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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ W.P.(CRL) 1868/2015 & CrI.M.A. 12509/2015 (Impartial inquiry)
MANOJ KUMAR GUPTA Petitioner

Through Mr. S.B. Tripathi, Adv.

versus

NCT OF DELHI & ORS Respondents
Through Mr.Ashish Aggarwal, ASC with
Mr.Piyush Singhal, Adv.
Mr.J.C. Mahindro, Adv. for R-2 to R-7.

CORAM:

HON'BLE MR. JUSTICE ASHUTOSH KUMAR

ORDER

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13.09.2017

The petitioner has challenged the order dated 22.05.2014 passed by the learned Link Metropolitan Magistrate (South-East), Saket Courts, New Delhi in DD No.35B dated 22.05.2014 whereby the petitioner has been granted bail and simultaneously, a direction has been issued for registration of a FIR against the petitioner under section 174-A of the IPC.

It may be noted here that a complaint case vide CC No.1666/2014 (M/s BCC Cement Pvt. Ltd. vs. Manoj Gupta) was preferred by the respondent no.2 against the petitioner. During the pendency of the aforesaid proceedings under section 138 of the NI Act, a settlement had been arrived at between the petitioner and the complainant/respondent no.2. Pursuant to the aforesaid settlement, the petitioner was to perform his part of the obligation for the complainant to withdraw his complaint later on.

It has been submitted that the complaint, later, was permitted to be withdrawn on the ground of jurisdiction but before the same was done, the petitioner absented himself and did not appear before the court despite having given an undertaking of settlement with respondent no.2/complainant.

As such, an order was passed on 01.05.2014 by the learned Magistrate in the complaint case no.1666/2014, referred to above, whereby a kalandra under section 41.1.C Cr.P.C. was filed before the learned Link MM.

Mr.Ashish Aggarwal, ASC has informed this Court that pursuant to the direction dated 22.05.2014 by the order impugned, FIR has already been registered under section 174-A IPC, in which chargesheet also has been submitted.

The Court concerned has taken cognizance in the case and the case is pending trial.

Thus, the present petition seeking quashing of the order, directing for registration of FIR is misconceived.

Learned counsel for the petitioner has, however, stated that the Court which directed the registration of the FIR under section 174-A IPC was misled by respondent no.2/complainant as also the police. The undertaking was given under duress and it was not of his free will. In fact the undertaking was arrived at when the petitioner was in police custody.

The aforesaid statement/ground cannot be adjudicated in the present proceeding as in the order impugned, it is specifically recorded that it was admitted on behalf of the petitioner that there had been an amicable settlement and taking into account the aforesaid statement on behalf of the petitioner only, bail was granted to him.

Be that as it may, it would be open for the petitioner to raise all these issues during the trial in the case registered under section 174-A IPC as against him.

The writ petition is dismissed with the aforesaid observation.

ASHUTOSH KUMAR, J

SEPTEMBER 13, 2017
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