

\$~4

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

DECIDED ON : 26th APRIL, 2017

+ **CRL.M.C. 894/2016 & CRL.M.A.No.3748/16**

DEEPAK CHAUDHARY Petitioner
Through : Mr.Sumit K.Vats for Mr.Deepak
Dhingra, Advocate

versus

STATE & ANR Respondents
Through : Mr.G.M.Farooqui, APP with SI
Manmohan, PS Rani Bagh.
Mr.A.K.Chhabra, Advocate for R2.

CORAM:
HON'BLE MR. JUSTICE S.P.GARG

S.P.GARG, J. (Oral)

1. Present petition under Section 482 Cr.P.C. has been preferred by the petitioner for quashing of the FIR No.728/2015 registered under Section 380 IPC at PS Rani Bagh. It is contested by the respondent No.2 / complainant. Status report is on record.

2. I have heard the learned counsel for the parties and have examined the file. The complainant / respondent No.2 had lodged a written complaint about theft of almirah and certain goods lying therein. It was informed that the said almirah was kept in the parking slot / stilt of the building under construction. It was found stolen on 29.09.2015. Complainant suspected the petitioner to have committed the theft.

3. Status report reveals that there was no eye witness to the incident. No individual had seen the petitioner committing theft of the almirah. During investigation, statement of one Raju Tiwari was recorded. He denied his presence at the spot on 29.09.2015. He informed that he did not see the petitioner Deepak Chaudhary at the spot on 29.09.2015. Initially, the investigating agency was reluctant to register the FIR due to suspicious circumstances and it was kept pending. However, subsequently, in no change of circumstances, the instant FIR was recorded. No plausible explanation has been offered by the prosecution as to why the FIR qua the petitioner was lodged.

4. There is no material whatsoever to attract ingredients of Section 380 IPC qua the petitioner. Neither the complainant nor any other individual had seen him committing theft of the almirah. The almirah or any other document allegedly contained therein was not recovered from the petitioner or at his instance. PW-Raju Tiwari claimed to be an eye witness did not support the prosecution during investigation and denied to have seen the petitioner committing theft. It has come on record that various disputes were pending between the complainant and the petitioner / petitioner's mother regarding the collaboration agreement. Certain directions had been given by this Court in civil suit. There was no occasion for the complainant to keep the almirah in the open space without having any gate or boundary. Complaint against the petitioner seems to be motivated. The petitioner cannot be forced to face trial in the absence of any specific and categorical evidence to prima facie show his involvement in the crime. Mere suspicion is not enough to implicate the petitioner.

5. Considering the facts and circumstances of the case, the present FIR No.728/2015 registered under Section 380 IPC at PS Rani Bagh and all the proceedings arising therefrom are quashed qua the petitioner.

6. The petition stands disposed of. Pending application also stands disposed of.

(S.P.GARG)
JUDGE

APRIL 26, 2017 / *tr*

