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

+ **CRL.M.C. 882/2023**

VIKAS PAWAR & ANR.

..... Petitioner

Through: Mr. Hirein Sharma, Mr. Vikram
Singh Jakhar, Ms. Sonali Gupta, Advs.

versus

THE STATE GOVT. OF NCT OF DELHI & ANR. Respondent

Through: Ms. Manjeet Arya, APP

CORAM:

HON'BLE MR. JUSTICE JASMEET SINGH

ORDER

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08.02.2023

CRL.M.A. 3354/2023-EX.

Allowed subject to all just exceptions.

The application stands disposed of.

CRL.M.C. 882/2023

This is a petition filed seeking quashing of the impugned order dated 03.02.2023 passed by the learned ASJ-02/ Special Judge (NDPS Act), North-West, Rohini Courts, Delhi for registration of the FIR in complaint case No. 136/2019.

It is stated by Mr. Sharma, learned counsel appearing for the petitioner that the present case is a gross abuse and misuse of process of law.

Mr. Sharma, learned counsel further states that the complaint under SC/ST Act was filed on 10.09.2014 of the incident alleged to have occurred on 23.07.2014. There is no explanation as to why there was a delay of 2 months in registering the FIR.

Issue notice to the respondents through all modes including electronic on the petitioner taking steps within 1 week from today.



Ms. Arya learned APP accepts notice for the respondent No.1 and does not wish to file a reply. She states that the issue is legal and she wishes to address arguments.

CRL.M.A. 3353/2023-STAY

This is an application filed seeking stay of the order dated 03.02.2023 passed by the learned ASJ-02/ Special Judge, North-West, Rohini Courts, Delhi, wherein it has been directed to register an FIR against the petitioners who are both police officers.

In '**Indra Devi vs. State of Rajasthan**' [(2021) 8 SCC 768], the Hon'ble Supreme Court has stated as under:-

“10. We have given our thought to the submissions of the learned counsel for the parties. Section 197 CrPC seeks to protect an officer from unnecessary harassment, who is accused of an offence committed while acting or purporting to act in the discharge of his official duties and, thus, prohibits the court from taking cognisance of such offence except with the previous sanction of the competent authority. Public servants have been treated as a special category in order to protect them from malicious or vexatious prosecution. At the same time, the shield cannot protect corrupt officers and the provisions must be construed in such a manner as to advance the cause of honesty, justice and good governance. (See Subramanian Swamy vs. Manmohan Singh⁴.) The alleged indulgence of the officers in cheating, fabrication of records or misappropriation cannot be said to be in discharge of their official duty.



However, such sanction is necessary if the offence alleged against the public servant is committed by him “while acting or purporting to act in the discharge of his official duty” and in order to find out whether the alleged offence is committed “while acting or purporting to act in the discharge of his official duty”, the yardstick to be followed is to form a prima facie view whether the act of omission for which the accused was charged had a reasonable connection with the discharge of his duties. [See State of Maharashtra v. Dr. Budhikota Subbarao]⁵. The real question, therefore, is whether the act committed is directly concerned with the official duty.”

Prima facie, it seems that the learned Sessions Court has not dealt with the embargo cast upon Courts under Section 197 Cr.PC.

For the said reason, till the next date of hearing, the operation and effect of the order dated 03.02.2023 passed by the learned ASJ-02/ Special Judge, North-West, Rohini Courts, Delhi shall remain stayed.

List on 12.05.2023.

Dasti.

JASMEET SINGH, J

FEBRUARY 8, 2023 / (MS)

[Click here to check corrigendum, if any](#)