

\* **HIGH COURT OF DELHI AT NEW DELHI**

+ **Crl. M. C. No. 1743/2007 & Crl M. A. No 6112/07**

Judgment reserved on : 22.04.2008

Date of decision : 30.04.2008

# MS. MEENAKSHI RAWAL ..... Petitioner

! Through : Mr. Rajesh Yadav, Adv.

**Versus**

\$ STATE & ORS. .... Respondents  
^ Through : Mr. M.P.Singh, APP for the  
State.  
Mr. Naveen Gupta, Adv. for R-2  
& 3.

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**CORAM:**  
**HON'BLE MS. JUSTICE ARUNA SURESH**

- (1) Whether reporters of local paper may be allowed to see the judgment?
- (2) To be referred to the reporter or not?
- (3) Whether the judgment should be reported in the Digest ?

**J U D G M E N T**

**ARUNA SURESH, J.**

1. This petition has been filed by petitioner Meenakshi Rawal challenging the order of summoning dated 24.4.2006 passed in criminal complaint under

Sections 347/461 of the Delhi Municipal Corporation Act (hereinafter referred to as DMC Act) and seeking quashing of the said summoning order as well as the complaint No. 77/2006.

2. Ritnand Balved Education Foundation (RBEF) had taken on rent premises No. B-1/623, second floor, Janak Puri, New Delhi, for purposes of running two institutes namely Amity Institute of Competitive Examinations (AICE) and Amity School of Distance Learning. It seems that on 18.5.2004 Junior Engineer inspected the said premises and on the basis of his report MCD/respondent No. 3 filed a complaint under Section 347/461 of the DMC Act on 30.7.2004 against one Ashok as owner/occupier for change of user of the property from residential to commercial. The learned Metropolitan Magistrate took cognizance of the offence and summoned the accused in the said complaint. On 1.4.2005 petitioner was appointed as an Administrative Head of AICE. Another inspection was carried out by the Junior Engineer (Building), West Zone, on 2.11.2005. On the basis of this report a complaint was filed by the respondent No. 3 against

the petitioner for offences under Section 347/461 of the DMC Act for change of user of premises of the third floor B-1/623, Janak Puri, New Delhi i.e. the same house. The complaint was filed on 7.12.2005 and the learned Metropolitan Magistrate took cognizance of the offence and summoned the petitioner for 16.4.2007. The petitioner has challenged the validity of the summoning order on two grounds. Firstly, the complaint dated 7.12.2005 is barred by limitation under Section 471 of the DMC Act and secondly, complaint for the same offence with the same allegation cannot be entertained. Petitioner has also disputed her possession in respect of third floor of the above said house which is the subject matter of the complaint dated 7.12.2005.

3. Learned counsel for the respondent No.3 has submitted that the first complaint did not pertain to the third floor of property No. B-1/623, Janak Puri, New Delhi and it is possible that third floor was constructed after filing of the first complaint.

4. I find no merits in these submissions. Bare perusal of

the first complaint filed against Ashok, who probably was an employee, for the misuser of property B-1/623, Janak Puri, New Delhi, shows that Ashok as owner/occupier was allegedly found committing offences under Sections 347/461 of the DMC Act on 18.5.2004. Thus, it is clear that the complaint does not speak about misuser of the property in respect of ground floor, first floor or second floor. This complaint pertains to the misuser of the entire house. Therefore, second complaint for the same offence during the pendency of the first complaint by simply adding the third floor cannot be said to be constituting a separate offence committed by the petitioner under Sections 347/461 of the DMC Act. To say that the first complaint did not pertain to third floor of the impugned property is not borne out from the record and therefore cannot be accepted as correct.

5. The maintainability of the second complaint dated 7.5.2005 is also challenged by the petitioner on the ground that it is barred by period of limitation. Section 471 of the DMC Act lays down the period of

limitation for prosecution of offences committed by a person under the said Act. This section reads as follows:

“471. Limitation of time for prosecution.—No person shall be liable to punishment for any offence against this Act or any rule, regulation or bye-law made thereunder, unless complaint of such offence is made before a municipal magistrate within six months next after—

- (a) the date of the commission of such offence, or
- (b) the date on which the commission or existence of such offence was first brought to the notice of the complainant.”

6. Thus, it is clear that the period of limitation for filing a complaint for the offences allegedly committed by the petitioner is six months after the date of the commission of such offence or the date on which the commission or existence of such offence was first brought to the notice of the complainant.

7. The applicability of the period of limitation as prescribed under Section 471 of the DMC Act came up for consideration in various cases before this Court. In ***Municipal Corporation of Delhi v.***

***Ravindra Kumar Mahindra - 1991 Crl. Law***

***Journal 2630.*** The provisions of Section 471 were interpreted as follows:

“The provision clearly sets out the scope. Even though section 466A does not make certain offences under the DMC Act cognizable and has permitted their investigation to be done as if these offences were cognizable. The offences do not cease to be offences under the DMC Act and Section 471 clearly lays down the period of limitation within which action for offences under the DMC Act shall be initiated. It, therefore, clearly bars prosecution beyond a period of six months from the date of the commission of the offence or from the date when the existence of such offence was brought to the notice of the complainant. In our view, therefore, section 468 of the Code of Criminal Procedure is not applicable as the offences under the DMC Act will be covered by the provision regarding limitation made in the Act itself.”

8. In ***Municipal Corporation of Delhi v. Sh. Sunil Sabharwal - ILR (1996) 1 Delhi 79***, it was observed:

“21... Hence, it is evident that Municipal Corporation of Delhi being not a natural person, the knowledge of commission of offence must come to the notice of the competent officer who can initiate the prosecution on

behalf of the Municipal Corporation of Delhi and only then the limitation of six months would commence from such date of knowledge. The Municipal Corporation of Delhi comprises of a large number of officials of different hierarchy. It would be really absurd to say that even if an official of class-IV comes to know about the commission of the offence, the limitation would start running from the date of his knowledge and that knowledge is to be impugned to be the knowledge of Municipal Corporation of Delhi. It is not shown that the Junior Engineer, who had inspected the premises on August 23, 1984 had the authority to launch the criminal prosecution against respondent on behalf of Municipal Corporation of Delhi, it cannot be said that limitation of six months would start running from the date of his knowledge.”

9. The first complaint was filed on the basis of the report of Junior Engineer Suleman Khan on 30.7.2004. During the course of arguments it is informed to the court that Ashok Kumar pleaded guilty and the said complaint has therefore been decided. The second complaint is for the same property though the respondent No. 3 has tried to confine its complaint to the misuser of the third floor of the property only. Under these circumstances, from the evidence as on

the record it is obvious that it was within the knowledge of the competent authorities of the Corporation that property No. B-1/623, Janak Puri, New Delhi, was being misused for commercial purposes whereas the purpose of user was residential only when the first complaint was filed in the Court. Junior Engineer Ashish Sharma inspected the premises on 2.11.2005 at 11.35 AM and submitted his report on 3.11.2005. The complaint was filed against the petitioner on 7.12.2005. Even if the second complaint has been filed on 7.12.2005, it is barred by limitation as it has not been filed within six months from the knowledge of the competent authority of the Corporation about the misuse of the property by the petitioner or other occupier. Therefore, the complaint apparently is barred by period of limitation and is not maintainable.

- 10.** Though the petitioner has tried to state that she has no concern with the third floor of the property and to support her contention she has filed lease deed pertaining to the second floor. However, this contention may not have much force as there can be



separate lease deeds executed for each floor between the owner/landlord and the tenant. The petitioner happens to be an employee of the tenant and is in occupation of the premises and was found in occupation of the third floor at the time of inspection by Junior Engineer Ashish Sharma on 2.11.2005. Petitioner admits that she was appointed as administrative head of AICE on 1.4.2005.

**11.** Accordingly, the petition is allowed. Complaint No. 77/2006 now pending in the Court of Mr. Praveen Singh, MM, is hereby quashed being barred by period of limitation. Consequently, the summoning order dated 24.4.2006 also stands quashed.

**ARUNA SURESH  
(JUDGE)**

**April 30, 2008  
jk**