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

+ **W.P.(CRL) 1605/2011**

AMIT KUMAR & ORS

..... Petitioners

Through: Mr. R.K. Chandiwal and Mr. Manoj
Kumar, Advocates.

versus

STATE & ANR

..... Respondents

Through: Ms. Urvi Kuthiala, Advocate for Mr.
Rajesh Mahajan, Additional Standing
Counsel with SI Manoj Bhatia, PS
Moti Nagar, Delhi.

CORAM:

HON'BLE MS. JUSTICE MUKTA GUPTA

ORDER

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23.11.2011

Crl. M.A. No. 18240/2011 (Exemption)

Allowed, subject to all just exceptions.

W.P. (Crl.) 1605/2011 & Crl. M.A. No. 18241/2011 (Stay)

1. In the present petition the Petitioners seek quashing of the FIR No. 219/2011 under Sections 147/148/149/323/452/427/34 IPC registered at PS Moti Nagar, Delhi on the ground that the Petitioners have been falsely implicated in the said FIR and the same is maliciously registered thus causing miscarriage of justice.

2. According to the Petitioners, the Respondent No. 2 and his associates

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are local residents involved in criminal activities and cause hindrance and nuisance in the society. On 14th September, 2011 at about 3.30 p.m. when the Petitioner No. 1 was present at his house, the complainant along with his associates Rajiv, Ravi, Rajender, Sunil @ Kakku, Anuj, Bijender, Prem, Nitesh and Amit in furtherance of their common object entered the house of the Petitioner No. 1 in order to kill and thereby started beating the family members resulting in injuries to his neighbourer Sanjay and Rajesh by iron rods and also damaged the Car bearing No. DL-2C-AN-1237. On this complaint of the Petitioner No.1 FIR No. 218/2011 under Sections 147/148/149/323/ 452/427/34 IPC was registered. However, despite the Petitioners' FIR a cross false FIR has been registered being FIR No. 219/2011 against the Petitioners, the quashing of which is sought by the Petitioners.

3. The allegations as set out in the FIR No. 219/2011 registered against the Petitioners on the complaint of Rajender Kumar state that the complainant along with his family was residing in Basai Darapur and he was doing the job of beating the drums in parties. On 14th September, 2011 at about 3.30 p.m. when he was present at his home many people came carrying lathis, dandas etc. and they used filthy language against his family

and neighbours. According to the Complainant, Amit Kumar, Anand Kumar, Kamal Singh, Nitin Chautala, Sandeep, Ramdeva, Rajesh and Sanjay, that is, the Petitioners herein were present. They threatened the Complainant that he had filed a case against them and in case he does not withdraw the same they would make his life difficult. After entering the house they beat the Complainant and Rahul and damaged Car No. DL-4CM-3815. The said persons were having lathis, dandas, rods and hockey sticks in their hands with which they gave beatings. The damaged vehicle was seized and the MLC of the injured Rajender was recorded.

4. Thus it is apparent that on the complaint of both the sides FIRs have been registered. Both the sides are alleging beating by rods, dandas etc. and damage to their respective cars. The MLCs of the Petitioners and the assailants who are the Complainants and victim in the cross FIR have been collected by the Police. This Court in a petition under Article 226 of the Constitution or Section 482 Cr.P.C. will not appreciate the evidence and come to the conclusion that the FIR registered was false, malicious and motivated. The contention of the Petitioner that the FIR in question cannot be registered as both the versions cannot be true deserves to be rejected. There are injuries and damage of vehicles on both sides, and thus both are

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independent causes of action. As held by the Hon'ble Supreme Court in *Upkar Singh Vs. Ved Prakash & Ors. (2004) 13 SCC 292* filing of a counter complaint is permissible.

5. The Hon'ble Supreme Court in *State of Karnataka vs. M. Devendrappa and Anr., 2002 (3) SCC 89* held that the High Court has inherent power under Section 482 Cr.P.C. to quash the proceedings, however, the said power should not be exercised to stifle the legitimate prosecution. It was further held that the High Court should not assume the role of the trial Court and embark upon the enquiry. The power should be exercised sparingly with caution and circumspection.

6. The case of the petitioners does not fall within any of the parameters laid down in the *State of Haryana vs. Bhajan Lal, 1992 (suppl) (1) SCC 335*. The allegations in the FIR prima facie disclose the commission of cognizable offences. The claim of the complainant is fortified by the MLCs and the damaged vehicle. There is no legal bar in continuing the proceedings.

7. Since the facts of the present case do not satisfy the test laid by the Hon'ble Supreme Court in *State of Karnataka* or *State of Haryana* (Supra), no ground for quashing of the FIR and the proceedings pursuant thereto is

made out.

8. Petition and application are dismissed.


MUKTA GUPTA, J.

NOVEMBER 23, 2011

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