

Adarsh Kumar Handa vs Government Of Nct Of Delhi And Ors on 26 July, 2024

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IN THE HIGH COURT OF DELHI AT NEW DELHI

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W.P. (CRL) 2236/2024

ADARSH KUMAR HANDA

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Through: Mr. Adarsh Kumar H

Advocate

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GOVERNMENT OF NCT OF

DELHI AND ORS

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Through: Mr. Sanjay Kuma

Standing Counse

Mr. Sunil Kumar

Mr. M.S. Akhtar

Musarrat Benaze

Advocates for R

with SI Parmend

PS Rani Bagh, D

Mr. Sanjeev Bha

ASC with Ms. Sp

Bhandari,

Sharma, Mr. Arj

& Mr. Vaibhav V

Advocates for t

with SI Pooja,

Marg.

Mr. Anuj

Advocate for R-

CORAM:

HON'BLE MR. JUSTICE AMIT MAHAJAN

ORD

% 26.07.2024

1. The present petition is filed under Article 226 of the Constitution of India, read with Section 528 of the Bharatiya Nagarik Suraksha Sanhita ('BNSS'), inter alia, praying as under:

"1. Directions may be issued to the Commissioner of Police Delhi to arrange to register FIR against Shri Ajay Kumar LAC (east) GNCTD for furnishing false statement in the This is a digitally signed order.

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Server on 09/08/2024 at 22:19:34 Counter Affidavit filed in WP(C) 4801/2018 on dt 22-01- 2019 and investigate the case and submit report to this Hon'ble Court for further necessary action.

2. To take strict action against Shri Ajay Kumar LAC GNCTD for committing crime u/s 201, 216 & 217 of the Bhartiya Nyaya Sanhita, 2023.

3. Take appropriate action against the responsible officers in the office of Delhi Development Authority for violation of IPC Sections-210 & 211 by not submitting Counter Affidavit in W.P.(C) 4801/2018 filed by the Petitioner despite orders by this Hon'ble Court on 07-05-2018, 18-07-2018, 11-10- 2018 and 31- 01-2019.

4. Since the petitioner is 73 years of age the case may please be decided in a time bound manner, please.

5. Pass such other or further order/ orders as this Hon'ble Court may deem fit and proper in the facts and circumstances of the case."

2. The grievance of the petitioner is that Mr. Ajay Kumar, Land Acquisition Collector ('LAC'), Respondent No. 3, furnished a false statement in the counter affidavit filed before this Court in W.P.(C) 4801/2018. The petitioner seeks registration of FIR against Respondent No. 3, for offences under Section 201/216/217 of the Bhartiya Nyaya Sanhita, 2023 ('BNS'). The petitioner also seeks strict action against the Delhi Development Authority ('DDA'), Respondent No. 4 under Sections 210/211 of the BNS for not filing a counter affidavit in W.P.(C) 4801/2018.

3. The brief facts arising from the petition are that two plots of 200 square yards each (hereinafter 'subject property') (Khasra Nos. 243 and 244), were purchased by the father of the petitioner, Mr. Charan Das Handa on 24.11.1955 in Janta Garden, Village Garonda Neema Ka Bangar ('VGNB') (currently known as Mayur Vihar Phase-1).

4. On 13.11.1959, the DDA issued a notification under Section 4 of the Land Acquisition Act, 1894 ('LA Act'), for This is a digitally signed order.

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5. It is stated that on 31.03.1977, an award for compensation was issued for a portion of the acquired land. In respect of the remaining portion, a supplementary award was to be drawn after the receipt of the requisite details.

6. It is stated that despite the acquisition of the subject property by the DDA, the petitioner was not served with a notice under Sections 9 and 10 of the LA Act, to enable him to claim compensation. Further, no compensation was awarded to the petitioner.

7. Thereafter, the petitioner filed applications under the Right to Information Act, 2005, inter-alia, seeking information with respect to the notices under Sections 9 and 10 of the LA Act as well as the action taken by the LAC in respect of the subject property.

8. Aggrieved by the inaction of the LAC and DDA, the petitioner instituted proceedings before this Court vide W.P.(C) 4801/2018 seeking appropriate declaration under Section 24 of the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013. In these proceedings, the LAC was directed to file a counter affidavit and the same was filed on 22.01.2019.

9. It is stated by the petitioner that the LAC made false statements in his counter-affidavit that the notices under Sections 9 and 10 of the LA Act had been issued. Further, another false statement as per the petitioner is that the compensation was awarded in respect of the subject property after acquiring the property on 01.10.1976.

10. By an order dated 11.12.2019, this Court dismissed the This is a digitally signed order.

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11. The petitioner has since instituted W.P.(C) 13435/2023 seeking similar reliefs as W.P.(C) 4801/2018. By an order dated 05.12.2023, the same was dismissed by relying upon the order dated 11.12.2019 in W.P.(C) 4801/2018.

12. The petitioner once again approached this Court vide W.P.(CrI.) 3621/2023, to initiate proceedings against the LAC and DDA, for the offence of furnishing false statement. However, the petitioner was advised to register a FIR first and accordingly, that petition was withdrawn. Then, the petitioner wrote a letter dated 22.03.2024 to the Assistant Police Commissioner, Rani Bagh, requesting to register a complaint against the LAC for submitting false statement in his counter-affidavit.

13. The petitioner-in-person submits that there are sufficient documents on record which demonstrate that the LAC had given a false statement in his counter-affidavit.

14. The learned Standing Counsel for the Central Government submits that the present petition is not maintainable, and the appropriate remedy lies under Section 175 of BNSS.

15. Further, he submits that an appropriate representation was afforded to the petitioner by the Delhi Police. The complaint of the petitioner was received by the Police Station Rani Bagh. However, since the same was not filed within the appropriate jurisdiction, the case was transferred to the Police Station Tilak Marg. Upon enquiry, it was found that no cognizable offence was made out and the complaint was closed.

16. The petitioner is aggrieved by the false statement rendered This is a digitally signed order.

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17. The petitioner is also aggrieved owing to the non-filing of counter-affidavit by the DDA in W.P.(C) 4810/2018. He alleges that such non-filing attracts offences under Section 210/211 of the BNS.

18. The procedure for prosecution of any offence punishable under Sections 210/211/216/217 of the BNS is prescribed under Section 215 of the BNSS, which reads as follows:

215. Prosecution for contempt of lawful authority of public servants, for offences against public justice and for offences relating to documents given in evidence.--(1)
No Court shall take cognizance--

(a)(i) of any offence punishable under Sections 206 to 223 (both inclusive but excluding Section 209) of the Bharatiya Nyaya Sanhita, 2023; or

(ii) of any abetment of, or attempt to commit, such offence; or

(iii) of any criminal conspiracy to commit such offence, except on the complaint in writing of the public servant concerned or of some other public servant to whom he is administratively subordinate or of some other public servant who is authorised by the concerned public servant so to do;

(b)(i) of any offence punishable under any of the following sections of the Bharatiya Nyaya Sanhita, 2023, namely, Sections 229 to 233 (both inclusive), 236, 237, 242 to 248 (both inclusive) and 267, when such offence is alleged to have been committed in, or in relation to, any proceeding in any Court; or

(ii) of any offence described in sub-section (1) of Section 336, or punishable under sub-section (2) of Section 340 or Section 342 of the said Sanhita, when such offence is alleged to have been committed in respect of a document This is a digitally signed order.

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(iii) of any criminal conspiracy to commit, or attempt to commit, or the abetment of, any offence specified in sub-clause (i) or sub-

clause (ii), except on the complaint in writing of that Court or by such officer of the Court as that Court may authorise in writing in this behalf, or of some other Court to which that Court is subordinate.

(2) Where a complaint has been made by a public servant or by some other public servant who has been authorised to do so by him under clause (a) of sub-section (1), any authority to which he is administratively subordinate or who has authorised such public servant, may, order the withdrawal of the complaint and send a copy of such order to the Court; and upon its receipt by the Court, no further proceedings shall be taken on the complaint:

Provided that no such withdrawal shall be ordered if the trial in the Court of first instance has been concluded.

(3) In clause (b) of sub-section (1), the term "Court"

means a Civil, Revenue or Criminal Court, and includes a tribunal constituted by or under a Central or State Act if declared by that Act to be a Court for the purposes of this section.

(4) For the purposes of clause (b) of sub-section (1), a Court shall be deemed to be subordinate to the Court to which appeals ordinarily lie from the appealable decrees or sentences of such former Court, or in the case of a Civil Court from whose decrees no appeal ordinarily lies, to the Principal Court having ordinary original civil jurisdiction within whose local jurisdiction such Civil Court is situate:

Provided that--

(a) where appeals lie to more than one Court, the Appellate Court of inferior jurisdiction shall be the Court to which such Court shall be deemed to be subordinate;

(b) where appeals lie to a Civil and also to a Revenue Court, such Court shall be deemed to be subordinate to the Civil or Revenue Court according to the nature of the case or proceeding in connection with which the offence is alleged to have been committed.

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19. It is clear from the bare perusal of Section 215 (1)(a)(i) of the BNSS that no Court can take cognizance of any offence under Sections 210/211/216/217 of the BNS when such offence is alleged to have been committed or in relation to any proceedings in any Court except on a complaint in writing of that Court or by such officer of that Court as that Court may authorize in writing on its

behalf or of some other Court to which that Court is subordinate. Section 379 of the BNSS provides procedure in regard to the cases mentioned in Section 215 of the BNSS and reads as under:

"379. Procedure in cases mentioned in Section 215.--

(1) When, upon an application made to it in this behalf or otherwise, any Court is of opinion that it is expedient in the interests of justice that an inquiry should be made into any offence referred to in clause (b) of sub-section (1) of Section 215, which appears to have been committed in or in relation to a proceeding in that Court or, as the case may be, in respect of a document produced or given in evidence in a proceeding in that Court, such Court may, after such preliminary inquiry, if any, as it thinks necessary,--

(a) record a finding to that effect;

(b) make a complaint thereof in writing;

(c) send it to a Magistrate of the first class having jurisdiction;

(d) take sufficient security for the appearance of the accused before such Magistrate, or if the alleged offence is non-bailable and the Court thinks it necessary so to do, send the accused in custody to such Magistrate; and

(e) bind over any person to appear and give evidence before such Magistrate.

(2) The power conferred on a Court by sub-section (1) in respect of an offence may, in any case where that Court has neither made a complaint under sub-section (1) in respect of that offence nor rejected an application for the making of such complaint, be exercised by the Court to which such former Court is subordinate within the meaning of sub-section (4) of Section 215.

(3) A complaint made under this section shall be signed,--

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(a) where the Court making the complaint is a High Court, by such officer of the Court as the Court may appoint;

(b) in any other case, by the presiding officer of the Court or by such officer of the Court as the Court may authorise in writing in this behalf.

(4) In this section, "Court" has the same meaning as in Section 215."

20. The perusal of Section 379 of the BNSS makes it clear that prosecution can be initiated only by the sanction of the Court under whose proceedings, offences as referred to in Section 215 of the BNSS are alleged to have been committed. The Court is not only to consider the prima facie case but also to see whether it is in the public interest to allow the criminal proceedings to be initiated. The law in this regard is well settled. The Hon'ble Apex Court in M.S. Ahlawat v. State of Haryana and Anr:

(2000) 1 SCC 278, while interpreting the scope of Section 195 of the Code of Criminal Procedure, 1973 ('CrPC') (corresponding Section 215 of the BNSS), had categorically held that private complaints are absolutely barred. It was held as under:

"5. Chapter XI IPC deals with 'false evidence and offences against public justice' and Section 193 occurring therein provides for punishment for giving or fabricating false evidence in a judicial proceeding. Section 195 of the Criminal Procedure Code (CrPC) provides that where an act amounts to an offence of contempt of the lawful authority of public servants or to an offence against public justice such as giving false evidence under Section 193 IPC, etc. or to an offence relating to documents actually used in a court, private prosecutions are barred absolutely and only the court in relation to which the offence was committed may initiate proceedings. Provisions of Section 195 CrPC are mandatory and no court has jurisdiction to take cognizance of any of the offences mentioned therein unless there is a complaint in writing as required under that section. It is settled law that every incorrect or false statement does not make it incumbent upon the court to order prosecution, but (sic) to exercise judicial discretion to order prosecution only in the larger interest of the administration of justice.

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6. Section 340 CrPC prescribes the procedure as to how a complaint may be preferred under Section 195 CrPC. While under Section 195 CrPC it is open to the court before which the offence was committed to prefer a complaint for the prosecution of the offender, Section 340 CrPC prescribes the procedure as to how that complaint may be preferred. Provisions under Section 195 CrPC are mandatory and no court can take cognizance of offences referred to therein (sic). It is in respect of such offences the court has jurisdiction to proceed under Section 340 CrPC and a complaint outside the provisions of Section 340 CrPC cannot be filed by any civil, revenue or criminal court under its inherent jurisdiction."

(emphasis supplied)

21. The Hon'ble Apex Court in the *Pritish v. State Of Maharashtra & Ors*: AIR 2002 SC 236, has discussed the scheme of Section 340 of the CrPC (corresponding Section 379 of the BNSS) and held as under:

"Reading of the sub-section makes it clear that the hub of this provision is formation of an opinion by the court (before which proceedings were to be held) that it is expedient in the interest of justice that an inquiry should be made into an offence which appears to have been committed. In order to form such opinion the court is empowered to hold a preliminary inquiry. It is not peremptory that such preliminary inquiry should be held. Even without such preliminary inquiry the court can form such an opinion when it appears to the court that an offence has been committed in relation to a proceeding in that court. It is important to notice that even when the court forms such an opinion it is not mandatory that the court should make a complaint. This sub-section has conferred a power on the court to do so. It does not mean that the court should, as a matter of course, make a complaint. But once the court decides to do so, then the court should make a finding to the effect that on the fact situation it is expedient in the interest of justice that the offence should further be probed into. If the court finds it necessary to conduct a preliminary inquiry to reach such a finding it is always open to the court to do so, though absence of any such preliminary inquiry would not vitiate a finding reached by the court regarding its opinion. It should again be remembered that the preliminary inquiry contemplated in the sub-section is not for finding whether any particular person is guilty or not. Far from that, the purpose of preliminary inquiry, even if the court opts to conduct it, is only to decide whether it is expedient in the interest of justice to inquire into the offence which appears to have been committed.

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The authenticity of the order can be re-verified from Delhi High Court Order Portal by scanning the QR code shown above. The Order is downloaded from the DHC Server on 09/08/2024 at 22:19:45 Inquiry is defined in Section 2(g) of the Code as every inquiry, other than a trial, conducted under this Code by a magistrate or court. It refers to the pre trial inquiry, and in the present context it means the inquiry to be conducted by the magistrate. Once the court which forms an opinion, whether it is after conducting the preliminary inquiry or not, that it is expedient in the interest of justice that an inquiry should be made into any offence the said court has to make a complaint in writing to the magistrate of first class concerned. As the offences involved are all falling within the purview of warrant case [as defined in Sec.2 (x)] of the Code the magistrate concerned has to follow the procedure prescribed in Chapter XIX of the Code. In this context we may point out that Section 343 of the Code specifies that the magistrate to whom the complaint is made under Section 340 shall proceed to deal with the case as if it were instituted on a police report. That being the position, the magistrate on receiving the complaint shall proceed under Section 238 to Section 243 of the Code.

Section 238 of the Code says that the magistrate shall at the outset satisfy himself that copies of all the relevant documents have been supplied to the accused. Section 239 enjoins on the magistrate to consider the complaint and the documents sent with it. He may also make such examination of the accused, as he thinks necessary. Then the magistrate has to hear both the prosecution and the accused to consider whether the allegations against the accused are groundless. If he finds the allegations to be groundless he has to discharge the accused at that stage by recording his reasons thereof. Section 240 of the Code says that if the magistrate is of opinion, in the aforesaid inquiry, that there is ground for presuming that the accused has committed the offence he has to frame a charge in writing against the accused. Such charge shall then be read and explained to the accused and he shall be asked whether he pleads guilty of the offence charged or not. If he pleads not guilty then the magistrate has to proceed to conduct the trial. Until then the inquiry continues before the magistrate.

(emphasis supplied)

22. Under Section 379 of the BNSS, the court before which the proceedings were held is the only court empowered to see whether the offence appears to have been committed or not. The court is required to first hold a preliminary enquiry to determine whether the alleged offence needs to be inquired into. Once the court is satisfied that an inquiry must be made into the offence, then a complaint must be made in writing to the concerned This is a digitally signed order.

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23. In the present case, the proceedings where the alleged offence occurred arise from W.P.(C) 4801/2018. No such inquiry as contemplated under Section 379 of the BNSS has been initiated in those proceedings. Thus, no complaint in writing has been made for the alleged offence. On the contrary, this Court had dismissed W.P.(C) 4801/2019 on the grounds of delay and laches without going into the merits of the case. Thus, the counter-affidavit of the LAC or the non-filing of the counter- affidavit by the DDA was never considered by this Court in those proceedings. In fact, the petitioner had once again initiated proceedings vide W.P.(C) 13435/2023 seeking similar reliefs as sought in W.P.(C) 4801/2018. However, the Court vide order dated 05.12.2023 had dismissed the same on the similar grounds of delay and laches.

24. As noted above, the writ petitions filed by the petitioner in regard to acquisition and award of compensation were dismissed by this Court on the ground of delay and laches. This Court had noted that the respondents were not in a position to effectively counter the petitioner's claim after such a delay. Once the affidavit which alleged to be false was never adjudicated upon, it cannot be termed as a false document given in evidence to the Court. Even otherwise, since the writ petition filed by the petitioner seeking substantive relief in regard to its claim has already been dismissed by this Court and the order passed thereto has not been challenged and has attained finality, I am of the

opinion that it is not expedient in the interest of justice that any inquiry should be made into an alleged offence.

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25. In view of the above, I find no merit in the present petition and the same is, accordingly, dismissed.

AMIT MAHAJAN, J JULY 26, 2024 "hkaur"/SS This is a digitally signed order.

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