



2026:DHC:5135-DB



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

***Reserved on: 27.04.2026***  
***Pronounced on: 18.06.2026***

+ **CRL.REF. 1/2024**

COURT ON ITS OWN MOTION

.....Petitioner

Through: Mr.Rahul Mehra, Sr. Adv.  
(*Amicus Curiae*) with  
Mr.Chaitanya Gosain, and  
Mr.Hanif Chimthanawala,  
Advs.

versus

STATE OF DELHI

.....Respondent

Through: Mr.Aman Usman, APP with  
Mr.Manvendra Yadav and  
Mr.Atiq Ur Rehman, Advs.  
Mr.Tushar Sannu, SC with  
Mr.Priyankar Tiwary and  
Mr.Fajallu Rehman, Advs. for  
MCD.

**CORAM:**

**HON'BLE MR. JUSTICE NAVIN CHAWLA**

**HON'BLE MR. JUSTICE RAVINDER DUDEJA**

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

**NAVIN CHAWLA, J.**

1. The present petition is a Criminal Reference under Section 395(2) of the Code of Criminal Procedure, 1973 (hereinafter referred to as 'Cr.P.C.')









beyond a period of six months. The issue, thus, was found to be of one that assumes a larger public importance.

2.6 The learned Referral Court has also taken note of the prevailing practice, wherein the complaint of the Deputy Commissioner is ordinarily forwarded to the police, resulting in registration of an FIR, which is then transmitted to the jurisdictional Magistrate. No separate complaint is, in practice, sent directly to the Court within six months, though the information/complaint relating to the offence does reach the Court in the form of the FIR transmitted by the police.

3. It is in the above background of facts, and in view of the recurring nature of the issue, its impact on a large number of pending prosecutions, and stating that there is absence of a clear and consistent judicial position on the issue, the present reference has been made.

4. In its order dated 08.01.2024, the learned Referral Court has given the ‘genesis of the issue’ and also the ‘prevalent practice & issues germane to the reference’, which we reproduce hereunder:

**“GENESIS OF THE ISSUE**

6. *Section 332 of the Delhi Municipal Corporation Act, 1957 provides for the offence of carrying out construction without seeking previous sanction from the concerned Commissioner, thereby rendering it unauthorized. The provision is reproduced as follows:*

**“332. Prohibition of building without sanction.—** *No person shall erect or commence to erect any building, or execute any of the works specified in section 334 except with the previous*





- (i) *the sub-division of any room in such building so as to convert the same into two or more separate rooms, or*
  - (ii) *the conversion of any passage or space in such building into a room or rooms;*
  - (e) *to repair, remove, construct, reconstruct or make any addition to or structural alteration in any portion of a building abutting on a street which stands within the regular line of such street;*
  - (f) *to close permanently any door or window in an external wall;*
  - (g) *to remove or reconstruct the principal staircase or to alter its position; shall apply for sanction by giving notice in writing of his intention to the Commissioner in such form and containing such information as may be prescribed by bye-laws made in this behalf.*
- (2) *Every such notice shall be accompanied by such documents and plans as may be so prescribed.”*

8. *That the nature of activities indicated in Section 334 points towards the changes of a substantial character. Therefore, almost every substantial alteration in a building is prohibited without seeking previous sanction. The above acts, as mentioned in Section 332 and as illustrated in Section 334 of DMC Act, constitute the actus reus for the offence in question.*

9. *That Section 461 of DMC Act is the general penal provision and it provides for punishment for the contravention of any of the provisions of the Act. Section 461 of DMC Act is reproduced as follows:*

**“461. Punishment for certain offences.—** (1) *Whoever -*

- (a) *contravenes any provision of any of the sections, sub-sections, clauses, provisos or other provisions of this Act*



mentioned in the first column of the Table in the Twelfth Schedule; or

(b) fails to comply with any order or direction lawfully given to him or any requisition lawfully made upon him under any of the said sections, sub-sections, clauses, provisos or other provisions, shall be punishable—

(i) with fine which may extend to the amount, or with imprisonment for a term which may extend to the period, specified in that behalf third column of the said Table or with both; and

(ii) in the case of a continuing contravention or failure, with an additional fine which may extend to the amount specified in the fourth column of that Table for every day during which such contravention or failure continues after conviction for the first such contravention or failure.

(2) Notwithstanding anything contained in sub-section (1), whoever contravenes the provisions of 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, in relation to any street which is a public street, shall be punishable with simple imprisonment which may extend to six months or with fine which may extend to five thousand rupees or with both”.

10. That a peculiar feature of Section 461 of DMC Act is that the extent of punishment is contingent upon whether the offence is an isolated offence or a continuing offence. It is specifically provided that in case of a continuing contravention or failure, an additional fine (which may extend to the extent of fine specified for the offence in the table annexed with 12<sup>th</sup> schedule of the Act) may be imposed for each day during which such contravention or failure continues.



11. Section 466-A of the DMC Act is relevant and it provides for the applicability of Cr.PC on the offences under the DMC Act. Section 466-A of DMC Act is reproduced as under:

**“466A. Certain offences to be cognizable.—** The Code of Criminal Procedure, 1973 , shall apply to,—

(a) an offence 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;

(b) an offence 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 in relation to any street which is a public street, as if it were a cognizable offence—

(i) for the purposes of investigation of such offence; and

(ii) for the purposes of all matters other than—

(1) matters referred to in section 42 of that Code, and

(2) 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 a Deputy Commissioner, as may be appointed by the Administrator;

Provided that no offence of the contravention of any condition subject of which sanction was accorded for the erection of any building or the execution of any work shall be cognizable, if such contravention relates to any deviation from any plan of such erection or execution sanctioned by the Commissioner which is compoundable on payment of an amount under the bye-laws relating to buildings made under this Act.”











*filing the charge sheet. The argument is primarily based on such reading of Section 471 DMC Act that the word “complaint” is read as “chargesheet” to contend that the 10 was obliged to file the chargesheet within 6 months from the date of offence.*

*vii. It is noteworthy that the application for dropping of proceeding/discharge is premised on Section 471 of DMC Act. As the language indicates, Section 471 prohibits the Court from punishing an accused for any offence under DMC Act unless a complaint thereof is made before the Magistrate within six months from the date of commission of the offence or from the date of knowledge of the offence. Therefore, this Hon’ble Court is requested to practically interpret the word “complaint” in Section-471 (as distinguishable from the word “chargesheet”) and to examine the scope of Section 471 in light of the fact that the Court takes cognizance on the chargesheet and not complaint.*

*viii. The interpretation of the word “complaint” would necessarily require an examination of the concept of complaint as defined in the Cr.PC. Section 2(d) defines a complaint as:*

*“(d) “complaint” means any allegation made orally or in writing to a Magistrate, with a view to his taking action under this Code, that some person, whether known or unknown, has committed an offence, but does not include a police report.*

*Explanation.—A report made by a police officer in a case which discloses, after investigation, the commission of a non-cognizable offence shall be deemed to be a complaint; and the police officer by whom such report is made shall be deemed to be the complainant;”*

*ix. However, the concept of complaint is limited to a summary of allegations sent to the Magistrate. It is pertinent to mention that the concept of complaint is co-related to the*



*concept of cognizance under Section 190 Cr.PC as cognizance could be taken on a complaint. However, in cases under the DMC Act, cognizance is not taken on a complaint, rather, it is taken on the chargesheet/final report filed under Section 173 of Cr.PC.*

*x. It follows from the above observation that the word "complaint", as used in Section 471 of DMC Act, is neither used in the context of "complaint" for the purpose of taking cognizance or in the context of chargesheet. There appears to be no bearing of Section 471 of DMC Act on the point of cognizance.*

*xi. Importantly, the concepts of complaint, information and chargesheet are distinct concepts. In light of various pronouncements from the Hon'ble Supreme Court and the Hon'ble High Courts, there is no ambiguity on the distinct meanings of these terms for the purpose of taking cognizance. Therefore, it is impermissible to assign a common meaning to the word complaint and chargesheet. Thus understood, the word "complaint" under Section 471 of DMC could not be understood as chargesheet and therefore, no timeline or limitation could be imposed for filing any chargesheet or for completing the investigation or for taking cognizance from Section 471 of DMC Act.*

*xii. Despite so, the requirement of conveying a complaint to the Magistrate within 6 months, as mentioned under Section 471 of DMC Act, ought to be given a logical meaning and certainly cannot be sidelined. The said requirement can be read alongside Section 467 of DMC Act which prescribes that trial could be conducted only on complaint or information. A harmonious reading of Section 471 with Section 467 of DMC Act would indicate that the proceeding would be valid if either a complaint or information is received within 6 months, either directly from the Deputy Commissioner or in the form of First Information Report (FIR).*





*Supreme Court in **Sarah Mathew v. Institute of Cardio Vascular Diseases** (Annexure-B) lays down in unequivocal terms that the delay occasioned during investigation or in taking cognizance is not attributable to the complainant, if the complainant had acted well within the timeline. If the complainant filed the complaint for registration of FIR within the period of six months from the date of knowledge, the delay in investigation may not be attributable to the complainant and may not be construed to the drop the proceedings and effectively, dismiss the complaint without any adjudication of guilt on merits. Such an interpretation would be principally against the view taken in **Sarah Mathews**, and may lead to undesirable consequences from a rule of law perspective.*

xvii. *It is of utmost importance to bring to the notice of this Hon'ble Court that the interpretation sought to be advanced in these cases is primarily sourced from the decisions of this Hon'ble Court in **North Delhi Municipal Corporation v. Ashok Saran** (Annexure-C), **Meenakshi Rawal V. State** (Annexure-D), **Municipal Corporation of Delhi V. Ravindra Kumar Mahindra** (Annexure-E) and **Municipal Corporation of Delhi v. Sunil Sabharwal** (Annexure-F). A perusal of these decisions would unequivocally indicate that they only hold the period of six months to begin from the date of offence or from the date of knowledge of the offence. The applications for dropping of proceedings have been allowed in these cases only on the ground that the MCD had knowledge of the offence even prior to the period of six months. It may be clarified that there is no question or doubt on the said proposition and it does not arise before the Referral Magistrate. The aforesaid cases do not lay down that the period of completion of investigation or filing of chargesheet is six months and no relief has been ordered on the said ground in any of*



*these cases. No such interpretation of Section 471 of DMC Act is laid down in any of these cases.*

*xviii. The cases discussed in the preceding para are also authorities on the point of non-application of Cr.PC for condonation of delay, as DMC Act is a special statute. There is no issue pertaining to the said point of law as well. In the above cases, the delay discussed by the Hon'ble Courts was in filing of the first complaint by the MCD beyond six months from the date of knowledge, and not filing of chargesheet or completion of investigation. Pertinently, no question of condonation of delay arises in the present case (or in hundreds of other cases set up on the same ground), as there is no limitation period prescribed for investigation in the first place. The question of condonation is contingent upon there being a limitation or timeline for completion of investigation.”*

5. For answering the questions referred, we shall have to refer to some of the provisions of the DMC Act, which we reproduce hereinunder:

**“332. Prohibition of building without sanction.**—No person shall erect or commence to erect any building, or execute any of the works specified in section 334 except with the previous sanction of the Commissioner, not otherwise than in accordance with the provisions of this Chapter and of the bye-laws made under this Act in relation to the erection of buildings or execution of works.

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**461. Punishment for certain offences.—(1)**  
Whoever—

(a) contravenes any provision of any of the sections, sub-sections, clauses, provisos or other provisions of this Act mentioned in the first column of the Table in the Twelfth Schedule; or



*(b) fails to comply with any order or direction lawfully given to him or any requisition lawfully made upon him under any of the said sections, sub-sections, clauses, provisos or other provisions, shall be punishable—*

*(i) with fine which may extend to the amount, or with imprisonment for a term which may extend to the period, specified in that behalf third column of the said Table or with both; and*

*(ii) in the case of a continuing contravention or failure, with an additional fine which may extend to the amount specified in the fourth column of that Table for every day during which such contravention or failure continues after conviction for the first such contravention or failure.*

*(2) Notwithstanding anything contained in sub-section (1), whoever contravenes the provisions of sub-section (1) of section 317 or sub-section (1) of section 320 or sub-section (1) of section 321 or subsection (1) of section 325 or section 339, in relation to any street which is a public street, shall be punishable with simple imprisonment which may extend to six months or with fine which may extend to five thousand rupees or with both.*

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**Section 466A. Certain offences to be cognizable.**—*The Code of Criminal Procedure, 1973, shall apply to,—*

*(a) an offence 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;*

*(b) an offence 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 in relation to any street which is a public street, as if it were a cognizable offence—*

*(i) for the purposes of investigation of such offence; and*



(ii) for the purposes of all matters other than—

(1) matters referred to in section 42 of that Code, and

(2) 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 a Deputy Commissioner, as may be appointed by the Administrator:

*Provided that no offence of the contravention of any condition subject of which sanction was accorded for the erection of any building or the execution of any work shall be cognizable, if such contravention relates to any deviation from any plan of such erection or execution sanctioned by the Commissioner which is compoundable on payment of an amount under the bye-laws relating to buildings made under this Act.*

**Section 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





*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.*

**Section 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.*

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**474. Arrest of offenders.**—*(1) Any police officer may arrest any person who commits in his view any offence against this Act or against any rule, regulation or bye-law made thereunder, if—*

- (a) the name and address of such person be unknown to him, and*
- (b) such person on demand declines to give his name and address or gives a name and address which such officer has reason to believe to be false.*

*(2) No person so arrested shall be detained in custody after his true name and address are ascertained or, without the order of the nearest magistrate, for a period longer than twenty-four hours from the time of arrest exclusive of the time necessary for the journey from the place of arrest to the court of such magistrate.*

**475. Duties of police officers.**—*It shall be the duty of all police officers to give immediate information to the Commissioner of the*



*commission of, or the attempt to commit any offence against this Act or any rule, regulation or bye-law made thereunder and to assist all municipal officers and other municipal employees in the exercise of their lawful authority.”*

6. We may also usefully refer to some of the provisions of the Cr.P.C., which, in our opinion, will have a bearing in answering the questions referred:

***“4. Trial of offences under the Indian Penal Code and other laws.—***

*(1) xxx*

*(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.*

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***157. Procedure for investigation.—****(1) If, from information received or otherwise, an officer in charge of a police station has reason to suspect the commission of an offence which he is empowered under section 156 to investigate, he shall forthwith send a report of the same to a Magistrate empowered to take cognizance of such offence upon a police report and shall proceed in person, or shall depute one of his subordinate officers not being below such rank as the State Government may, by general or special order, prescribe in this behalf, to proceed, to the spot, to investigate the facts and circumstances of the case, and, if necessary, to take measures for the discovery and arrest of the offender: Provided that—*



(a) when information as to the commission of any such offence is given against any person by name and the case is not of a serious nature, the officer in charge of a police station need not proceed in person or depute a subordinate officer to make an investigation on the spot;

(b) if it appears to the officer in charge of a police station that there is no sufficient ground for entering on an investigation, he shall not investigate the case.

Provided further that in relation to an offence of rape, the recording of statement of the victim shall be conducted at the residence of the victim or in the place of her choice and as far as practicable by a woman police officer in the presence of her parents or guardian or near relatives or social worker of the locality.

(2) In each of the cases mentioned in clauses (a) and (b) of the proviso to sub-section (1), the officer in charge of the police station shall state in his report his reasons for not fully complying with the requirements of that subsection, and, in the case mentioned in clause (b) of the said proviso, the officer shall also forthwith notify to the informant, if any, in such manner as may be prescribed by the State Government, the fact that he will not investigate the case or cause it to be investigated.

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**468. Bar to taking cognizance after lapse of the period of limitation.**—(1) Except as otherwise provided elsewhere in this Code, no Court shall take cognizance of an offence of the category specified in sub-section (2), after the expiry of the period of limitation.

(2) The period of limitation shall be— (a) six months, if the offence is punishable with fine only;

(b) one year, if the offence is punishable with imprisonment for a term not exceeding one year;



(c) three years, if the offence is punishable with imprisonment for a term exceeding one year but not exceeding three years.

[*(3) For the purposes of this section, the period of limitation, in relation to offences which may be tried together, shall be determined with reference to the offence which is punishable with the more severe punishment or, as the case may be, the most severe punishment.*]

**469. Commencement of the period of limitation.**—(1) *The period of limitation, in relation to an offender, shall commence,—*

(a) *on the date of the offence; or*

(b) *where the commission of the offence was not known to the person aggrieved by the offence or to any police officer, the first day on which such offence comes to the knowledge of such person or to any police officer, whichever is earlier; or*

(c) *where it is not known by whom the offence was committed, the first day on which the identity of the offender is known to the person aggrieved by the offence or to the police officer making investigation into the offence, whichever is earlier.*

(2) *In computing the said period, the day from which such period is to be computed shall be excluded.*

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**471. Exclusion of date on which Court is closed.**—*Where the period of limitation expires on a day when the Court is closed, the Court may take cognizance on the day on which the Court reopens.*

*Explanation.—A Court shall be deemed to be closed on any day within the meaning of this section, if, during its normal working hours, it remains closed on that day.”*



**SUBMISSIONS OF THE LEARNED AMICUS CURIAE**

7. Mr. Rahul Mehra, the learned Senior Counsel appointed by us as *Amicus Curiae*, submits that though the DMC Act contains certain provisions to deal with offences under the Act, such as power of entry and inspection, cognizance, limitation, recovery, etc., however, the said Act cannot be termed as a complete Code in itself for the trial of such offences. He submits that, therefore, Section 4(2) of the Cr.P.C. would be applicable for the purposes of investigation, inquiry, trial, etc., subject to the specific provisions to the contrary contained in the DMC Act.

8. The learned *Amicus Curiae* draws our attention to a judgment of this Court in *Deepa Singh v. State*, (1998) SCC OnLine Del 162, to submit that a learned Single Judge of this Court has held that, in view of Section 4(2) of the Cr.P.C. and Section 466A of the DMC Act, there is no bar on an FIR being registered on a complaint for offence under Section 332 of the DMC Act being filed by the competent officer of the MCD.

9. In this regard, he also draws our attention to the judgments of this Court in *Smt. Bimla Gupta v. State & Anr.*, 2006:DHC:17539 and *Abhay Tyagi v. State NCT of Delhi & Anr.*, 2009:DHC:978-DB. He submits that the Judgment in *Abhay Tyagi* (supra) has also been approved by the Supreme Court in *Vishal Agrawal & Anr. v. Chhattisgarh State Electricity Board & Anr.*, (2014) 3 SCC 696.

10. To buttress his above submission, he also places reliance on the judgments of the Supreme Court in *State of Bihar v. Murad Ali Khan*



*& Ors.*, (1988) 4 SCC 655; *Moti Lal v. Central Bureau of Investigation & Anr.*, (2002) 4 SCC 713; *State of Punjab v. Raj Singh & Anr.*, 1998 (2) SCC 391 ; *Sarah Mathew v. The Institute of Cardio Vascular Diseases by its Director*, (2014) 2 SCC 62 and *Jeewan Kumar Raut & Anr. v. Central Bureau of Investigation*, (2009) 7 SCC 526.

11. He submits that as far as the Question No. 1 referred to this Court is concerned, under Section 471 of the DMC Act, no timeline for completion of the investigation and filing of the chargesheet is prescribed. However, Section 471 of the DMC Act specifies time limit of 6 months for filing of a complaint of the offence before the Municipal Magistrate. He submits that the limitation for taking cognizance of an offence shall be governed by the provisions of the Cr.P.C. and, therefore, the question of chargesheet being barred by limitation during inquiry/trial of offence under DMC Act, is not relevant.

12. On Question No. 2, he submits that the DMC Act does not contain any bar on taking cognizance of an offence under Section 332 of the DMC Act after the expiry of 6 months from the date of the knowledge of the offence. Section 471 of the DMC Act provides for limitation for launch of prosecution, which is distinct from taking cognizance of the offence. It is only where the complaint itself is filed beyond 6 months of the knowledge of the offence, that no prosecution shall be maintainable due to the limitation prescribed under Section 471 of the DMC Act.



13. On Question No. 3, he submits that as Section 471 refers to the ‘complaint’, there is no occasion for applying it to the ‘police report’. He submits that the ‘complaint’ referred to in Section 471 of the DMC Act, is not the police report under Section 173 of the Cr.P.C.

14. On Question No. 4, he submits that the transmission of the FIR to the jurisdictional or *ilaqa* Magistrate cannot be regarded as sufficient compliance of Section 471 read with Section 466A/467 of the DMC Act.

15. In the same light, for Question No. 5, he submits that non-transmission of the complaint to the Municipal Magistrate within 6 months, would vitiate the prosecution and, therefore, the remedy under Section 258 of the Cr.P.C. would be available to the accused.

**SUBMISSIONS OF THE LEARNED STANDING COUNSEL FOR MCD**

16. Mr. Tushar Sannu, the learned Standing Counsel appearing for MCD, submits that there is no timeline for completion of investigation and filing of chargesheet prescribed under Section 471 of the DMC Act. The same shall be governed by the general principles of Cr.P.C. In this regard, he also draws our attention to Section 4(2) of the Cr.P.C. and Section 466A of the DMC Act along with the judgment of this Court in *Abhay Tyagi* (supra).

17. Placing reliance on the Judgment of this Court in *North Delhi Municipal Corporation v. Ashok Saran*, 2018 SCC OnLine Del 7225, he submits that the limitation prescribed under Section 471 of the







during subsequent proceedings. In support, he places reliance on a judgment of the Kerala High Court in *Suo Moto v. State of Kerala*, 2019 SCC Online Ker 2239.

### **ANALYSIS AND FINDINGS**

24. We have considered the submissions made by the learned *Amicus Curiae*, learned Standing Counsel of MCD and the learned APP for the State.

25. The interplay between Section 4(2) of the Cr.P.C. and Section 466A of the DMC Act, was considered by a learned Single Judge of this Court in *Deepa Singh* (supra), and it was held as under:

*“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 Penal Code, 1860 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 Penal Code, 1860 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 thereunder 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*







15. *It is stated at the cost of repetition that the offences under the Electricity Act are also to be tried by applying the procedure contained in Cr.P.C. Thus, it cannot be said that a complete machinery is provided under the Electricity Act as to how such offences are to be dealt with. In view thereof, I am of the opinion that learned counsel for the NDPL, is right in his submission that if the offence under the Cr. P.C. is cognizable, provisions of Chapter XII containing Section 154 Cr.P.C. and onward would become applicable and it would be the duty of the police to register the FIR and investigate into the same. Maxim generalibus specialia derogant shall have no application when the provisions are read in the aforesaid manner. Sections 135 and 138 only prescribe that certain acts relating to theft of electricity etc. would also be offences. It also enables certain persons/parties, as mentioned in Section 151, to become complainant in such cases and file complaint before a Court in writing. When such a complaint is filed, the Court would be competent to take cognizance straightway. However, that would not mean that other avenues for investigation into the offence which are available would be excluded. It is more so when no such special procedure for trying the offences under the Electricity Act is formulated and the cases under this Act are also to be governed by the Code of Criminal Procedure.”*

27. Further, a Division Bench of this Court in **Abhay Tyagi** (supra), while relying upon the decision rendered in **Deepa Singh** (supra) and while considering the provisions of the Electricity Act, reiterated as under:

*“9. Section 151 of the Electricity Act as it stood at the relevant time provided the manner of taking cognizance of an offence and the cognizance has to be taken on the basis of a*



*complaint filed by the officers/authorities mentioned therein. It does not mean that the police cannot investigate a cognizable offence under the Cr.P.C. Section 151 of the Act comes into operation at the stage when the court intends to take cognizance of offences under Sections 135 to 139 of the Act, and it has nothing to do with the statutory power of the police to investigate into a FIR, which discloses a cognizable offence, in accordance with Chapter XII of the Cr.P.C. In other words, the statutory power of the police to investigate under the Code is not in any way controlled or circumscribed by Section 151 of the Act. An offence of theft of electricity is punishable with three years of imprisonment besides fine and is a cognizable offence. As a cognizable offence had been committed, it was permissible for the respondent to lodge a FIR and for the police authorities to investigate the same in accordance with law. Section 151 of the Electricity Act enables certain authorities/officers to become complainants before the court in such cases and file complaint before the court in writing. However, that does not mean that other avenues for investigation which are available are excluded, since no such special procedure for trying the offences under the Electricity Act is provided and cases under Electricity Act are also governed by the Cr.P.C. Therefore, the submission of the learned counsel appearing for the petitioner that the police cannot investigate into the FIR filed by the officer authorized by the electricity company has to be rejected.”*

28. This view was further approved and upheld in the judgment of Supreme Court in **Vishal Aggarwal** (supra), which held as under:

*“23. Thus, the clear principle which emerges from the aforesaid discussion is that even when a Magistrate is to take cognizance when*



*a complaint is filed before it, that would not mean that no other avenue is opened and the complaint/FIR cannot be lodged with the police. It is stated at the cost of repetition that the offences under the Electricity Act are also to be tried by applying the procedure contained in the Code. Thus, it cannot be said that a complete machinery is provided under the Electricity Act as to how such offences are to be dealt with. In view thereof, we are of the opinion that the respondent's Counsel is right in his submission that if the offence under the Code is cognizable, provisions of Chapter XII containing Section 154 Cr.P.C. and onward would become applicable and it would be the duty of the police to register the FIR and investigate into the same. Sections 135 and 138 only prescribe that certain acts relating to theft of electricity etc. would also be offences. It also enables certain persons/parties, as mentioned in Section 151, to become complainant in such cases and file complaint before a Court in writing. When such a complaint is filed, the Court would be competent to take cognizance straightway. However, that would not mean that other avenues for investigation into the offence which are available would be excluded. It is more so when no such special procedure for trying the offences under the Electricity Act is formulated and the cases under this Act are also to be governed by the Code of Criminal Procedure.*

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*25. In view of the aforesaid discussion, we hold that the decisions of Kerala High Court as well as Calcutta High Court and Madras High Court in Chacko, A.K. & Anr. Vs. Assistant Executive Engineer, K.S.E.B. (2010) 2 KLJ 569; Biswanath G Patra Vs. Divisional Engineer AIR 2007 Cal 189; Ranjeet Kr.Bag Vs. State of West Bengal (2006) 1 C CrIj (Cal) 334; Paramasivan vs. Union of India (2007) 2*



*KLJ 733; Kumaran Chemicals (P) Ltd. Rep. By its Managing Partner D. Thillairaj and Ors. vs. Government of Pondicherry rep. by the Inspector of Police MANU/TN/0584/2010 do not lay down correct law and the view taken by the High Court of Delhi in Abhay Tyagi v. State NCT of Delhi & Anr. and Asish Kumar Jain vs. State of Jharkhand (2010) CriLJ 271 is hereby approved.”*

29. From the above judgments, it clear that the DMC Act and the Electricity Act, which contain almost *para materia* provisions, do not bar the registration of an FIR on a complaint filed by the Deputy Commissioner, MCD (by the appropriate government/ commission/officer authorised by them, in case of the Electricity Act). The above conclusion is also supported by the fact that Section 466A of the DMC Act expressly makes the provisions of the Cr.P.C. applicable to the offence *inter alia* under Section 332 of the DMC Act, as if it was a cognizable offence.

30. Further, Section 467 of the DMC Act, which provides that no court shall proceed to the trial of any offence, *inter alia*, under Section 332 of the DMC Act has a “subject to” clause when it starts with the words except on the complaint of or upon information received from such officer of the corporation, not below the rank of Deputy Commissioner, as may be appointed by the administrator. Therefore, Section 467 of the DMC Act is subject to the other provisions of the Act, which *inter alia* would include Section 466A of the DMC Act.

31. Therefore, from the above, it would be evident that for an offence committed under Section 332 of the DMC Act, the criminal





*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.*

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6. *In conclusion we want to make it clear that for the purpose of limitation section 471 of the DMC Act alone will be applicable to all the offences under the said Act and not section 468 Cr. P.C.”*

34. In *Sunil Sabharwal* (supra), a Division Bench of this Court held that while it is true that six months' period is prescribed for filing the complaint for commission of offences punishable under Section 471 of the DMC Act, but the limitation would start running only from the date the knowledge of the offence is gained by the complainant, that is, the authorized officer of the Corporation. The Corporation is not a natural person and thus, unless and until the factum of commission of offence comes to the notice of the officer concerned, who is entitled to act as a complainant on behalf of the Corporation, the limitation shall not commence.

35. From the above, what would also be evident is that Section 471 of the DMC Act provides for a special period of limitation for filing of the complaint of any offence against the Act or Rule,



Regulation or Bye-Law made thereunder. It does not provide for any limitation for taking cognizance of the offence by the Magistrate. Therefore, Section 468 of the Cr.P.C. and other provisions regulating period of limitation for taking cognizance of offences contained in Chapter XXXVI of the Cr.P.C., would not extend the period of limitation as far as the filing of the complaint under Section 471 of the DMC Act is concerned. Equally, Section 471 of the DMC Act does not prescribe the limitation period for the Magistrate to take cognizance of the offences mentioned in Section 466A of the DMC Act; the same shall continue to be governed by Chapter XXXVI of the Cr.P.C.. The only prescription of the limitation period in Section 471 of the DMC Act is to the filing of the complaint and not to the filing of the chargesheet or the taking of cognizance on either a complaint or the chargesheet.

36. It has been contended by the learned Standing Counsel for MCD as also by the learned APP, that when an FIR is filed, a copy thereof is transmitted to the concerned Magistrate/*ilaga* Magistrate in due compliance with Section 157 of the Cr.P.C. They have submitted that this should be considered as a due compliance with Section 471 of the DMC Act for making the period of limitation stop. The learned *Amicus Curiae* has, however, submitted that the definition of 'complaint' under Section 2(d) of the Cr.P.C. does not include a police report. He further submits that, as the offence under the DMC Act is cognizable only by a Municipal Magistrate appointed under Section 469 of the DMC Act, a report sent to the Area



Magistrate/*ilqa* Magistrate would not make the limitation stop under Section 471 of the DMC Act.

37. For answering the above submissions, we note that Section 469 of the DMC Act empowers the government to appoint one or more Metropolitan Magistrate for the trial of offences against the DMC Act and against any Rule, Regulation or Bye-Law made thereunder. Section 469(5) of the DMC Act provides that each such Magistrate shall have jurisdiction over the whole of Delhi, and in terms of Section 469(6) of the DMC Act, for the purposes of the Cr.P.C., all Municipal Magistrates shall be deemed to be Magistrates appointed under Section 16 of the said Code. Section 470 of the DMC Act further provides that all offences against the DMC 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.

38. On reading the above provisions together, it is apparent that once the Municipal Magistrates are appointed, the exclusive jurisdiction to try any offence under the DMC Act shall vest only with the Municipal Magistrates, Sections 469 and 470 of the DMC Act being special provisions for the same and therefore, shall prevail over the general provisions of the Cr.P.C. as far as the jurisdiction issue is concerned.

39. We are cognizant of the judgment of this Court in *Deepa Singh* (supra), where the Court was faced with a situation where the Municipal Magistrate had not been appointed by the government.



The Court held that in such a situation, the bar under Section 470 of the DMC Act shall become operative only when a Municipal Magistrate has been appointed for trial of offences under the said Act. The said judgment therefore, shall have no application once the Municipal Magistrates have been appointed by the Government.

40. On reading Sections 469, 470 and 471 of the DMC Act together, therefore, it is evident that for the limitation under Section 471 of the DMC Act to stop, the complaint of the offence under the Act is to be made before a Municipal Magistrate. Mere transmission of a complaint in form of the FIR to the area Magistrate/*ilaga* Magistrate will, therefore, not suffice. There can, however, be a situation where the FIR is transmitted under Section 157 of the Cr.P.C. to the Municipal Magistrate, in such a situation, the requirement of Section 471 of the Cr.P.C. would be met and in case transmission is made within six months from the date of commission of the offence or the date on which the commission or existence of such offence was first brought to the notice of the complainant/authorised officer of the Corporation, the prosecution shall not be barred by time. In this regard, the words “*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*” in Section 467 of the DMC Act would gain importance. The cognizance can be taken by the Municipal Magistrate, not only on the ‘complaint’ of the competent officer of the Corporation, but also upon the information received



from such officer. The information can be transmitted to the Municipal Magistrate either directly by such officer or through the police. In either of these cases, the requirement of Section 467 read with Section 471 of the DMC Act shall be met and fulfilled.

41. Therefore, we hold that while Section 471 of the DMC Act, in no uncertain terms, provides that no person shall be liable to punishment for any offence against the DMC Act or any Rule, Regulation or Bye-Law made thereunder, unless complaint of such offence is made before a Municipal Magistrate within six months from the date of 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/officer of the Corporation, at the same time, the transmission of such complaint in form of an FIR by the police officer to the Municipal Magistrate under Section 157 of the Cr.P.C., would also suffice and shall stop the period of limitation under Section 471 of the DMC Act. At the same time, transmission of such complaint by the police officer to the area Magistrate/*ilaga* Magistrate, who is not the designated Municipal Magistrate, would not suffice for purposes of stopping the period of limitation under Section 471 of the DMC Act.

42. The learned Standing Counsel for MCD has submitted that there can be cases where the name and particulars of the offender are not available with the concerned officer of the Corporation and, therefore, for the said purpose, a complaint is made to the police officer. We have already held that there are two alternate modes of







**Q2. Whether the DMC Act prescribes a bar on taking cognizance of an offence under Section 332 of DMC Act after the expiry of six months from the date of knowledge, as per Section 471 of the Act?**

A. Section 471 of the DMC Act does not contain any bar on the Municipal Magistrate taking cognizance of an offence under Section 332 of the DMC Act after the expiry of six months from the date of knowledge of the commission of the offence by the Corporation, however, the complaint must be filed before the Metropolitan Magistrate, if so appointed, or the information of the offence transmitted to the Municipal Magistrate, within the period of six months prescribed under Section 471 of the DMC Act.

**Q3. What is the scope and relevance of the requirement of sending a "complaint" to the Magistrate within six months, as contemplated under Section 471 of DMC Act, since no cognizance is taken on the complaint and case is instituted on the police report?**

A. The complaint under Section 471 of the DMC Act, can be directly filed by the competent officer of the Corporation or be transmitted to the Magistrate by the police in compliance with Section 157 of the Cr.P.C., for purposes of reckoning of the period of limitation under Section 471 of the DMC Act.

**Q4. Whether the transmission of the copy of First Information Report (FIR) to the concerned jurisdictional/*Ilqa* Magistrate within six months could be considered as transmission of**



**complaint/information, as sufficient compliance of Section 471 read with Section 466-A/467 of DMC Act?**

A. The transmission of the copy of the FIR to the concerned jurisdictional/*ilqa* Magistrate, unless such jurisdictional/*ilqa* Magistrate is also the appointed Metropolitan Magistrate, where such Metropolitan Magistrates have already been appointed by the government, shall not suffice for purposes of Section 471 read with Sections 466A/467 of the DMC Act. However, if such report is transmitted to the Metropolitan Magistrate, the same would duly comply and be sufficient for the purposes of Section 471 of the DMC Act.

**Q5. If no, whether non-transmission of complaint/information to the concerned Magistrate within six months would *ipso facto* vitiate the entire prosecution or would be a curable defect being a formal/technical requirement, in view of the fact that the original complaint from Deputy Commissioner is indeed transmitted to the Court as a part of the chargesheet. If yes, whether the remedy under Section 258 Cr.PC would be available with the accused in such cases?**

A. The non-transmission of complaint/information to the concerned Magistrate within six months, either in form of a complaint filed by the officer of the Corporation or by way of transmission of information of the offence, would *ipso facto* vitiate the entire prosecution and shall not be a curable defect. Section 471 of the DMC Act contains a complete bar on any person being made liable to

