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IN THE HIGH COURT OF DELHI AT NEW DELHI

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Date of decision: 02nd April, 2025

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CRL.M.C. 2700/2017**PRAKASH LAL KHERA****Ex. SHO, P.S. Ashok Vihar, New Delhi****S/o Late Sh. J.N. Khera****R/o 216, Tagore Park, Model Town-I,****Delhi-110009.****.....Petitioner****Through: Mr. Rajiv Mohan & Mr. Sachit
Sharma, Advocates.****versus**

1. **STATE**
GNCT of Delhi
Through Standing Counsel
Chamber No. 442, Delhi High Court,
New Delhi

2. **MOHD. ILIYAS**
S/o Sh. A. Hussain
R/o Jhuggi No. A-180,
Plot No. A-138, Wazirpur Industrial Area,
Delhi

.....Respondents**Through: Mr. Shoaib Haider, APP for State.**
S.I. Ajay Kumar, PS Ashok Vihar,
Delhi.**CORAM:****HON'BLE MS. JUSTICE NEENA BANSAL KRISHNA****J U D G M E N T****NEENA BANSAL KRISHNA, J.**



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1. Petition under Section 482 of the Code of Criminal Procedure, 1973 (*hereinafter referred to as 'CrPC'*) has been filed on behalf of the Petitioner, Prakash Lal Khara for quashing of the Order dated 26.10.2016, passed by the Court of learned CMM (North West), Rohini, Delhi, who has summoned the Petitioner for the offence under Section 304A of the Indian Penal Code, 1860 (*hereinafter referred to as 'IPC'*) in Complaint Case bearing CC No. 1594/2001.
2. *Briefly stated*, Respondent No. 2, Mohd. Ilyas filed a Complaint case bearing CC No. 1594/2001 against the Petitioner and two others, for having committed the offence under Section 304A of the IPC.
3. The basic averments made in the Complaint, were that the Respondent No. 2, Mohd. Ilyas was having his Jhuggi bearing Plot No. 138 WPIA, Delhi where he had been residing with his family since 1981. Aside from his Jhuggi, there were various other jhuggis of others, on the said plot.
4. It was contended that the owner of the plot got the demolition Order dated 27.11.2003 from this Court in respect of 36 Jhuggis only in which the Jhuggi of Respondent No. 2, was not named. Despite that, in the execution of the demolition of the Jhuggis, the Respondents also demolished the Jhuggi of the Complainant without prior Notice and without giving ample time to the family members to vacate it. The request of the Complainant to the Petitioner and others to stop the bulldozer was ignored and on the instructions of the accused persons, Jhuggis were demolished. The seven years old daughter of the Complainant, who was present in the Jhuggi, expired because of the debris which fell on her. Hence, the Complaint under Section 200 of CrPC was filed for taking cognizance of offence under



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Section 304A IPC against the Petitioner and others. The Complainant in support of his assertions examined himself as CW-3 and also corroborated his evidence by examining CW-1, namely, Mr. Tasleem Ahmad and CW-2, namely, Mr. Ram Avadh, who deposed on similar lines.

5. ***Learned Metropolitan Magistrate in the impugned Order dated 26.10.2016*** observed that the testimony of the Complainant, which was fully corroborated by CW-1 and CW-2, is *prima facie* established that the Jhuggi of the Complainant was not in the list of Jhuggis which were directed to be demolished by this Court. The Petitioner along with the others, without paying any heed got the Jhuggi demolished, without giving any warning or time for the family members to come out, which led to the demise of his seven years old daughter, who was present in the Jhuggi and thus, summoned the Petitioner under Section 304A IPC.

6. It was also noted that the FIR bearing No. 883/2004 under Section 304A IPC had also been registered at Police Station Ashok Vihar but persistently, *Cancellation Report* was submitted thrice. On two occasions, the learned Metropolitan Magistrate directed the fresh investigations but the third time while considering this Complaint *vide* Order dated 26.10.2016, it was observed that no fruitful purpose would be served by directing further investigations as the material evidence would have been lost with passage of time and the FIR was clubbed with the Complaint in which the summoning has been allowed.

7. Aggrieved by the Order of the learned Metropolitan Magistrate, the present Writ Petition has been filed on behalf of Mr. Prakash Lal Khera, SHO, impugning the Order on the ground that Cancellation Reports in the



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FIR No. 883/2004 registered in regard to the same incident, have already been filed before the learned Metropolitan Magistrate. The Respondent No. 2/Complainant had already filed a Criminal Complaint No. 1594/2001 in respect of the same incident.

8. It is contended on behalf of the Petitioner that the learned Trial Court failed to note that even though the Cancellation Reports were not accepted by the learned Metropolitan Magistrate and further investigations were directed twice, but again the Cancellation Report filed the third time on 15.04.2014, was also declined by the learned Metropolitan Magistrate, who directed that further investigations are required. However, even at that time, the Complainant did not pursue his Complaint, but addressed arguments on the Protest Petition.

9. The Petitioner has asserted that despite repeated investigations, nothing incriminating could be brought on record and consequently, third Cancellation Report dated 06.05.2016 had been preferred before the learned Metropolitan Magistrate, who while passing the impugned Order dated 26.10.2016 in regard to the Complaint under Section 200 of CrPC, did not comment anything on the Cancellation Report. The clubbing of the Cancellation Report filed in the FIR with the proceedings under Section 200 CrPC, is erroneous.

10. The learned Metropolitan Magistrate also fell in error in observing that the alleged act was not done in discharge of official duties and that the cognizance could be taken of the offence in the absence of the Sanction from the Concerned Authority against the Petitioner/SHO.

11. It is further contended that this Court in its Order dated 17.07.2003,



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had directed one *M/s Sanjeev Soni Industries* to be put in possession of the plot. For this purpose, the Bailiff was authorised to remove any person, who refused to vacate the plot. The Respondent No. 2/Complainant was not the Judgment Debtor or even the party to the Suit in which the Order had been made. The Bailiff had been appointed by the Orders of the Court, who demolished the Jhuggis and handed over the possession. The Petitioner *herein* had no role to play in the demolition in the alleged incident and he was present on the spot as an SHO to provide assistance to the Bailiff and that too, only if required if some resistance was shown by the illegal occupants of the plot and not otherwise.

12. The presence of the Petitioner was not for the purpose of carrying out the Orders of this Court but only to give protection, if required. It cannot be said by any stretch of imagination that Jhuggi of the Complainant, was demolished at the instance or under the supervision of the Petitioner. He could not have been roped in by invoking Section 304A of IPC. The concept of vicarious /constructive liability cannot be invoked, in the present facts.

13. It is further contended that from the testimony of the Complainant and his two witnesses, CW-1 and CW-2, the essential ingredients of rashness or negligent are not born out and nothing incriminating has come on record which warranted issuance of summons under Section 304A IPC, against the Petitioner, for which reliance has been placed on *State of Gujarat vs. Haidarali Kalubhai*, 1976 AIR 1012.

14. Reliance has also been placed on *Naresh Giri vs. State of MP*, (2008) 1 SCC 791 wherein distinction between the Section 299 and Section 304A of the IPC, has been drawn.



15. It is further contended that even if his act is found to be *prima facie* culpable, it should be construed as being in discharge of his official duty as SHO of the concerned Police Station, and no action could be initiated without Sanction from the Competent Authority.

16. The learned Trial Court has failed to appreciate that the Judgments of P.K. Pradhan vs. State of Sikkim, 2001 Cr. L.J. (SC) 3505 and Alister Anthony Pareira vs. State of Maharashtra, (2012) (2) SCC 648, are distinguishable and not applicable to the facts in hand. In Sankaran Moitra vs. Sadhna Das, AIR 2006 SC 1599, the factual matrix was starkly similar to the present facts wherein the Apex Court held that the sanction under Section 197(1) was mandatory.

17. Reference has been made to General Officer, Commanding Officer vs. CBI, (2012) 6 SCC 228 wherein the Supreme Court had opined that the *sanction* is of paramount importance for protecting a public servant, who has acted in good faith while performing his duty. It is obligatory on the part of the Executive Authority to protect him; if the law requires Sanction and the court proceeds against a public servant without Sanction, such an action may be rendered void *ab initio*.

18. Similar observations have been made in Anil Kumar vs. M.K. Aiyappa, (2013) 10 SCC 705.

19. It is, therefore, submitted that the impugned Order summoning the Petitioner under Section 304(II) IPC, is bad in law and is liable to be set-aside.

20. ***The Respondent No. 2/Complainant in his detailed Reply***, has



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submitted that Mr. Hari Mittal Ghai, the owner of the plot, had got the demolition Orders dated 27.11.2003 from this Court, in respect of the 36 Jhuggis in which the Jhuggi of the Respondent No. 2, was not covered, despite which it was demolished. It is further asserted that despite registration of FIR on 04.12.2014, no appropriate action has been taken by the Investigating Agency, who have time and again submitted three Cancellation Reports, though none has been accepted by the learned Metropolitan Magistrate. Furthermore, in the impugned Order, the learned Metropolitan Magistrate has rightly referred to various Judgments to conclude that this Act cannot be said to have been done in discharge of official duty and thus, the summoning has been done rightly. It is submitted that the impugned Order does not merit any interference.

21. The *formal Status Report has also been filed by the State* wherein the details of facts as mentioned earlier, have been narrated. It has also been stated that further proceedings in the FIR, have been clubbed with Complaint Case bearing CC No. 1594/2001, Police Station Ashok Vihar.

22. **Submissions heard and the record perused.**

23. The admitted facts which emerged from the narration of facts which are essentially not in dispute, are that the Decree Holder, *M/s Sanjeev Soni Industries* had filed a Civil Suit No.2470/1987 for Declaration and Possession of the suit plot against 36 jhuggi dwellers who had occupied the suit plot, before this Court, which was decreed *vide* Judgment dated 16.10.2021 whereby the Plaintiff was declared the owner and was also granted possession of the plot in question on which the Defendant No. 1 to 36 had been residing in Jhuggis.



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24. In execution of the Decree, this Court *vide* Order dated 17.07.2003, issued warrants of possession in respect of Plot No. 138, the Site Plan of which was annexed with the warrant. Thereafter, *vide* Order dated 27.11.2003, it was noted by this Court that the execution of Decree would not be possible without Police aid. Consequently, directions were issued to the DCP, Ashok Vihar, for providing Police assistance.

25. In compliance of the directions of the High Court for execution of the decree, on the fateful day i.e. 04.12.2004, the Bailiff along with the bulldozers/JCB, went to the site for taking the physical possession. The Petitioner, who was then the SHO, Police Station Ashok Vihar, New Delhi, along with the police team, was also present for providing police assistance.

26. It is evident from the circumstances that it was not the duty of the Police Officer either to get the Jhuggis vacated or to get the Jhuggis demolished; his only duty was to maintain law and order and to ensure that in case of any person objecting or creating any hindrance in the execution of the warrants of possession, is prevented from doing so and the Bailiff is able to abide by the directions of this Court, to get the possession of the plot in question.

27. Having so defined the role of the Petitioner which was confined to ensuring law and order, it cannot be said that he was under any duty of getting the Jhuggis vacated or that he intentionally in connivance with the owner or the Bailiff, illegally got the Jhuggi of the Complainant demolished without exercising due care and caution.

28. There is no evidence on record to reflect that the Petitioner in any way, had any connivance with the Bailiff or the owner of the property to



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illegally demolish the Jhuggis. His job was confined to maintaining law and order and to ensure that in case, the demolition is opposed by any of the residents of the Jhuggis, he may prevent them from opposing such demolition.

29. In these circumstances, though it is an unfortunate case where a father had been knocking the doors of the Court for over 10 years, seeking relief on account of demise of his daughter in a demolition while taking a possession of the plot in question, but the Petitioner, the then SHO, who was present only for the purpose of maintaining law and order, cannot be attributed with any culpability or connivance in causing the demise of the young child.

30. Since no *prima facie* case is made out against the Petitioner, the question of obtaining prior sanction under Section 197 of Cr.P.C., has become irrelevant.

31. The Criminal Complaint bearing CC No. 1594/2001 along with the impugned Order dated 26.10.2016 is hereby set-aside qua the petitioner. However, it is directed that the learned Metropolitan Magistrate shall proceed to consider the Cancellation Report, which has been filed in FIR No. 883/2004 under Section 304A IPC and the Complaint and proceed in accordance with law against the other respondents/ accused persons.

32. The Petition is disposed of accordingly.

(NEENA BANSAL KRISHNA)
JUDGE

APRIL 02, 2025
RS