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

+ **CRL.M.C. 2881/2016 & CrI.M.A. 12352/2016**

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Decided on: 10th November, 2016

NIRAJ SHARMA

..... Petitioner

Represented by: Mr. Sudarshan Rajan, Mr.
Arjun Gadhoke, Mr. Archit
Arora, Mr. Karanjot Singh,
Advts.

versus

STATE & ORS

..... Respondents

Represented by: Mr. Ashok Kumar Garg, APP
with SI Arvind SWR Cr.Br.
Mr. D.S. Kohli, Mr. T.D.
Sharma, Ms. Parminder Singh,
Mr. Harvinder Singh, Advts. for
R-2.

CORAM:

HON'BLE MS. JUSTICE MUKTA GUPTA

MUKTA GUPTA, J. (ORAL)

1. Learned counsel for the respondent No.2 enters appearance and has placed on record his vakalatnama.
2. On the complaint of the petitioner FIR No.253/2004 was registered at PS Chitranjan Park under Sections 506/507/387/120B IPC and investigation was going on when the respondent No.2 filed an application before the learned CMM under Section 156(3) Cr.P.C. for monitoring the investigation and directing the investigating officer to conclude the investigation expeditiously. The learned CMM vide the order dated 14th January, 2015 dismissed the application of the respondent No.2 noting therein that the investigation has been completed and the respondent No.2 was not a person

aggrieved under Section 36 of the Cr.P.C. at whose instance monitoring of the investigation could be conducted by the Court.

3. Challenging the order dated 14th January, 2015 the respondent No.2 filed a revision petition before the learned ASJ wherein vide the impugned order dated 12th February, 2016 the learned ASJ noted that since the Trial Court has not taken cognizance till that date, it would be appropriate to advise the Trial Court that at the time of taking cognizance the respondent No.2 who was the accused sought to be summoned on the charge-sheet be allowed to file all documents relied upon by him and the Court should hear respondent No.2 and take into consideration the documents filed by him. The relevant para 9 of the impugned order dated 12th February, 2016 reads as under:

“9. However the only concern of revisionist left in this revision is that the trial Court in para 7 of the impugned order wherein it is observed that tone and tenor of the queries of revisionist in Para No.16 of the application appears to be cross examination of IO for which revisionist will get an ample opportunity at the time of cross-examination of IO and other PWs while reading this line of order, the revisionist has failed to take note of the observation of MM in the next line wherein it is observed that revisionist shall get ample opportunity to render his arguments at the stage of charge in regard to the allegations levelled. Hence the concern of revisionist does not appear to be reasonable. However since the learned Trial Court had not taken cognizance of the offence till date, in all fairness to the revisionist I deem it appropriate to advise the Trial Court that at the time of taking cognizance revisionist be allowed to file all documents relied upon by him and trial Court should hear the revisionist and take into consideration all the documents of the revisionist, before passing the order without being influenced by the observations mentioned in para No.7 of the impugned order

under challenge. The revision is disposed of with these directions.”

4. Aggrieved by this order dated 12th February, 2016 the petitioner who is the complainant in FIR No.253/2004 approached this Court by way of the present petition. While issuing notice this Court noted that the direction of the learned revisional Court was contrary to the law laid down in State of Orissa Vs. Debendra Nath Padhi (2005) 1 SCC 568 and at the stage of cognizance the accused had no right to file the documents or examined at that stage.

5. Learned counsel for the respondent No.2 on instructions submits that the impugned order passed by the learned ASJ directing the learned Trial Court to consider the defence documents at the stage of cognizance and hear the respondent No.2 is contrary to the law.

6. It is well settled that when a charge-sheet is filed it is for the Court to either proceed in the matter by taking cognizance or direct further cognizance or form an opinion contrary to the opinion of the investigating officer as the Court is not bound by the opinion of the investigating officer, however at the stage of taking cognizance the accused has no right to examine himself or produce his documents in defence. Consequently, the impugned order dated 12th February, 2016 passed by the learned ASJ is set aside.

7. Petition and application are disposed of.

(MUKTA GUPTA)
JUDGE

NOVEMBER 10, 2016
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