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

+ **W.P.(CRL) 2225/2018**

ANAND MISHRA & ANR

..... Petitioner

Represented by: Mr. Rakesh Tiku, Senior Advocate
with Mr. Manu Padalia and Mr.
Gaurav Kohli, Advocates.

versus

STATE & ORS

..... Respondent

Represented by: Ms. Nandita Rao, ASC for the State.

CORAM:

HON'BLE MS. JUSTICE MUKTA GUPTA

ORDER

25.10.2018

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1. By this petition, the petitioners seek transfer of investigation in case FIR No. 263/2018 under Sections 354/323/34 IPC registered at PS Bhajanpura, District North East, New Delhi to CBI or any other independent agency and also for protection of life and liberty of the petitioners.
2. Petitioners in the present petition state that on 9th May, 2018 petitioners along with their one and half year old nephew were going to Neelkanth Pathology and on the street petitioner No. 1 was hit by a passerby deliberately due to which the petitioners and his nephew fell down. The shopkeepers of the area were hand in glove with the passerby and despite the petitioner No. 2 begging the attackers not to beat they did not pay any heed to the requests, assaulted petitioner No. 1 and molested petitioner No. 2.

3. Case of the petitioners is that despite the entire incident having been recorded in the CCTV police took no action and petitioner No. 1 was made to run from pillar to post to get the FIR registered. Petitioner/complainant states that he was informed by reliable source that all accused belonged to a particular organization, who were beating the petitioners thinking that the petitioners belonged to a particular community and the police officers were not recording the statement made by him under Section 161 Cr.P.C, and asking him not to take the name of the organisation.

4. On a notice being issued a status report has been filed. As per the status report a PCR call was received on 9th May, 2018 which was recorded vide DD No. 20B related to a quarrel. SI Devendra to whom the DD entry was entrusted reached the spot where the petitioners were present and stated that some people had beaten them. They were taken to JPC hospital in the PCR van.

5. MLCs of the petitioners were collected. In the MLCs of petitioners gave alleged history of physical assault by five unknown persons. SI Devendra reached the spot back and checked for the CCTV footage which was found installed in a nearby shop. During enquiry it was revealed that a man was coming on the motorcycle along with his wife and the motorcycle touched one person due to which quarrel ensued.

6. In the written complaint filed by petitioner No. 1 he stated that he was going to Nilkanth Pathology with his wife and child on motorcycle. Suddenly, a man hit them and pushed his motorcycle near street no. 3 due to which they all fell on the road. When he complained regarding the same, some persons who were five in number from Sadhana Garment and Sharma

Garment came and beat him and his wife. They also misbehaved with his wife and tore her clothes. Two people took out ₹5320/- from his pocket and hit him to the extent that his nose started bleeding. He made a call at 100 number when he was taken to the hospital. He stated that he could recognise the people who attacked, assaulted and looted him.

7. As per the CD of the CCTV footage installed in one of the shops it was revealed that the petitioner No. 1 bumped into a pedestrian on his motor bike resulting in him and his wife falling down from the motorcycle. Upon getting up the petitioner No. 1 started assaulting the pedestrian when some other persons also collected and manhandled the petitioner No. 1. As per the CCTV footage petitioner No. 2 was seen restraining the petitioner No. 1 from quarrelling.

8. The DVR of the CCTV footage has already been sent to the FSL for report on the authenticity and continuity. Further at JPC hospital the petitioner No. 1 was referred to a higher medical centre for further treatment, whereafter the petitioner No. 1 went to a private hospital. Despite notice the petitioner has not given the medical documents nor furnished the particulars of the hospital where he got himself attended to.

9. Notice was also served for recording of statement of petitioner No. 2 under Section 164 Cr.P.C. which was also refused to be accepted. As per the noting the petitioner No. 1 stated that he would accept any notice after the hearing of the writ petition.

10. Considering the status report filed and the material in the CCTV footage this Court finds no ground to transfer the investigation in the above noted FIR to CBI or any other independent agency or to grant any order of

protection. As regards the allegations of the petitioner that he has been asked to not name the organisation in his statement under Section 161 Cr.P.C, notice for recording of the statement of petitioner No. 2 under Section 164 Cr.P.C. is being given, however, the petitioners are not co-operating with the investigation.

11. Petition is dismissed.

MUKTA GUPTA, J.

OCTOBER 25, 2018
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