

Ct. Case No. 3/2019

Narayan Kumar Vs. Pawan Kumar Meena & Ors.

04.08.2020

Matter is taken up through Video Conferencing (Cisco Webex), hosted by Reader of the Court Sh. Davinder Singh Bisht.


Present (on screen): Sh. Sundeep Sehgal, Ld. Counsel for the complainant with complainant.

Sh. Davinder Singh Bisht, Reader, Sh. Kripal Singh Sajwan, Sr.P.A, Sh. Hardeep Singh, Ahlmad and Sh. Manish Kumar, Asstt. Ahlmad are also present through Video Conference.

Vide separate order announced in the open Court through Video Conferencing, the complaint filed by the complainant u/s 200 Cr.P.C is dismissed u/s 203 Cr.P.C.

Screen signed copy of this jiminy order as well as screen signed copy of the detailed order be sent to the Computer Branch for uploading the same on the official website of the Court. The signed copy of jiminy order as well as detailed order shall be placed on record as and when physical hearing of the Court resumes. Digital signed copy of the order shall also be uploaded today itself.

Complaint case file be consigned to the Record Room after necessary compliance.



(Harish Kumar)

**Special Judge (PC Act) CBI-20,
Rouse Avenue District Court,
New Delhi/04.08.2020**

**IN THE COURT OF SPECIAL JUDGE (P C ACT) (CBI-20), ROUSE
AVENUE DISTRICT COURT, NEW DELHI**

Complaint Case No. 3/2019

In the matter of :-

Narayan Kumar

S/o Late Bhagwan Dass
R/o 6/108, DDA Flats,
Madangir, New Delhi

..... **Complainant**

VERSUS

1. Pawan Kumar Meena

Junior Engineer (Building)
South Delhi Municipal Corporation,
Green Park, New Delhi

2. Jai Pal Sharma

Junior Engineer (Building)
South Delhi Municipal Corporation,
Green Park, New Delhi

3. Sushil Kumar

Assistant Engineer (Building)
South Delhi Municipal Corporation,
Green Park, New Delhi

4. Tej Narain

Beldar
South Delhi Municipal Corporation,
Green Park, New Delhi

..... **Accused Persons**

Date of Institution : 21.01.2019
Date of Argument : 09.07.2020
Date of Order : 04.08.2020



Order on Summoning

1. This order on summoning is pronounced through video conferencing as due to Covid-19 pandemic physical hearing of the cases in court have been suspended since 23.03.2020.

2. Complainant Sh. Narayan Kumar has filed present complaint against four respondent/accused persons who are all employees of South Delhi Municipal Corporation in building Section.

3. It has been mentioned by complainant in his complaint that he has been residing at 6/108, DDA Flats, Madangir, New Delhi – 110062 and in the month of February 2018, he started some repairs on his property as it was in a dilapidated condition and was falling apart. On 08.03.2018 and 13.03.2018 he informed the Dy. Commissioner of the concerned Municipal Corporation that he had started repairs in his premise pursuant to the order of the Hon'ble High Court of Delhi.

4. It has been further stated that on 02.04.2018/03.04.03.2018 accused No.2 came with his associate on the motorcycle, pasted a notice, took the photo on his mobile, removed the notice and took the notice back with him and complainant was informed about it by one of his neighbour. The complainant got in touch with accused/respondent No. 3 and told him to give notice which was allegedly pasted on his property but was removed.



5. It is further stated that on 06.04.2018 after much persuasion, accused/respondent No.2 finally met near Hanuman Temple, Pushp Vihar and gave him the notice and during conversion demanded Rs. 30,000/- from the complainant so that demolition etc. would be stopped. Accused/respondent No. 2 further informed complainant that the standard rate was Rs. 20,000/- per floor in the Madangir area and the owner/builder who were constructing high rise building were paying as per this going rate to him. The complainant further alleged that since he did not pay any money to accused/respondent No.2, a demolition notice was sent to him.

6. It has been further stated that on 29.11.2018, accused/respondent No. 4 forcibly entered the house of the complainant and tried to check the seal of the premises. When the complainant asked him as to who has authorized him to check his premises, accused/respondent No. 4 named accused/respondent No. 1 but he was unable to produce anything in writing. The complainant was also informed that there was date in the MCD tribunal on the next day i.e. 30.11.2018 and if complainant pay Rs. 40,000/- that day itself, a favourable report would be given on the next day and the demolition and sealing would be stopped. The complainant told accused/respondent No. 4 to call accused/respondent No.1 who came there and barged into the premise without any authority or communication and started threatening the complainant. When complaint threatened to report the matter to police, accused/respondent No.1 went out of the house of complainant. The constable Ajit Gujjar, an emergency police officer, took all three of them to police station where complainant demanded that accused/respondent No.1



and 4 be booked for entering into his premises without an authority and demanding bribe in order to give a favourable report. The complainant also sent complaints dated 07.04.2018 and 29.11.2018 to the DCP and SHO Ambedkar Nagar informing them about the two incidents of criminal trespass, house trespass and the demand of bribe but no action was taken by the police. Alleging that offense of house trespass, criminal trespass as well as those u/s 13 of the Prevention of Corruption Act are made out, the complaint filed the present complaint.

7. The complainant in his complaint made following prayer:-

- a). Direct the competent authority to register the FIR under the appropriate sections of law (viz. Sections 447/448 and Section 13 of the Prevention of Corruption Act, 1988) and further investigate the matter.
- b). Take cognizance of the offences committed by the respondents, summon them and prosecute them in accordance with law.

8. Vide order dt 20.04.2018 Ld. Predecessor of this Court finding that prayer clause 'a' and prayer clause 'b' are contradictory to each other as no direction for registration of FIR can be issued by the Court u/s 200 CrPC, observed that complainant has to specify which mode of action he intended to pursue and accordingly fixed the next date for clarification.

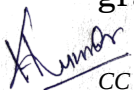
9. After hearing Counsel for complainant, Ld. Predecessor of this Court vide order dt. 27.08.2019 was pleased to reject the prayer of the



complainant qua direction for registration of FIR. However complaint was given an opportunity to lead pre - summoning evidence in support of averments made in his complaint.

10. Pursuant to opportunity granted, complainant examined himself as CW1 as well as two more witnesses namely CW2 Sh. Ramesh Chand and CW3 Head Constable Sh. Subhash Chand of P.S. Ambedkar Nagar, New Delhi.

11. Ld. Counsel for Complaint has argued that facts alleged in the complaint as well as deposed to by all three witnesses are itself sufficient to summon all the four accused/respondents as it has been specifically come in evidence that accused persons particularly accused/respondent No. 1, 2 and 3 have demanded bribe money for getting stopped the sealing/demolition process etc. of the house of the complainant. He further submitted that from the testimony of CW1 Narayan Kumar and CW2 Ramesh Chand it is clear that accused No. 1 and 4 committed house and criminal trespass. He has further submitted that at the stage of summoning, court need not make an in-depth analysis of evidence on record and to see if it will result in conviction of the accused persons. He submitted that at this stage, court has only got to see if material placed before the court constitute the commission of offense alleged against the accused persons. He has further submitted that at pre - summoning evidence stage sanction under section 19 of Prevention of Corruption Act is not required. In any case, he has submitted that, complaint applied for grant of sanction for prosecution on 5.11.2019 but till date no refusal or



any reply has been received and therefore, in view of judgement of the Hon'ble Supreme Court in the case titled as **Dr. Subramaniam Swami v. Dr. Manmohan Singh** decided on 31.01.2012, he contends, that there is deemed sanction as neither refusal has been conveyed nor any reply has been sent by competent authority.

12. File perused and contentions of Ld. Counsel for complainant taken into consideration. All respondents are public servants. In **Punjab National Bank and Others v. Surendra Prasad Sinha**, 1993 Supp (1) SCC 499, Hon'ble Supreme Court held as under:-

“5. It is also salutary to note that judicial process should not be an instrument of oppression or needles harassment. The complaint was laid impleading the Chairman, the Managing Director of the Bank by name and a host of officers. There lies responsibility and duty on the Magistracy to find whether the concerned accused should be legally responsible for the offence against the juristic person or the persons impleaded then only process would be issued. At that stage the court would be circumspect and judicious in exercising discretion and should take all the relevant facts and circumstances into consideration before issuing process lest it would be an instrument in the hands of the private complaint as vendetta to harass the persons needlessly. Vindication of majesty of justice and maintenance of law and order in the society are the prime objects of criminal justice but it would not be the means to wreak personal vengeance. Considered from any angle we find that the respondent had abused the process and laid complaint against all the appellants without any prima facie case of harass them for vendetta.

(Emphasis supplied)



13. As the respondents are public servants and the alleged offense have been allegedly committed during the colorful exercise of their respective officials duties, therefore, this court has to be on guard so as to ensure that its process does not become the means of personal vengeance of the complainant. As noted above vindication of majesty of justice and maintenance of law and order in the society are the prime objects of criminal justice but it should not be the means to wreak personal vengeance, hence the court is required to be circumspect and judicious in exercising discretion and should take all the relevant facts and circumstances into consideration before issuing process.

14. Complainant in his pre – summoning evidence deposed not only on the lines of complaint but also went beyond his complaint and deposed on the facts which admittedly took place after the filling of the complaint. Hence, those facts which admittedly (allegedly) took place after 21.01.2019 that is the day on which present complaint was filed, cannot be taken into consideration for the present complaint.

15. Further, complainant for reason best known to him, did not examine his neighbour who had allegedly seen accused No. 2 pasting notice on the premise of the complainant, taking the photo of the same and then removing the same. So much so that even name of that neighbour was not disclosed by the complainant.

16. Furthermore, testimony of CW2 Ramesh Chand in whose presence incident of 29.11.2018 had allegedly taken place, has also got to



be discarded because complainant neither in his written complaint dt 29.11.2018 Ex CW3/A made to S.H.O. P.S. Ambedkar Nagar nor in his complaint before this court nor in his testimony recorded before this court deposed about the presence of CW2 Ramesh Chand on 29.11.2018 on which day allegedly accused/respondent No. 4 and 1 made criminal house trespass and respondent No. 1 allegedly demanded Rs. 40,000/- to bury up the matter of alleged unauthorised construction allegedly carried out by the complainant in his house. Presence of CW2 Ramesh Chand, if any, on the 29.11.2018 on the spot was an important piece of evidence as an eye witness which would not have slipped out of mind of the complainant when he wrote his complaint to S.H.O. of P.S Ambedkar Nagar on 29.11.2018 itself. Hence, anything deposed to by CW2 Ramesh Chand cannot be relied upon as his presence at the spot is extremely doubtful.

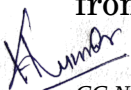
17. Now complainant is left with his own testimony to lay foundation for supplying enough grounds to summon the accused persons to face criminal charges. This court is conscious of the fact that at the summoning stage this court has not got to make roving inquiry into the materials laid before it to see if allegation would sustain at the end. This Court, however, is also conscious of its duty to see that its process does not become means in the hand of the complainant to wreak his personal vengeance. This court is also conscious of the fact that summoning a public servant to face criminal charge entails serious consequence and therefore is a serious matter. In **M/s Pepsi Foods Ltd. v. Special Judicial Magistrate, (1998) 5 SCC 749**, a three Judge Bench of Hon'ble Supreme



Court observed as under:

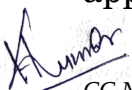
"28. Summoning of an accused in a criminal case is a serious matter. Criminal law cannot be set into motion as a matter of course. It is not that the complainant has to bring only two witnesses to support his allegations in the complaint to have the criminal law set into motion. The order of the Magistrate summoning the accused must reflect that he has applied his mind to the facts of the case and the law applicable thereto. He has to examine the nature of allegations made in the complaint and the evidence both oral and documentary in support thereof and that would be sufficient for the complainant to succeed in bringing charge home to the accused. It is not that the Magistrate is a silent spectator at the time of recording of preliminary evidence before summoning of the accused. Magistrate has to carefully scrutinise the evidence brought on record and may even himself put questions to the complainant and his witnesses to elicit answers to find out the truthfulness of the allegations or otherwise and then examine if any offence is prima facie committed by all or any of the accused."

18. Striking balance between the above limitation, it has got to be seen the background in which present complaint originated. It is the saying of complaint that in February 2018 he started some repairs in his property as it was in a dilapidated condition and was falling apart. He further said that vide his letter dt. 08.03.2018 and 13.03.2018 he intimated Dy. Commissioner of the Municipal Corporation that he had started repairs in his premise pursuant to the order dt 24.07.2014 passed by Hon'ble High Court in the writ petition filed by him. Perusal of the Order dt 24.07.2014 shows that complaint had approached the Hon'ble High Court seeking an order to the effect that respondents therein be restrained from interfering in carrying out repairs in his property. In the said writ



petition, as reflected from order, complainant had submitted that roof of his flat had caved in and it was necessary for him to carry out repairs but respondent therein were obstructing repairs. Hon'ble High Court vide order dt. 24.07.2014 permitted complainant to carry out the repairs. This urgent repair complainant undertook only after almost three and half years. No explanation as to why he undertook such urgent repair of roof of his flat after almost three and half years of permission granted by Hon'ble High Court. So it seems doubtful that respondent was carrying out repairs following the order of the Hon'ble High Court.

19. Further, complainant in his pre – summoning testimony recorded on 17.10.2019 himself deposed *“I asked Jaipal Sharma A-2 that my house was surrounding by buildings which were constructed upto sixth floor and that my house was only one storied and that I was constructing a room for my daughter on it so why was my house was required to be demolished”*. Now here complainant specifically deposed that he was constructing one room for his daughter but no such permission was granted by the Hon'ble High Court and therefore complainant cannot claim that he was carrying repairs in pursuance to permission granted by Hon'ble High Court. Surprisingly it has also not been specifically claimed by the complainant that he was carrying out construction authorisedly. Further, constructing a room cannot be said to be repair work that too in pursuance of the order of Hon'ble High Court which had permitted to repair caved in roof. Complainant has not stated that he had taken approval/permission from the concerned authority for raising construction



of a room nor has he stated that building bye-laws are not applicable to the area where his flat is situated. Moreover since his flat is DDA flat as is apparent from the address given by the complainant himself then it cannot be said that his area is out of bound of building bye-laws.

20. Now in the background where complainant was carrying out construction without permission and in the absence of claim that no such permission was required then a duty is cast upon the officials of the Municipal Corporation of building department to ensure that no unauthorized construction is carried out in the area under their charge. For aforesaid purpose the officials visited, served notice and passed demolition order and finally carried out the demolition after the date of filing of the complaint as deposed to by the complainant himself.

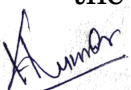
21. Now the grievance of the complainant is that since he did not bribe them as demanded by them therefore he was not permitted to carry out construction and they have demolished the construction on 03.06.2019 i.e. after filing of the present complaint. It has been further submitted that in entire area where complainant lives, there are rampant unauthorised construction carried out or are being carried out but these officials and other concerned officials are turning their eyes away as they are being bribed. It is his submission that he was chosen for action as he did not bribe them. It is further his submission that asking bribe is an offense so the accused/respondents be summoned for facing charges. It is further his



submission that entering his house forcefully amounts to criminal trespass and therefore accused persons be summoned and tried.

22. It is no doubt true that unauthorised construction in many parts of Delhi have come out and it has become possible only with the nexus of officials responsible to check it. Nevertheless this Court has no writ jurisdiction to direct investigation into nexus of officials responsible to curb unauthorised construction, with persons carrying out unauthorised constructions and merely because many unauthorised constructions was going in the area where these officials were posted it cannot be presumed that these officials were bribed to turn away their eyes. Accused persons enjoys the legal presumption of their innocence till they are proved guilty. Further if at all they have turned away their eyes from the existing or ongoing unauthorised construction in the area then also this is not the forum for bringing action for dereliction of duty or for offense if any.

23. Admittedly, complainant is smarting under his failure to successfully secure construction in his flat which for reason best known to him has not been specifically claimed by him to be authorised construction. In exasperation he needs action against officials who became instrumental in the stoppage of construction and final demolition in his flat as that will somehow relief him of pain he is undergoing through. It has to be kept in mind that existence of or widespread ongoing unauthorised construction in the area, even with the nexus of concerned officials, does not authorise



other persons like complainant to go ahead with unauthorised construction and does not oblige officials to remain mute spectator. One cannot claim equality in the matter of treatment in the *parallel system* so far as one's action in violation of law/rules is concerned. One cannot as a matter of right claim that he may be allowed to continue with his construction as the concerned officials are allowing others to do (*illegal*) construction after taking bribe otherwise he would expose them to criminal charges.

24. Further, if complainant's present action had not oozed out of his deep anguish due to his failure to secure his construction, he would not have claimed before authority or before this Court that he was carrying on construction pursuant to permission granted by Hon'ble High Court and he would not have put up CW2 Ramesh Chand as a witness to the incident whose presence has been found doubtful for the reason noted above and instead would have examined his neighbour who had seen accused No.2 pasting notice and removing after taking photograph. If the said neighbour was not willing to come to court at least his name would have been mentioned.

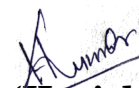
25. Thus taking into account all the relevant facts and circumstances as noted above, this court finds that there is no sufficient ground to summon the accused persons as the process of this court is likely to become instrument in the hands of the complainant to wreak personal vengeance and accordingly, present complaint is hereby dismissed.



26. Before parting, however, it must be clarified that observation by this court qua the nature of construction in the premise of the complainant is purely incidental and should not be taken as adjudication on the nature of construction which complainant had carried out in his above noted premise and hence it does not affect the right of the complainant to prove legal or authorised nature of construction in appropriate proceedings.

27. Digitally signed copy of this order be uploaded on the website. Physical signed copy be placed on file after resumption of physical hearings in courts.

28. File be consigned to Record Room after necessary compliance.



(Harish Kumar)

**Spl. Judge (P.C.Act) (CBI-20)
Rouse Avenue District Court
New Delhi / 04.08.2020**

Announced in open court through VC.
(Order contains 14 pages)