

**Deepa Singh Vs. State**

**Deepa Singh Vs. State**

**SooperKanoon Citation :** [sooperkanoon.com/691627](http://sooperkanoon.com/691627)

**Court :** Delhi

**Decided On :** Mar-03-1998

**Reported in :** 1998IVAD(Delhi)492; 1998(46)DRJ90

**Judge :** Anil Dev Singh, J.

**Acts :** [Delhi Municipal Corporation Act, 1957](#) - Sections 5, 332, 461, 466-A, 467, 469 and 470; [Code of Criminal Procedure \(CrPC\), 1973](#) - Sections 4(2) and 173

**Appeal No. :** Criminal Misc. (Main) Petition No. 1165 Of 1994 & CrI.M.1101/94

**Appellant :** Deepa Singh

**Respondent :** State

**Advocate for Def. :** Mr. R.D. Jolly, Adv.

**Advocate for Pet/Ap. :** Mr. G.K. Srivastava, Adv

**Judgement :**

ORDER

**Anil Dev Singh, J.**

1. This is a petition under Section 482 of the Code of Criminal Procedure for quashing the order dated 1st December, 1993 passed by Mr. S.P. Garg, Metropolitan Magistrate, Shahdara in case FIR No. 67/1989 under Section

332/466-A of the [Delhi Municipal Corporation Act, 1957](#) (for short 'the Act'). The facts necessary for the disposal of this petition are as follows:

2. The Deputy Commissioner-A of the Municipal Corporation of Delhi (for short 'the Corporation') sent 'a complaint bearing No. A /52/89/2032 dated 17th February, 1989' to the SHO, Police Station Krishna Nagar, Delhi against the petitioner under Section 466A of the Act alleging therein that the petitioner had made certain deviations in the construction of the building in violation of the sanctioned building plan. The property in question where the alleged deviations have been made by the petitioner is B-26, East Krishna Nagar, Delhi. The police on receiving the complaint initiated investigation into the matter and recorded the statement of the Junior Engineer and others. On completion of the investigation, a police report was filed in the Court of Mr. S.P. Garg, Metropolitan Magistrate under Section 173 of the Code of Criminal Procedure. The learned Metropolitan Magistrate took cognizance of the offence under Section 332 read with Section 461 of the Act and proceeded to frame charge against the petitioner. At that stage the petitioner took the objection that the learned Metropolitan Magistrate did not have the jurisdiction to proceed with the trial of the offence as no complaint had been filed before the Court by any officer of the Corporation authorised by the Commissioner in this behalf. The petitioner also argued that the Metropolitan Magistrate was not competent to hold the trial as under Section 470 of the Act an offence against the Act or any Rules or Regulation or Bye-law made there under is cognizable by a Municipal Magistrate appointed under Section 461 of the Act. The learned Metropolitan Magistrate by order dated 1st December, 1993 rejected the objections of the petitioner. By the same order he came to the prima facie conclusion that the petitioner had committed an offence under Section 332 of the Act and the Court had the jurisdiction to proceed with the case. It is this order which has been impugned in the instant petition.

3. Learned counsel appearing for the petitioner vehemently argued that under Section 467 of the Act no court can proceed to the trial of any offence under Section 332 of the Act except on the complaint of the Commissioner, Municipal Corporation of Delhi or any person authorised by him by a general or special order in this behalf and since no complaint has been filed by the Commissioner or any

person authorised by him, the Metropolitan Magistrate ought not to have proceeded with the trial of the case on a police report.

4. He also contended that the Metropolitan Magistrate has no authority to take cognizance of the offence under the Act and it is only a Municipal Magistrate who could have taken cognizance of the offence under Section 470 of the Act.

I have considered the submissions of learned counsel for the petitioner. Section 4 of the Code of Criminal Procedure on which reliance was placed by the learned counsel for the petitioner needs to be noticed. The Section reads as follows :

'4. Trial of offences under the Indian Penal Code and other laws -(1) All offences under the Indian Penal Code (45 of 1860) shall be investigated, inquired into, tried and otherwise dealt with according to the provisions hereinafter contained.

(2) All offences under any other law shall be investigated, inquired into, tried, and otherwise dealt with according to the Same provisions, but subject to any enactment for the time being in force regulating the manner of place of investigating, inquiring into, trying or otherwise dealing with such offences.

5. It is apparent from the reading of this Section that the provisions of the Code of Criminal Procedure are applicable where an offence under the Indian Penal Code or under any other law is being investigated, inquired into, tried or otherwise dealt with. This position is clear from sub-section (2) of Section 4 of the Code of Criminal Procedure which provides that all offences, whether under the Indian Penal Code or under any other law, are required to be investigated, inquired into or tried according to the provisions of the Code of Criminal Procedure except in case of an offence where the procedure prescribed there under is different than the procedure prescribed under the Code of Criminal Procedure. At this stage it needs to be noted that Section 466-A of the Delhi Municipal Corporation Act specifically lays down that the Code of Criminal Procedure shall apply to an offence under sub-Section (5) of Section 313 or Section 332 or sub-section (1) of Section 334 or Section 343 or Section 344 or Section 345 or Section 347 and an offence under sub-section (1) of Section 317 or sub-section (1) of Section 320 or sub-section (1) or Section 321 or sub-section (1) of Section 325 or Section 339 in

relation to any street which is a public street; as if it were a cognizable offence for the purpose of investigation of such offence; and for the purpose of all matters other than matters referred to in Section 42 of the Code, and arrest of a person, except on the complaint of, or upon information received from such officer of the Corporation not being below the rank of Deputy Commissioner, as may be appointed by the Commissioner. thereforee, the procedure to be followed for the purpose of investigation of the offences under Section 332 of the Delhi Municipal Corporation Act is the one which is laid down in the Code of Criminal Procedure, 1973. Much stress was laid by the learned counsel for the petitioner on the provisions of Section 467 of the Delhi Municipal Corporation Act which lays down that save as otherwise provided in the instant Act, no court shall proceed to the trial of any offence under certain sections of the Act including Section 332 unless a complaint on or upon receiving information from the Commissioner or a person authorised by him is filed. Section 467 of the Act reads as follows :

'467. Prosecutions-Save as otherwise provided in this Act, no court shall proceed to the trial of any offence-

(a) under sub-section (5) of section 313 or section 332 or sub-section (1) of section 333 or sub-section (1) of section 334 or section 343 or section 344 or section 345 or section 347 except on the complaint of or upon information received from such officer of the Corporation, not being below the rank of a Deputy Commissioner as may be appointed by the Administrator;

(b) under sub-section (1) of section 317 or sub-section (1) of section 320 or sub-section (1) of section 321 or sub-section (1) of section 325 or section 339 if any such offence was committed in relation to any street which is a public street, except on the complaint of, or upon information received from, such officer of the corporation, not being below the rank of a Deputy Commissioner as may be appointed by the Administrator;

(c) other than those specified in clauses (a) and (b) except on the complaint of, or upon information received from the Commissioner or a person authorised by him, by a general or special order in this behalf.

6. Learned counsel for the petitioner submitted that since the complaint was not filed by the Commissioner or any person authorised by him, therefore, the Court could not proceed to the trial of the offence under Section 332 of the Act. In making the submission, learned counsel for the petitioner has not given due consideration to the fact that the prosecution could be initiated upon information received by the Court from an officer of the Corporation. Such an information can be received by the court from the Officer of the Corporation either directly or through the agency of the police. Where the police starts investigation into the matter on the information furnished by the authorised officer of the Corporation, who is competent to file a complaint, and the police on the basis of the said information investigates the matter and finally files a report under Section 173 of the Code of Criminal Procedure, it cannot be said that the Court to which such a report is filed is not acting on the information received from the authorised officer of the Corporation. Section 467 does not lay down as to how the information should be received by the Court from the Commissioner or the person authorised by him in this behalf. It nowhere says that the information should be directly filed in the Court by the Commissioner or the person authorised by him in this behalf. therefore, the information could also be received by the Metropolitan Magistrate through the report filed by the police under Section 173 of the Code which in turn is based on the complaint of the Commissioner or the person authorised by him. therefore, the submission of learned counsel for the petitioner that the Court could not proceed to the trial of the offence as the complaint was not filed by the Commissioner or the person authorised by him in this behalf, is of no avail to him. Accordingly, the sub-mission of the learned counsel for the petitioner is rejected. In so far as the contention of the learned counsel for the petitioner that only the Municipal Magistrate can take cognizance of the offence under the Act is concerned, it seems to me that the contention is without force. To appreciate the submission, it will be necessary to set down Section 469 and 470 of the Act which read as follows:

'469. Municipal Magistrate. - (1) The Government may appoint one or more Metropolitan Magistrates for the trial of offences against this Act and against any rule, regulation or bye-law made there under and may prescribe the time and place at which such magistrate or magistrates shall sit for the dispatch of

business.

(2) Such magistrates shall be called municipal magistrates and shall besides the trial of offences as aforesaid, exercise all other powers and discharge all other functions of a magistrate as provided in this Act or any rule, regulation or bye-law made thereunder.

(3) Such magistrates and members of their staff shall be paid such salary, pension, leave and other allowances as may, from time to time be fixed by the Government.

(4) The Corporation shall, out of the Municipal Fund, pay to the Government the amount of the salary pension, leave and other allowances as fixed under subsection (3) together with all other incidental charges in connection with the establishments of the said magistrates.

(5) Each such magistrate shall have jurisdiction over the whole of Delhi.

(6) For the purpose of the Code of Criminal Procedure, 1973 (2 of 1974), all municipal magistrates appointed under this Act shall be deemed to be magistrates appointed under Section 16 of the said Code.

(7) Nothing in this Section shall be deemed to preclude any magistrate appointed hereunder from trying any offence under any other law.

470. Cognizance of offences- All against this Act or any rule, regulation or bye-law made thereunder, whether committed within or without the limits of Delhi shall be cognizable by a municipal magistrate and such magistrate shall not be deemed to be incapable of taking cognizance of any such offence or of any offence under any enactment which is repealed by, or which ceases to have effect under this Act by reason only of his being liable to pay any municipal tax or rate or benefited out of the Municipal Fund.

7. It is clear from a reading of Section 469 that the Government may appoint Municipal Magistrates for the trial of the offences against the Act or against any rule, regulation or bye-law made thereunder. It is not disputed that the

Government has not appointed any Municipal Magistrate as Municipal Magistrate. In *Bhim Sen vs . State of U.P.*, : 1955 CriLJ1010 , the Supreme Court laid down that where under a Special Act machinery for the trial of offences under that Act has not been provided, the jurisdiction of the ordinary criminal courts is not to be excluded. It also laid down that ouster under the Special Act must be clear and operative. The Supreme Court in this regard observed as follows :

'Such a bar in respect of the entire case can be operative only where there is a valid machinery for the trial thereof. In the present case in which at least one of the accused (though not this very appellant) is a person coming from an area outside to local extent of the Act, any bench of the Adalat that can be validly formed there under cannot try the three accused together and hence can have no jurisdiction over the whole case. The jurisdiction of the regular criminal court in respect of such a case cannot be taken away by the operation of S. 55 of the Act.'

Again in *AttiquR Rehman v. Municipal Corporation of Delhi and another*, 1996 1 AD SC 316, the Apex Court interpreting Sections 466-A, 467, 469 and 470 of the Act held that the bar under Section 470 of the Act becomes operative only when a Municipal Magistrate has been appointed for trial of offences under the Act. It is further held that the Code of Criminal Procedure is comprehensive and exhaustive. To the extent that no valid machinery is set up under any other law for trial of any particular case, the jurisdiction of the ordinary criminal court cannot be said to have been excluded. The Supreme Court concluded the controversy by stating thus:

'Keeping in view the scheme of the Act and the relevant provisions of the Code of Criminal Procedure it emerges that the Government has an obligation on 469 of the Act to appoint Municipal Magistrates for trial of offences under the Act, rules, regulations or bylaws made thereunder. The use of the word 'may' in Section 469 of the Act only indicates that the Government has the discretion to appoint one or more Municipal Magistrates but it certainly does not relieve the Government of its obligation to appoint Municipal V Magistrates and once such Municipal Magistrates are appointed, they alone would have the jurisdiction to try offences under the Act as per the mandate of Section 470 of the Act. The bar under Section

470 of the Act becomes operative only when a Municipal Magistrate has been appointed for trial of offences under the Act. The Cr.P.C. is comprehensive and exhaustive. To the extent that no valid machinery is set up under any other law for trial of any particular case, the jurisdiction of the ordinary criminal court cannot be said to have been excluded. Exclusion of jurisdiction of a court of general jurisdiction can be brought about only by setting up a court of limited jurisdiction in respect of the limited field provided that the vesting and the exercise of that limited jurisdiction is clear and operative. Thus, where there is no valid machinery for the exercise of jurisdiction in a specific case, the exercise of jurisdiction by the Judicial Magistrates or the Metropolitan Magistrates, as the case may be, is not excluded. The law and procedure for trial of cases under the Indian Penal Code and those under other statutes, according to Section 4 Cr.P.C., is not different except that in the cases of offences under other laws, the procedures laid down by the Cr.P.C. is subject to the provisions of the relevant enactment for the time being in force for regulating the manner of trial of offences under that enactment.

9. As already pointed out, since the machinery under the Act for the Trial of the offences under Section 469 has not been set up so far, therefore, the ordinary criminal courts under Section 5 of the Act, will have jurisdiction to deal with the offences. In this view of the matter, the plea of ouster of the jurisdiction of the ordinary criminal courts fails.

10. In view of the above said discussion, the petition is dismissed.