

**IN THE COURT OF MS. KIRAN BANSAL,
SPECIAL JUDGE (PC ACT) (ACB)-01, RADC, NEW DELHI**

**CC. No. 136/2020
FIR No. 50/14
PS : ACB
State Vs Unknown (Closure)**

22.06.2020

: ORDER :

- 1) Brief facts of the case are that the Director (Vigilance), EDMC, Vigilance Department filed a complaint to ACB stating that they had received a complaint from Sh. Raj Kumar Goel and Kamal Goel, R/o E-54, Vivek Vihar, Phase-I, Delhi-110055 against municipal employees and Delhi Police personnel regarding illegal demolition, impersonation and bribery.
- 2) The complaint was investigated by the Vigilance Department, EDMC and the investigation report was also put up to the Commissioner, EDMC and thereafter, J.E. Sh. A.K. Yadav, Beldar Vicky, Peon Garun Kishore Gautam were suspended and the complaint was forwarded to ACB for further investigation and action. Some officials of Delhi Police were also stated to be involved.
- 3) On this complaint, the present FIR was registered. In the complaint, the complainants Raj Kumar Goel and Kamal Goel alleged that their lives' hard earned money was taken away by J.E. Sh. A.K. Yadav, HC Bhola Nath and Ct. Ashok. They further stated that they had a plot i.e. 520A, Ganpati Rolling Mill Compound, Tahirpur Village, G.T. Road, Shahdara, Delhi and Sh. A.K. Yadav, HC Bhola Nath and Ct. Ashok proposed that they would allow them to construct on the said property if they are paid Rs.1,50,000/- per floor to J.E. A.K. Yadav and Rs.65,000/- per floor to HC Bhola Nath

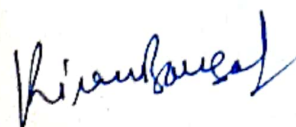
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and Ct. Ashok. It is further alleged that these people convinced the complainants by showing them six buildings in the said compound which were already constructed upto four floors. The complainants have stated that on being convinced by the above said three persons, they agreed and built two floors i.e. basement and ground floor and paid Rs.3,00,000/- to J.E. Sh. A.K. Yadav and Rs.1,00,000/- to HC Bhola Nath and Ct. Ashok. But to their surprise on 8th May, J.E. Sh. A.K. Yadav told them that some press reporter had also filed a complaint and some part of the building has to be demolished. J.E. Sh. A.K. Yadav also asked to pay Rs.20,000/- to the press reporter Sh. Rishi on which the complainant argued that how demolition order could be passed, moreso as elections were going on. Still 1/3rd of the property was demolished and further payment of Rs.2,00,000/- was made for allowing them to reconstruct the property. The complainant further stated that they have been trapped and again paid Rs.1,00,000/- and thus, had paid Rs.5,00,000/-.

- 4) It is further alleged that proposal to build two more floors was made and they were asked to pay Rs.4,00,000/- and when the complainant objected, the J.E. Sh. A.K. Yadav told them that he had increased his fees from Rs.3,00,000/- to Rs.4,00,000/- for two floors and also told them that this was the best he could do. The complainant again agreed to pay Rs.4,00,000/- but told them that they would pay only after the construction and not before. But when the first floor was constructed, J.E. Sh. A.K. Yadav started demanding for the money but the complainants told the J.E. that they would pay only after all the floors were constructed.
- 5) The complainant further alleged that in the meanwhile some police persons also started demanding money on the pretext of stopping fresh complaints by press reporter. The complainant has stated that they then felt cheated and decided not to pay anything and not to construct further due to the blackmailing tactics and therefore, they stopped the construction on 19th



May. It is stated that thereafter, J.E. A.K. Yadav and police persons started threatening them with the demolition of building and they met Sh. Gautam, P.A. to Chief and Sh. Vicky to apprise them of their problem and to take up the matter with the Commissioner. They were informed that the Commissioner had talked to the J.E. Sh. A.K. Yadav and J.E. Sh. A.K. Yadav would not bother them. But still on 21st May, J.E. Sh. A.K. Yadav came with the police and demolished all the three floors of their building. The complainant further stated that when they asked about other buildings which were also illegally constructed in the nearby area, they did not say anything and refused on the pretext of his authority. It is further stated that work stop notice was received at 03:00 pm on the same day on 21st May but the building was demolished by 02:00 pm. The complainant made a request to take action against the J.E. and the other persons involved as well as also requested to investigate as to how illegal construction was done in Ganpati Rolling Mill Compound. He stated that there is a lot of illegal construction which is behind his premises. The photographs of the other properties behind his plot where the illegal construction is allegedly rampant, was also annexed with the complaint.

- 6) In this complaint, the matter was investigated and the statements of Sh. Raj Kumar Goel and Sh. Kamal Goel were recorded and statement of independent witness Sh. Sanjay Kumar was also recorded on 25.06.2014. However, Sh. Sanjay Kumar stated that he was working as Chowkidar at the said plot and during the construction period, J.E. Sh. A.K. Yadav had taken Rs.5,00,000/- as bribe in his presence but he cannot identify J.E. Sh. A.K. Yadav because J.E. Sh. A.K. Yadav used to come in the evening when it was dark. As per the IO, statement of Sh. Sanjay Kumar was found contradictory, untrustworthy and unreliable.
- 7) Sh. Sanjay Kumar was made to join further investigation on 19.08.2019 as some clarifications were required and he clarified that he does not know the



date when the money was given to the J.E. Sh. A.K. Yadav by Sh. Kamal Goel. But Sh. Kamal Goel had told him that he had paid Rs.5,00,000/- in two installments of Rs.3,00,000/- and Rs.2,00,000/- and on both the occasions, Sh. Sanjay Kumar had taken out a packet of money wrapped in a newspaper from the dashboard of his car parked in the compound of Ganpati Rolling Mill and handed over to Sh. Kamal Goel who had given the same to a person sitting on a motorcycle wearing a helmet. Sh. Sanjay Kumar further stated that he could not see the clear face of the person sitting on the motorcycle due to darkness.

- 8) The IO has further stated in the closure report that the examination of call details of the complainants, J.E. A.K. Yadav, HC Bholu Nath, Ct. Ashok, Beldar Vicky, Peon Garun Kumar Kishore was not useful to prove their presence at the location where the money was paid. Neither the complainant was aware about the actual date and time when the payment was made to the J.E. Sh. A.K. Yadav.
- 9) The IO in the closure report has stated that on examination of the documents collected from EDMC, it was found that a complaint of Sh. Kali Ram Tomar, RTI Activist and Sh. Rajender Gupta was received in EDMC about unauthorized construction in Ganpati Rolling Mills Compound and also intimation about the unauthorized construction was passed by the concerned SHO, PS G.T.B. Enclave to EDMC, vide DD No. 31A dated 28.04.2014. Acting on those complaints, Executive Engineer Sh. Gagan Khanna had requisitioned police force for demolition and demolition programme was fixed for 05.05.2014 on which date, some unauthorized construction was demolished. One more property i.e. premises belonging to Sh. Prem Nath Jaiswal was also partly demolished and there was no demolition on 08th May as alleged by the complainant. Again on 15.05.2014, a work stop notice was issued by the A.E. under the signatures of J.E. Sh. A.K. Yadav but the said notice was actually posted on



20.05.2014 as per the dispatch register. On 19.05.2014, request for adequate police force was made for special demolition on 20.05.2014 and as per the programme on 21.05.2014, Sh. A.K. Yadav took action against unauthorized construction and had demolished the first floor as well as ground floor.

- 10) As per the IO, no evidence was found to prove the case of illegal demand and acceptance of illegal gratification against accused J.E. Sh. A.K. Yadav, HC Bhola Nath, Ct. Ashok, Beldar Sh. Vicky and Peon Sh. Garun Kishore Gautam and therefore, he has filed the present final report/closure report stating that no accused persons have been chargesheeted for want of evidence.
- 11) I have heard the submissions of Ld. Addl. PP for the State and IO through Video Conferencing on 20.06.2020. I have also gone through the final report and the documents filed alongwith the closure report. IO has also filed following documents alongwith the closure report :
- 1) Copy of FIR,
 - 2) Complaint,
 - 3) Enquiry Report of DOV (copy of notesheet),
 - 4) Enquiry Report of DOV (correspondence pages),
 - 5) Letter no. EE/(B)-1/SH-N/2017/D-283 dt. 16.10.2013,
 - 6) Complaint of Kali Ram Tomar dt. 29.04.2014,
 - 7) Complaint of Rajender Gupta dt. 15.04.2014,
 - 8) Notice U/s 344(2) DMC Act dt. 15.05.2014,
 - 9) Pages of demolition register,
 - 10) Dispatch Register Pages,
 - 11) Request letter for requisition of police force by EDMC dt. 28.04.2014,
 - 12) Request letter for requisition of police force by EDMC dt. 19.05.2014,
 - 13) Photographs of demolition,
 - 14) Report of MHC(R) PS GTB Enclave dt. 27.09.2018 regarding

Hiran Bhusel

unauthorized construction in Ganpati Rolling Mill Compound,

15) Statement U/s 161 Cr.P.C.

16) Letter No. EE(B_01/sh.-N/2019/D-197 dt. 06.12.2019 alongwith Original Demolition Register.

- 12) In the present case, the complainants have agreed to give bribe amount to the accused persons. The investigation is, thus, also required from the point of view of section 12 of POC Act against the complainants for giving bribe because giving bribe is also an offence U/s 12 of POC Act and protection of section 24 of POC Act is not available to such complainants in view of law laid down by the Hon'ble High Court in case of **Bhupinder Singh Patel & Ors. Vs CBI, 2008 VAD(Cr) DHC 293.**
- 13) As per the closure report, IO had obtained the call detail records of Sh. Kamal Goel (Mobile No. 9999333345), J.E. Sh. A.K. Yadav (Mobile No. 9717787820), HC Bhola Nath (Mobile No. 9868379618), Ct. Ashok (Mobile No. 9968524867), Beldar Vicky (Mobile No. 9990132249), Peon Garun Kishore Gautam (Mobile No. 9911607575). **The said call details records and CAF etc. have not been placed by the IO on record for the reasons best known to him.** The court comprehends no reason as to why the said records which had been collected during investigation should not have been made part of the final report/closure report or should have been withheld. IO has also failed to clarify as to whether the alleged suspects and the complainants were in contact with each other telephonically.
- 14) IO is thus, directed to further investigate the matter and clearly state as to whether the above said persons were in touch with each other during the relevant period. Also, it is clearly revealed that the work stop notice dated 15.05.2014 was dispatched later on i.e. on 20.05.2014 to the complainant whereas request for police force was made on 19.05.2014, which also reveals malafide intention of J.E. Sh. A.K. Yadav.



- 15) Though the IO has stated in the closure report that the complainant was not aware of the actual date and time of the payment made to the J.F. but no such statement could be found on record wherein the complainant has stated that he was not aware about the actual date and time. Also in **Doongar Singh Vs State of Rajasthan, CrI. Appeal No. 2045-2046 of 2017** decided by Hon'ble Supreme Court on 28.11.2017, it has been held that :

".....It is also necessary that the statements of eye-witnesses are got recorded during investigation itself under Section 164 of the Cr.P.C. In view of amendment to Section 164 Cr.P.C. by the Act No. 5 of 2009, such statement of witnesses should be got recorded by audio-video electronic means.

(i) The trial courts must carry out the mandate of Section 309 of the Cr.P.C. as reiterated in judgments of this Court, inter alia, in State of U.P. versus Shambhu Nath Singh and Others, Mohd. Khalid versus State of W.B. and Vinod Kumar versus State of Punjab.

(ii) The eye-witnesses must be examined by the prosecution as soon as possible.

(iii) Statements of eye-witnesses should invariably be recorded under Section 164 of the Cr.P.C. as per procedure prescribed thereunder....."

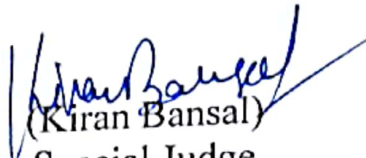
- 16) In view of the aforesaid judgment, the IO is also directed to get recorded the statements of the complainants U/s 164 Cr.P.C. As far as the averments by the IO that the statement of independent witness Sh. Sanjay Kumar was found to be contradictory, untrustworthy is concerned, this fact cannot be ignored that the first statement was recorded on 25.06.2014 and the next statement was recorded on 19.08.2019 and due to lapse of time, the witness was bound to forget such details. In fact, it is the investigating agency which took more than five years to conclude the investigation. In such circumstances, it is natural for the witness to forget the exact date and time and therefore, the complainants cannot be made to suffer for the fault



on the part of the investigating agency in investigation. No investigation has been made as to whether there is any other unauthorized construction on the said plot by other persons as alleged by the complainant. IO should have placed on record the photographs as well as site plan of the premises/houses constructed on the said plot and should have clearly stated as to whether the said construction was made as per the sanctioned plan or not.

17) Keeping in view the above facts and circumstances, the **closure report is returned in original and the IO is directed to re-investigate the matter on the above said aspects and to file fresh chargesheet/final report whatsoever under section 173 Cr.P.C.**

18) **Judicial file be consigned to record room.**


(Kiran Bansal)
Special Judge
(PC Act)(ACB-01)
Rouse Avenue District Courts
Delhi/22.06.2020

CC. No. 136/2020
FIR No. 50/14
PS : ACB
State Vs Unknown (Closure)

22.06.2020

Matter has been taken up in terms of orders of Hon'ble High Court bearing No. (i) R-235/RG/DHC/2020 dated 16.05.2020, (ii) 16/DHC/2020 dated 13.06.2020 (iii) 17/DHC/2020 dated 14.06.2020 as well as Office Orders no. (i) E-3943-4029/DJ/RADC/2020 dated 13.06.2020 and (ii) E-4121-4205/DJ/RADC/2020 dated 15.06.2020.

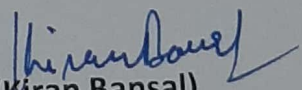
Present: **None.**

Vide separate order, the closure report is returned in original and the IO is directed to re-investigate the matter on the aspects mentioned in the order and to file fresh chargesheet/final report whatsoever under section 173 Cr.P.C.

IO is also directed to get recorded the statements of the complainants U/s 164 Cr.P.C. in view of the judgment **Doongar Singh Vs State of Rajasthan, Crl. Appeal No. 2045-2046 of 2017** decided by Hon'ble Supreme Court on 28.11.2017

Judicial file be consigned to record room.

A copy of this order be sent to the Computer Branch for uploading on the official website.


(Kiran Bansal)
Special Judge, PC Act (ACB-01)
RADC, New Delhi.
22.06.2020

CC. No. 21/2020
FIR No. 27/14
PS : ACB
State Vs Chiranji Lal

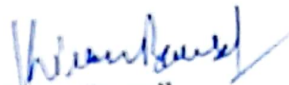
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Present : None.

Since the matter was proceeding at the stage of appearance, therefore, the same stands adjourned with the other *en bloc* cases to be taken up for physical court hearing as and when the Courts resume their normal functioning, for 21.07.2020.

A copy of this order be sent to the Computer Branch for uploading on the official website.


(Kiran Bansal)
Special Judge, PC Act (ACB-01)
RADC, New Delhi.
22.06.2020

CC. No. 32/2019
FIR No. 11/14
PS : Crime Branch
State Vs Harcharan Singh

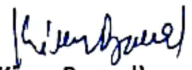
22.06.2020

Matter has been taken up in terms of orders of Hon'ble High Court bearing No. (i) R-235/RG/DHC/2020 dated 16.05.2020, (ii) 16/DHC/2020 dated 13.06.2020 (iii) 17/DHC/2020 dated 14.06.2020 as well as Office Orders no. (i) E-3943-4029/DJ/RADC/2020 dated 13.06.2020 and (ii) E-4121-4205/DJ/RADC/2020 dated 15.06.2020.

Present : None.

Since the matter was proceeding at the stage of Prosecution Evidence, therefore, the same stands adjourned with the other *en bloc* cases to be taken up for physical court hearing as and when the Courts resume their normal functioning, for 21.07.2020.

A copy of this order be sent to the Computer Branch for uploading on the official website.


(Kiran Bansal)
Special Judge, PC Act (ACB-01)
RADC, New Delhi.
22.06.2020

CC. No. 329/19
FIR No. 50/10
PS : Crime Branch
State Vs Joginder Singh

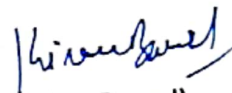
22.06.2020

Matter has been taken up in terms of orders of Hon'ble High Court bearing No. (i) R-235/RG/DHC/2020 dated 16.05.2020, (ii) 16/DHC/2020 dated 13.06.2020 (iii) 17/DHC/2020 dated 14.06.2020 as well as Office Orders no. (i) E-3943-4029/DJ/RADC/2020 dated 13.06.2020 and (ii) E-4121-4205/DJ/RADC/2020 dated 15.06.2020.

Present : None.

Since the matter was proceeding at the stage of Prosecution Evidence, therefore, the same stands adjourned with the other *en bloc* cases to be taken up for physical court hearing as and when the Courts resume their normal functioning, for 21.07.2020.

A copy of this order be sent to the Computer Branch for uploading on the official website.



(Kiran Bansal)
Special Judge, PC Act (ACB-01)
RADC, New Delhi.
22.06.2020

CC No. 55/2020
FIR No. 450/14
VS : Pancham Vihar
State Vs Bircha Singh & Ors.

22.06.2020

Matter has been taken up in terms of orders of Hon'ble High Court bearing No. (i) R-233/RG/DHC/2020 dated 18.08.2020, (ii) 18/DHC/2020 dated 13.06.2020 (iii) 17/DHC/2020 dated 14.08.2020 as well as Office Orders no. (i) E-3943-2020/VI/RADC/2020 dated 13.08.2020 and (ii) E-4121-4205/DI/RADC/2020 dated 13.08.2020.

Present : None.

Matter was processing at the stage of arguments on charge/further proceedings.

Let notices be issued (through email or WhatsApp only) to accused persons, their Counsels and Ld. Addl. PP for the State, with following directions :

(i) To give their consent that they are agreeable for taking the matter through video conferencing ; and

(ii) In the eventuality that Ld. Counsel(s), or anyone of them, are not inclined for proceedings through video conferencing, the case shall stand adjourn with the other *en bloc* cases to be taken up for physical court hearing as and when the Courts resume their normal functioning.

List the matter awaiting the consent on 27.06.2020.

A copy of this order be sent alongwith the notices to the accused persons, Ld. Counsel for the accused and Ld. Addl. PP for the State as well as to Computer Branch for uploading on the official website.


(Kiran Bansal)
Special Judge, PC Act (ACI
RADC, New Delhi.
22.06.2020