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IN THE HIGH COURT OF DELHI AT NEW DELHI

Decided on:- 23rd July, 2018

+ CRL.M.C. 323/2016 and CrI. M.A. 8248/2018
PROMILA MANCHANDA & ANR Petitioners
Through: Mr. Chirag Khurana and Mr.Nitin
Arora, Advocates

versus

STATE & ANR Respondents
Through: Mr. Akshai Malik, APP for the
State
Mr. Sandeep Kaushik, Mr. Depak Kumar,
Ms. Muskan Sharma, Advocates for R-2

CORAM:

HON'BLE MR. JUSTICE R.K.GAUBA

ORDER (ORAL)

1. The second petitioner was allegedly subjected to physical assault and certain other offences including theft, mischief by certain other persons described as anti-social elements on 17.10.2013, the incident becoming subject matter of First Information Report (FIR) no.232/2013 of police station Nabi Karim involving offences punishable under Sections 379, 147, 148, 149, 427, 308, 34 IPC. The said FIR was entrusted for investigation to the second respondent, then employed as Sub-Inspector in Delhi Police posted in the area. The petitioner had some grievance against the second respondent – that is the investigating officer of the aforementioned FIR and made complaint to the Commissioner of Police and to the Metropolitan Magistrate having the jurisdiction over the area to which the matter related. It appears certain inquiries were made of the second

respondent by the Metropolitan Magistrate followed by directions to the effect that the grievance of the petitioner were treated as a criminal complaint. The Metropolitan Magistrate held pre-summoning inquiry and, on that basis, issued summons against the second respondent finding *prima facie* grounds to proceed against him for offences punishable under Sections 166A and 506 (1) of IPC.

2. The second respondent challenged the said order in the court of the Sessions invoking its revisional jurisdiction by petition (Crl. Revision No.12/2015). The revision petition was allowed by the additional sessions judge, by order dated 10.12.2015, thereby setting aside the summoning order against the second respondent passed by the Metropolitan Magistrate on 18.08.2015. The prime reason for such order being passed by the revisional court was that the concerned Metropolitan Magistrate after taking cognizance under Section 190(1)(c) into the complaint of the petitioner against the second respondent should not have proceeded with the pre-summoning inquiry, his obligation being to abide by the mandate of Section 191 Cr. PC wherein he was obliged to first offer to the second respondent as to whether he wished the inquiry into the matter to be held by another Magistrate and, if any such objection was raised, to transfer the matter to another Magistrate through the Chief Metropolitan Magistrate.

3. The petitioners having felt aggrieved by the aforementioned order of the Sessions judge in revision have approached this court

under Section 482 Cr. PC with the submission that the intervention by the Sessions court was unjust and improper.

4. Having heard the learned counsel for the petitioner and the learned Additional Public Prosecutor for the State, this court is of the opinion that apart from the reasons which weighed with the revisional court, there is another fundamental reason why the proceedings before the court of the Metropolitan Magistrate were improper, unauthorized and consequently vitiated on which account this petition ought not succeed.

5. As mentioned earlier, the second respondent was serving at the relevant time as Sub-Inspector of the Delhi Police. He is governed by the provisions of Delhi Police Act, 1978. The conduct on which account criminal action is sought to be initiated against him pertains to acts of commission or omission done under the colour of power or authority within the meaning of the provision contained in Section 140 of Delhi Police Act, 1978. The said statutory provision bars initiation of any such prosecution to be entertained if it has been instituted without the previous sanction of the Administrator. No such previous sanction of the Administrator in this case has been obtained.

6. The petition and the application filed therewith are, therefore, dismissed.

R.K.GAUBA, J.

JULY 23, 2018/yg