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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ **W.P.(CRL) 607/2017 & CrI.M.A. 3326/2017 (stay)**

NIRMALA YADAV

..... Petitioner

Through: Mr. Aman Bhalla & Mr. Harsh
Kumar, Advs.

versus

STATE & ORS.

..... Respondents

Through: Mr. Avi Singh, ASC for State with
Ms. Megha, Adv. & Inspector C.L.
Meena, PS Shakarpur.

CORAM:

HON'BLE MR. JUSTICE R.K.GAUBA

ORDER

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18.04.2017

On 18.09.2016 at about 10.30 p.m. an incident took place in front of House No. 118, J Extn., Guru Ram Dass Nagar, Laxmi Nagar, Delhi within the jurisdiction of police station Shakarpur, District East of Delhi wherein one Subhash Yadav, son of Mohar Singh Yadav statedly suffered homicidal death. A case under Section 302 of Indian Penal Code, 1860 (IPC) was registered vide first information report (FIR) No. 789/2016 in police station Shakarpur for investigation. The investigation resulted in report under Section 173 of the Code of Criminal Procedure, 1973 (Cr.P.C.) being submitted in the court of Metropolitan Magistrate on 15.12.2016. The Magistrate took cognizance and issued process against five persons who had been arrested during the course of investigation, they being Aamin Khan, Mohin Khan, Mohd. Adnan, Nawab Ali @ Danish & Nakul @ Kishan. After compliance of provision contained in Section 207 Cr.P.C., the

Magistrate committed the case to Court of sessions. It came up before the Additional Sessions Judge -02 (East) on 04.01.2017, it having been allocated to the said court by the concerned Sessions Judge. It appears the police has sought prosecution of the said five persons for offences under Section 302/120 B/34 IPC.

On 04.01.2017 itself, the petitioner herein, she being the wife of the deceased Subhash Yadav appeared through counsel and filed a protest petition. The said protest petition appears to have come on record after the case had been adjourned to 11.1.2017 for consideration of the bail application and 10.02.2017 for consideration of the charge. It appears the counsel for the petitioner (described as complainant in the proceedings before the Sessions Court) appeared on 11.1.2017 and 13.1.2017 but thereafter there was no appearance on that side. It further appears by subsequent order dated 20.02.2017, the trial Court found, *prima facie*, charge to be made out for putting the said five persons on trial for offence under Sections 302/34 IPC.

By the present petition, the grievance raised essentially is that the protest petition was not taken into consideration and the learned trial Court has proceeded to frame charge against the five persons ignoring the fact that the petitioner has pointed out, *inter alia*, involvement of three other persons in the crime, they having been shown in the array of parties here as respondent nos.2 to 4. By the petition at hand, the grievance raised is that the investigation carried out by the local police has not been fair or complete as the role of the other persons pointed out on the basis of specific inputs has not been probed. The prayer in the petition is for transfer of the

investigation of the case to Central Bureau of Investigation (CBI). There is no requirement of law for notices to be issued to the respondent Nos. 2 to 4 as the prayer is for further investigation of a crime in which context they have not been summoned as yet.

Having heard the learned counsel on both sides, upon the learned Additional Standing Counsel for the State agreeing to the said course, particularly in view of the fact that the protest petition filed on 4.1.2017 has gone unheeded, it appears to be just and proper that the said protest petition be directed to be made over to the concerned Metropolitan Magistrate for proper consideration, if necessary, for direction for further investigation of the case in light of the inputs being given by the petitioner, in terms of Section 173 (8) Cr.P.C. Ordered accordingly.

In the above facts and circumstances, it is directed that the learned trial court shall make over the protest petition filed by the petitioner on 4.1.2017 on the file of the Sessions case to the concerned Metropolitan Magistrate indicating a specific date for it to be taken up and considered, by that Court, with the assistance of the counsel for the petitioner (complainant) and the learned Additional Public Prosecutor, for appropriate orders to be passed.

Lest there be any doubts, it is clarified that nothing in this order shall be construed as a direction to the Metropolitan Magistrate to order further investigation. All that has been ordered here is “consideration” of the protest petition seeking further investigation. Whether or not a case for further investigation is made out would be entirely within the discretion of the Metropolitan Magistrate, such direction to be exercised in the light of

facts and circumstances that are brought out at the hearing.

It is further clarified that in the event of further investigation being ordered, the same shall not be construed as a reason for stopping or staying the ongoing trial on the basis of charges already framed pursuant to the report under Section 173 Cr.P.C. which was earlier filed and taken cognizance of. It must, however, be also added that in the event of further investigation being ordered, the Metropolitan Magistrate shall ensure that it is concluded expeditiously.

The complainant shall appear before the trial Court for appropriate further directions in above light on 9th May, 2017.

The petition is disposed of with above directions.

Dasti.

R.K.GAUBA, J

APRIL 18, 2017

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