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

+ **CRL.M.C. 8126/2024 & CRL.M.A. 31098/2024**

GOPAL DASS JORWAL & ORS.Petitioners

Through: Mr. Vinayak Bhandari, Ms. Jaiswal
Singh and Ms. Teesta Mishra,
Advocates.

versus

STATE GOVT. OF NCT OF DELHI AND ORS.Respondents

Through: Mr. Sanjeev Sabharwal, APP for the
State.

Mr. Rakesh Chahar and Mr. Naveen
Chauhan, Advocates for R-2 to R-5.

CORAM:

HON'BLE MR. JUSTICE ANUP JAIRAM BHAMBHANI

ORDER

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16.10.2024

CRL.M.A. 31099/2024 (exemption)

Exemption granted, subject to just exceptions.

Let requisite compliances be made within 01 week.

The application stands disposed of.

CRL.M.C. 8126/2024

By way of the present petition filed under section 528 of the Bharatiya Nagarik Suraksha Sanhita 2023, the petitioners impugn order dated 24.09.2024 made by the learned Additional Sessions Judge-03 (West), Tis Hazari Courts, Delhi in CR. No.202/2024, thereby upholding order dated 23.02.2024 passed by the learned Metropolitan Magistrate (Mahila Court-05), West, Tis Hazari Courts, Delhi in Cr. Case No.3204/2018 which arose from case FIR No.532/2016 ('subject FIR'). By way of order dated 23.02.2024, the learned Magistrate has observed that *prima-facie* offences under



sections 323/341/354/354-B/506/509/34 of the Indian Penal Code, 1860 ('IPC') are made-out against the petitioners, though the petitioners have been discharged for the offence under section 354-A of the IPC. Pursuant to order dated 23.02.2024, the learned Magistrate has framed charges against the petitioners *vide* order dated 03.05.2024.

2. Mr. Vinayak Bhandari, learned counsel appearing for the petitioners contends that the subject FIR which relates to an alleged incident of 29.10.2016 was registered only as an act of retribution for an earlier incident that had happened on 26.10.2016, in which the husbands of respondents Nos.2 to 5 in the present case (who are the complainants in the subject FIR) had assaulted the petitioners. Counsel submits that the incident of 26.10.2016 had culminated in the registration of case FIR No.530/2016 dated 27.10.2016 under sections 452/323/341/ 34 of the IPC at P.S.: Patel Nagar, Delhi against the husbands of respondents Nos.2 to 5, who are presently facing trial in that case.
3. Counsel submits that all else apart, upon completing investigation, the Investigating Officer ('IO') had filed a chargesheet dated 05.05.2018 placing all the petitioners in Column No.12, thereby taking the stand that there was no material based on which the petitioners could be sent-up for trial. This charge-sheet came to be challenged by way of a protest petition, which was allowed by the learned Magistrate *vide* order dated 19.02.2020; and thereby the learned Magistrate also issued summons to all the petitioners.
4. Counsel points-out, that as referred-to in order dated 19.02.2020, 18 persons from the petitioners' neighbourhood, who were eye-witnesses



to the incident of 29.10.2016, had disputed and belied the allegations levelled by respondents Nos.2 to 5 against the petitioners in writing and signed by them, which statements were part of the record, but since those statements had not been recorded formally by the I.O. under section 161 of the Code of Criminal Procedure 1973 ('Cr.P.C.'), the learned Magistrate ignored those statements and proceeded to issue summons to the petitioners holding that there was sufficient material on record to take cognizance of the offence under section 190(1)(b) of the Cr.P.C. against all the petitioners.

5. This, it is argued, was followed by order dated 23.02.2024 (which is also one of the orders impugned in the present proceedings), in which the learned Magistrate further opined that *prima-facie* offences under sections 323/341/354/354-B/506/509/34 of the IPC (though not under section 354-A of the IPC) were made-out against the petitioners. Counsel however draws attention to the following reasoning contained in order dated 23.02.2024 :

*“As per the charge sheet, the complaint and documents filed alongwith the charge sheet, **there are specific allegations** against accused persons for beating the complainant and her family members, not letting them leave the place when they were trying to save themselves, tearing off clothes of complainant and other females of her family, threatening to kill the complainant and her family members and verbally abusing and using filthy language against the complainant and her family members in furtherance of their common intention. At the same time **there are specific allegations** all the accused persons of using criminal force to the complainant with an intent to outrage her modesty. Hence, from the charge sheet and the accompanying documents, prima facie offence punishable U/s 323/341/354/354-B/506/509 34 IPC are made out against accused no.1/Gopal Dass Jorwal, accused no.2/Mangal Sain Jorwal, accused no.3/Jayant Jorwal and accused no.4/Deepankar Jorwal.”*

(emphasis supplied)



6. Counsel argues that on a bare perusal of the aforesaid so-called reasoning, it is clear that the learned Magistrate has proceeded merely on the basis of the *allegations* in the charge-sheet, the complaint and in the documents filed with it; and there is not even a reference to *any material or evidence* that might have come on record upon completion of investigation. Counsel submits that in fact no evidence or material exists to warrant the framing of charges against the petitioners.
7. It is further submitted that the challenge to order dated 23.02.2024 filed by way of criminal revision petition bearing CR. No.202/2024 has been rejected by the learned Sessions Court *vide* order dated 24.09.2024, which is also one of the orders impugned by way of the present petition.
8. Issue notice.
9. Mr. Sanjeev Sabharwal, learned APP appears for the State; and Mr. Rakesh Chahar, learned counsel appears for respondent Nos.2 to 5 on advance copy; accept notice; and seek time to file status report/reply.
10. Let status report/reply be filed within 06 weeks; response/rejoinder thereto, if any, be filed within 04 weeks thereafter; with copies to the opposing counsel.
11. Upon a *prima-facie* view of the matter, what weighs with the court *at this stage* is that even at the stage of passing the order framing charges against the petitioners, the learned Magistrate has evidently proceeded *only* on the basis of what she describes as “*specific allegations*” against the accused persons, without there being any



reference in the order to *any material or evidence* that may have come-forth in the course of investigation. Now, an order may direct the registration of an FIR on the basis of ‘*specific allegations*’ if they disclose the commission of a cognizable offence; but when a court directs the framing of charges, it is necessary for the court to *examine the material and evidence that has come on record* after completion of investigation, to see if that material raises “*grave suspicion*”¹ against an accused person of commission of a cognizable offence. This does not appear to be the case insofar as the order of the learned Magistrate is concerned.

12. Furthermore, the learned Sessions Court also appears to have glossed-over this aspect, thereby dismissing the challenge to the order passed by the learned Magistrate.
13. In view of the above, on a *prima-facie* view of the matter, further proceedings in case FIR No.532/2016 dated 29.10.2016 registered under sections 323/341/354/354-A/354-B/509/506/34 of the IPC at P.S.: Patel Nagar, Delhi pending before the learned Magistrate shall remain stayed, till the next date of hearing before this court.
14. Re-notify on 31st January 2025.

ANUP JAIRAM BHAMBHANI, J

OCTOBER 16, 2024/ak

¹ Union of India vs. Prafulla Kumar Samal & Anr. (1979) 3 SCC 4, para 10