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

+ W.P.(CRL) 2311/2016 and Crl. M.A. 11967/2016

VIMLA DEVI & ORS

..... Petitioners

Through: Mr. K.K. Jha, Advocate

versus

STATE OF NCT OF DELHI & ORS

..... Respondents

Through: Mr.R.S. Kundu, ASC with Mr. Ankit
Kumar Gulia with SI Sandeep Yadav, PS Vasant
Kunj for R-1/State

CORAM:

HON'BLE MR. JUSTICE R.K.GAUBA

ORDER

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22.05.2017

Dharmender Kumar, the late husband of the second respondent was the son of the first petitioner, second and third petitioners being his brothers, fourth petitioner being his sister. The third respondent is a daughter born out of the wedlock of the second respondent with the said Dharmender Kumar. It appears that there were certain disputes within the family, the second respondent, and her daughter (third respondent), having been accused at some stage of being of wayward ways, they having allegedly indulged in prostitution to earn livelihood. It appears that, against such backdrop, the second respondent with her daughter, third respondent, had left the matrimonial home on 16.08.2014. Dharmender Kumar, the husband of the second respondent, initially lodged a missing report with the

local police station on 19.08.2014 but on the intervening night of 19th and 20.08.2014, he committed suicide leaving behind a suicide note making certain allegations against second and third respondent.

Against this backdrop, on the complaint of the first petitioner, filed before the Chief Metropolitan Magistrate, Patiala House Courts, pursuant to directions of the said court under Section 156(3) Cr.PC, case FIR 937/14 was registered in police station Vasant Kunj alleging offence under Section 306 IPC having been committed by the afore-said respondents.

It is the stand of the second and third respondents that having left the matrimonial home on 16.08.2014, having taken temporary accommodation in Rail Niwas, they had reached the house of the father of the second respondent on 22.08.2014 where they had learnt about the suicide of Dharmender Kumar and later about the registration of the FIR alleging abetment of suicide by them. It is their case that in the police station on 22.08.2014, the keys of the house where they were residing with Dharmender Kumar were handed over to them by the police and when the house was visited, it was revealed that the petitioners herein had taken away all their belongings including car, cash, documents, ornaments, wearing apparels, etc. A complaint against this backdrop was filed by them with the police on 08.10.2014 but no action was taken thereupon. A detailed reference is made to the goods of the second and third respondents which had been taken away allegedly with intent to cause wrongful loss. The initial complaint dated 05.10.2014 was followed

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by certain further complaints including those made on 25.10.2014 and 10.05.2015. The second respondent eventually filed a criminal complaint in the court of the Additional Chief Metropolitan Magistrate, New Delhi on which, pursuant to another order dated 15.03.2016, of the Magistrate's court, apparently under Section 156(3) Cr. PC, direction was given for offence to be registered and in compliance FIR 191/16 was registered with police station, Vasant Kunj for offence under Section 379 IPC.

By the petition at hand, prayer is made for the FIR no.191/16 registered at the instance of the second respondent herein to be quashed. The submissions are that the allegations made in the said complaint and FIR are false and motivated, late husband of the second respondent having accused her and her daughter (third respondent) of indulging in illegal and immoral activities to earn livelihood and having disowned them, they could not conceivably lay claim to any property left behind by him.

Having regard to the above-noted circumstances, it is clear that questions of fact arise. Such questions cannot possibly be inquired into or adjudicated upon with finality in writ jurisdiction. The FIR registered at the instance of the second respondent cannot be trashed merely because she is a suspect (or an accused) in a previously registered FIR under Section 306 IPC. The evidence will have to be gathered by proper investigation into both the cases registered by police. It is only thereafter that the court will be able to reach an appropriate conclusion.

For the foregoing reasons, the writ petition and the accompanying application being misconceived are dismissed.

R.K.GAUBA, J

MAY 22, 2017

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