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

+ W.P.(CRL) 1094/2011 & Crl.M.A. 9216/2011 (stay)

VIRENDER @ RAJU

..... Petitioner

Through Petitioner in person.

versus

STATE OF DELHI

..... Respondent

Through

Ms. Urvi Kuthiala for Mr. Rajesh Mahajan, ASC for State with ASI Ram Gopal PS Mukherjee Nagar.

CORAM:

HON'BLE MS. JUSTICE MUKTA GUPTA

ORDER

22.11.2011

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By this petition the Petitioner seeks directions to register FIR under Section 409 IPC against the Police officers for criminal breach of trust for having willfully suppressed the facts of the case from the Court which they were legally bound to file. According to the Petitioner a case under Section 7/13 Prevention of Corruption Act (in short POC Act) was registered vide FIR No. 39/95 on the complaint of the brother of the Petitioner. On 13th February, 2000 the Petitioner and his family members were robbed. On 15th February, 2000 a case FIR No. 60/2000 under Section 341/354/323/506/34 IPC was registered instead of 392/397 IPC at P.S. Timarpur. It is further

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contended that to settle old scores the Police officer hatched the conspiracy with the neighbours of the Petitioner and implicated the Petitioner in a false case being FIR No. 308/2000. The Police Officers have deliberately filed a Challan, without filing the true facts. In view of the fact that a false case has been instituted against the Petitioner in the year 2000, the Petitioner now wants registration of the FIR against the Police officers.

On a notice being issued status report has been filed. As per the status report, on 11th August, 2000 on the complaint of Shri Rajan Bharti case FIR No. 308/2000 under Section 323/341/308/34 IPC was registered at P.S. Mukherjee Nagar against the Petitioner alleging that on 10th August, 2000 while the complainant was coming out of his house, the Petitioner abused and beat him. The Petitioner herein injured the complainant on his head with a brick resulting in injuries on his head. As per the complainant when the room mates of the complainant came to save him, the Petitioner attacked room mates Ravi Ranjan Kumar and Alok with a Sua. Further brother of the Petitioner i.e. Ramesh also gave a thapi blow on the head of the Alok which when stopped by Alok with his hands resulted in fracture of his hands. The sister and father of the Petitioner also gave beatings to them. Thus on registration of FIR investigation was carried. After recording the statement

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of the witnesses necessary charge-sheet was filed which is pending trial. Whether FIR No. 308/2000 is a false case or not has to be determined by the Learned Trial Court before whom the trial is pending. This Court in a writ petition under Article 226 of the Constitution will not evaluate the truthfulness or falsity of the allegations made in the charge-sheet.

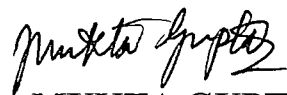
In view of these facts no orders can be passed that FIR No. 308/2000 and the trial thereon is false and fabricated.

The next prayer of the Petitioner is that since the Investigating Officer withheld the material documents before the Learned Trial Court during trial, a case under Section 409 IPC should be registered against him. In case material documents have been withheld, the Petitioner would be at liberty to prove the same before the Learned Trial Court by adducing the said documents at appropriate stages. Moreover as held by the Hon'ble Supreme Court in *Gangadhar Janardan Mhatre vs. State of Maharashtra and Ors.*, 2004 (7) SCC 768, *Minu Kumari & Anr. v/s State of Bihar & Ors* (2006) 4 SCC 359 and *Aleque Padamsee & Ors v/s UOI & Ors*, 2007 (6) SCC 171, in case no FIR is registered the Petitioner has the liberty of filing a complaint case before the Learned Metropolitan Magistrate for redressal of his grievance and in view of the alternate remedy available the present petition

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is not maintainable.

Petition and application are dismissed. Order dasti.


MUKTA GUPTA,J

NOVEMBER 22, 2011
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