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IN THE HIGH COURT OF DELHI AT NEW DELHI
CRL.M.C. 6054/2019 & CRL.M.A. 41269/2019
PAWAN KAUSHIKPetitioner

Through: Mr. Girish Chander, Mr.
Vaibhav Gusain, Ms.
Renu Khanna Verma,
Advocates.

versus

STATE

.....Respondent

Through: Mr. Sunil Kumar Gautam,
APP for the State with Mr.
Shahbaz Ahmad, Mr.
Imaad Mohammad Khan,
Mr. Dheeraj Kumar Roy,
Mr. Sayyed Aamir
Ahmad, Mr. Mohd.
Wassey & Mr. Puneet
Varshney, Advocates.
SI Devender (P.S. Alipur).

CORAM:

HON'BLE MR. JUSTICE AMIT MAHAJAN

ORDER

24.07.2024

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1. The present petition is filed challenging the order dated 06.08.2019 (hereafter the '**impugned order**'), passed by the learned Additional Sessions Judge ('**ASJ**'), Rohini Courts, New Delhi, in Crl.Rev. No.97/2019.
2. The learned ASJ, by the impugned order, dismissed the revision petition filed by the petitioner challenging the order dated 02.02.2019, in FIR No.722/2015, registered at Police Station Alipur, whereby the learned Magistrate framed notice against the petitioner for the offence punishable under Section 188 of the Indian Penal Code, 1860 ('**IPC**').
3. The learned counsel for the petitioner submits that the cognizance in relation to offence under Section 188 of the IPC



can only be taken after following the procedure under Section 195 of the Code of Criminal Procedure, 1973 ('CrPC').

4. He submits that Section 195 of the CrPC categorically provides that no cognizance of any offence punishable under Sections 172 to 188 of IPC can be taken by a Court except on a complaint in writing of that Court or by such officer of the Court as that Court may authorize in writing in this behalf or of some other Court to which the Court is subordinate.

5. He submits that it is a settled law that the police is not empowered to file chargesheet in such offences and the case has to proceed on a complaint by a complainant

6. He submits that in the present case, the purported letter addressed by the Executive Engineer, New Delhi Municipal Corporation ('NDMC'), addressed to the Court of Ashish Aggarwal, Rohini Court, Delhi is being treated as a complaint under Section 195 of the CrPC.

7. He submits that the said letter, even taken at the highest, cannot be treated as a complaint in terms of Section 195 of the CrPC.

8. This Court is of the opinion that before taking a final decision in the present matter, the complainant, that is, Executive Engineer, NDMC, should also be heard since the allegation against the petitioner is in regard to raising unauthorized construction which is an offence under Section 188 of the IPC.

9. Issue Court notice to NDMC through the learned Standing Counsel, returnable on 27.09.2024.

10. Interim order(s) to continue.

AMIT MAHAJAN, J

JULY 24, 2024/ 'Aman'