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

+ CRL.M.C. 411/2017, Cr MA 1824/2017

ADITYA PRASAD DUBE & ORS. Petitioners
Through Mr. Rakesh Kumar, Adv

versus

STATE & ANR. Respondents
Through Mr. M S Oberoi, APP for State
SI Ichha Ram, PS Tilak Marg
Mr. Pramod K Dubey, Adv for R-2

CORAM:

HON'BLE MR. JUSTICE A.K. PATHAK

ORDER

% **18.12.2017**

Vide order dated 24th June, 2016 trial court had held that a prima facie case is made out against the accused (petitioners) for framing charges under sections 448/341/380/34 IPC. Thereafter, charges were framed on 9th July, 2016 to which petitioners pleaded 'not guilty' and claimed trial. Accordingly, trial is underway.

Petitioners preferred Crl. Rev. 8886/2016 before the learned Addl. Sessions Judge against the aforesaid order, which has been dismissed vide order dated 16th November, 2016.

That is how petitioners are before this court by way of present petition under Section 482 Cr.P.C.

Learned Addl. Sessions Judge as well as trial court have marshalled the entire material on record, including the statements of witnesses under section 161 Cr.P.C. and have held that a prima facie case is made out against the accused for having committed the

offences under sections 448/341/380/34 IPC.

Second revision is barred under section 397(2) CrPC. Accordingly, petition under Section 482 Cr.P.C. can be entertained only in exceptional and rare cases only if High Court is satisfied that continuation of trial would result in gross abuse of process of law thereby resulting in miscarriage of justice. Petition cannot be entertained in a routine manner as a second revision petition. No such case of exceptional hardship is made out by the petitioners.

It is trite law that at the time of framing of charge statements of witnesses under Sections 161 CrPC and all other material collected during the investigation has to be taken on its face value. Defence of the accused is not to be considered. Similarly, documents produced by the accused as their defence are not to be considered. This is the view taken by both the courts, that is, Trial court and Revisional Court. The view taken by the trial courts is strictly in accordance with the settled law and has not resulted in any miscarriage of justice.

Learned counsel submits that there is no evidence collected during the investigation to show even, prima facie, that offence of trespass or theft was made out against the petitioners. I do not find this contention to be correct. Specific allegations have been levelled in the FIR that the petitioners had trespassed into the portioned premises under occupation of the complainant in her absence and that they had stolen goods lying there. Merely because petitioners claim that they were also in possession of some portion of the same premises would not mean that they were in possession of the entire property. Allegations in the FIR are that petitioners had trespassed

into the portion of property in possession of the complainant and removed certain articles. List of missing belongings of complainant was also given to Investigating Officer. This is sufficient to take a prima face view about the trespass and theft.

Petition is dismissed.

Miscellaneous application is disposed of as infructuous.

A.K. PATHAK, J

DECEMBER 18, 2017

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