

Kishan Devnani vs.state & Anr

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Court : Delhi

Decided On : Aug-26-2019

Appellant : Kishan Devnani

Respondent : State & Anr

Advocate for Def. : Mr. Sanjeev Sabharwal

Advocate for Pet/Ap. : Mr. Sudhir Nandrajot, Ms. Biji Rajesh, Ms. Ishita Baruah, Ms. Arti Mehta

Judgement :

\$~ IN THE HIGH COURT OF DELHI AT NEW DELHI Reserved on: August 07, 2019 Decided on: August 26, 2019 + CRL.M.C. 500/2019 KISHAN DEVNANI

... Petitioner

Through: Mr. Sudhir Nandrajot, Sr. Adv. with Ms. Biji Rajesh, Ms. Ishita Baruah & Ms. Arti Mehta, Advs. versus STATE & ANR

... RESPONDENTS

Through: Mr. Sanjeev Sabharwal, APP for the State. Respondent no.2 in person.
CORAM: HON'BLE MR. JUSTICE R.K.GAUBA

JUDGMENT

1 On the criminal complaint (CC No.523311/2016 - earlier No.CC No.63/1C/2015) of the second respondent (complainant), the petitioner (along with certain others)

has been summoned by the Metropolitan Magistrate, by her order dated 18.01.2018, to appear as an accused and be answerable on accusations of complicity in certain acts statedly constituting offences punishable under Sections 197 and 198 read with Section 34 of Indian Penal Code, 1860 (IPC). The petitioner had assailed the said summoning order in the court of Sessions by criminal revision No.739/2018 but without success, his petition having been dismissed by its order dated 09.01.2019. Crl.M.C. 500/2019 Page 1 of 8 2. Feeling aggrieved, he has come up invoking the inherent power and jurisdiction of this Court under Section 482 of the Code of Criminal Procedure, 1973 (Cr.P.C.) questioning the legality of the view taken by the courts below.

3. The background facts need to be taken note of, in brief. The controversy concerns property described as Duplex Dwelling Unit flat No.10A, Prem Shanti Kunj, 2 Club Road, Delhi-110054. The said flat is part of a larger super-structure, it statedly comprising of four floors including basement and ground floor. The building plans in respect of the said super-structure were statedly sanctioned on 18.04.1990. The building was developed by the owners with the help of a construction company under collaboration agreement that was executed on 09.02.1991. Unauthorised construction on account of deviations were noted by the municipal authorities leading to show cause notice against demolition being issued on 20.08.1992 under Sections 343 and 344 (1) of Delhi Municipal Corporation Act, 1957 (DMC Act).

4. There was some move at the above stage to revoke the sanction of the building plans though, it is stated, the concerned authorities in the municipal corporation decided on 09.10.1992 to keep such move in abeyance. The application for revised building plans to be sanctioned was moved on 01.03.1993. In the wake of subsequent developments, the entire building was sealed and a demolition order was passed on 06.09.1993. The then owners of the super-structure moved yet another application for revised plans to be sanctioned with certain further modification, on 22.10.1993. The revised plans were Crl.M.C. 500/2019 Page 2 of 8 rejected by the competent authority and directions were given for the property to be sealed. The appeal was filed against the sealing and rejection order which was allowed on 28.02.1997. Certain rectification was recorded as carried out in the

basement where the deviations had been noted in 1997 and compounding fee paid by the erstwhile owners. On 29.04.1999, the petitioner, as the then junior engineer (building) in the concerned zonal office of the municipal corporation, prepared a report which was submitted before the competent authorities for issuance of completion certificate. On 04.06.1999, after the submission of the report by the petitioner, unauthorized construction in the shape of partition walls in the basement was again noted and this led to fresh sealing order on 19.06.2001.

5. While the above events concerning the unauthorised construction in the building were taking place, the building being then sealed, the second respondent (complainant) purchased the subject portion of the property in question on 27.02.2002. The sealing order was set aside by the Appellate Tribunal for Municipal Corporation of Delhi (ATMCD) on 11.03.2002 and the matter was remanded to the municipal authority for further consideration. It appears that in March, 2002, the proceedings at that end were closed on some undertaking being offered. However, later the Deputy Commissioner (Civil Line zone) of Municipal Corporation of Delhi passed a sealing order on 15.12.2003 under Section 345-A of DMC Act on account of unauthorised construction of partition walls in the basement, this in Crl.M.C. 500/2019 Page 3 of 8 addition to a demolition order that had been passed on 07.10.2003. The sealing order, and the demolition order, were challenged by the occupants of various portions of property in question including the complainant herein, by their respective appeals before the ATMCD. The appeals having been rejected by the said forum, further appeals were taken out before the District and Sessions Judge, Delhi, they being batch matters led by MCD appeal nos. 3049/2016, 3036/2016 of the complainant herein. It may be mentioned here that all the said appeals were dismissed by the District and Sessions Judge, Delhi, by his judgment dated 07.11.2017, the contentions questioning the legality of the action by municipal authority having been rejected.

6. While the appeals were pending before the District and Sessions Judge, the second respondent filed the afore-mentioned complaint in the court of Metropolitan Magistrate on 06.01.2015, accusing amongst others, the petitioner herein of complicity in offences under Sections 197 and 198 read with Section 34 IPC primarily on the grounds that it was his false report which had led to the grant of

completion certificate in respect of the then existing super-structure on 29.04.1999.

7. The Metropolitan Magistrate, by her order dated 18.01.2018, has inter alia, observed that in the facts and circumstances of the case, the petitioner cannot claim protection of Section 197 Cr.P.C. The petitioner raised the issue of absence of sanction also agitating the question of limitation before the revisional court, both the said pleas, however, having been rejected. Crl.M.C. 500/2019 Page 4 of 8 8. The petition at hand under Section 482 Cr.P.C. questions the order dated 09.01.2019 of the revisional court on the above two grounds. It is resisted by the complainant by a formal reply dated 04.07.2019 against which a rejoinder affidavit has also been submitted.

9. Having heard both sides at length and having gone through the record, this Court is of the view that the petitioner must succeed on both counts.

10. It is clear from the bare averments in the criminal complaint that the acts of commission or omission allegedly indulged in by the petitioner were in exercise of the duty vesting in him and in discharge of the office he held at the relevant point of time under the Municipal Corporation in April, 1999. He concededly was an employee of Delhi Municipal Corporation and in that capacity is entitled to protection under Section 477 of DMC Act which reads thus: 477. Protection of action of the Corporation, etc.-No suit or prosecution shall be entertained in any court against the Corporation or against any municipal authority or against any municipal officer or other municipal employee or against any person acting under the order or direction of any municipal authority or any municipal officer or other municipal employee, for anything which is in good faith done or intended to be done, under this Act or any rule, regulation or bye-law made thereunder.

11. There is nothing shown in the complaint or the pre-summoning evidence from which bad faith in the impugned acts could be inferred. The protection under Section 477 of Delhi Municipal Corporation Act, Crl.M.C. 500/2019 Page 5 of 8 1957 cannot be taken away. The proceedings, therefore, ought not be allowed to continue [R.R. Gautam & Anr. vs. State & Anr. 2008 (1) JCC766.

12. The offences on the accusations of which the petitioner has been summoned are defined and provided for by the Indian Penal Code as under:-

"197. Issuing or signing false certificate.-Whoever issues or signs any certificate required by law to be given or signed, or relating to any fact of which such certificate is by law admissible in evidence, knowing or believing that such certificate is false in any material point, shall be punished in the same manner as if he gave false evidence.

198. Using as true a certificate known to be false.- Whoever corruptly uses or attempts to use any such certificate as a true certificate, knowing the same to be false in any material point, shall be punished in the same manner as if he gave false evidence.

13. It is clear that these offences attract the same punishment as is prescribed for giving false evidence, in terms of second part of Section 193 IPC i.e. imprisonment of either description for a term which may extend to three years, and shall also be liable to fine. 14. Section 468 Cr.P.C., however, provides for a bar to taking cognizance after lapse of the period of limitation. The period of limitation for criminal proceedings to be initiated is provided by Section 468 (2) Cr.P.C. which reads thus: The period of limitation shall be- Crl.M.C. 500/2019 Page 6 of 8 (a) six months, if the offence is punishable with fine only; (b) one year, if the offence is punishable with imprisonment for a term not exceeding one year; (c) three years, if the offence is punishable with imprisonment for a term exceeding one year but not exceeding three years. (emphasis supplied) 15. The last clause of sub-section (2) of Section 468 makes it clear that criminal action cannot become stale in cases involving offences for which the law prescribes punishment for imprisonment that may exceed three years. But, if the punishment does not exceed three years, as is the case of offences under Section 197 and 198 IPC (on account of second part of Section 193 IPC.), the period of limitation is three years from the date of commission of offence [section 469 (1) (a) Cr.P.C.]..

16. It is not the case of the petitioner that he had belatedly come to know of the role played by the petitioner vis-a-vis the issuance of completion certificate in April 1999. On the contrary, he had purchased the subject premises which is part of the

disputed structure on 27.02.2002 and ever since has been participating in the litigation before various authorities including before ATMCD and the appellate forum of District and Sessions Judge. Assuming that the petitioner had indulged in the questioned acts of commission or omission in April, 1999 so as to be complicit in crimes under Section 197 and 198 IPC, the initiation of criminal action against him by criminal complaint presented on 06.01.2015 is badly time barred. Such belated CrI.M.C. 500/2019 Page 7 of 8 prosecution in absence of any explanation or even request for condonation of delay cannot be permitted to continue.

17. Thus, the petition is allowed. The impugned order dated 18.01.2018 of the Metropolitan Magistrate summoning the petitioner as accused in above mentioned criminal complaint of second respondent and proceedings arising therefrom are hereby quashed. R.K.GAUBA, J.

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