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

+ W.P.(CRL) 3901/2018

RAJAT & ORS.

..... Petitioners

Represented by: Mr.Tanvir Quiser, Advocate

versus

STATE & ORS.

..... Respondents

Represented by: Mr.Sanjay Lao, ASC for the State
with Si Gajender, PS Alipur

CORAM:

HON'BLE MS. JUSTICE MUKTA GUPTA

ORDER

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20.12.2018

Crl.M.A.No.50284/2018

For the reasons stated in the application, delay of 4 days in re-filing the petition is condoned.

Application is disposed of.

W.P.(Crl.) No.3901/2018 and Crl.M.A. 50283/2018

1. By the present petition, the petitioners against whom proceedings were initiated under Sections 107/151 Cr.P.C. vide DD No.3A and 103B dated 30th August, 2018 at PS Alipur seek quashing of the said proceedings, initiation of departmental proceedings and registration of FIR against respondent Nos.3 to 9 and to pay compensation for harassment, misbehaviour, wrongful confinement etc., without authority of law.
2. The facts in the Kalandara against the petitioners as noted by SI Manoj respondent No.5 herein are that on 30th August, 2018 along with HC

Amarjeet, Const.Dipesh and Const.Jaideep he was on patrolling duty and reached Village Hiranki Bus Stand Delhi where he heard loud sounds, abusive language and noise of fighting. SI along with the staff reached the place where a car No.DL 1CQ 1532 was parked at one side of the road and three boys were loudly abusing each other, they were fighting and pushing one another. The police officer tried to separate but they continued fighting with each other. On being asked their names and addresses, they refused to disclose. Due to the activities of the three boys, nearby people also collected. Thus the acts of the petitioners were breaching the peace in the area and people who were there were pressing to the police for taking action. Action under Section 107/151 Cr.P.C. was initiated. The boys were separated with great difficulty and they revealed their names as Rajat, Aashish Kumar and Vishal the petitioners herein. The three boys were arrested. If they were not arrested, they would have committed any cognizable offence and were taken for medical examination to SRHC hospital and were examined vide MLC Nos.4879/2018, 4878/2018 and 4880/2018.

3. Case of the petitioners is that the three petitioners were going to the house of petitioner No.2. On the way their car was stopped and respondent No.6 started misbehaving with petitioner No.3 who was driving the vehicle. Petitioner No.3 sitting on the rear seat came out and asked respondent No.6 not to misbehave however they were beaten and were taken to the hospital and forcibly medically examined. Petitioner No.2 informed that he is a student of law and doing job as a Logistic Manager in a private firm and also informed his father at 1:30 AM in the night who is a lawyer who along with the mother of the petitioner No.2 went to the police station. It is alleged that

the respondents misbehaved with the petitioners for no fault of theirs. It is alleged that the officers not only beat the petitioners but also their father.

4. The petitioners seek quashing of the Kalandara on the ground that the same is false and frivolous and that up to 7:30-8:00 AM on 30th August, 2018 no case was registered, though the time in the MLC is shown as 1:36 AM, 1:37 AM and 1:39 AM however the time when they were brought to the police station was 3:00 AM which is contrary to create doubt on the veracity. It is stated that respondent No.5 SI Manoj was neither present at the place of incident nor in the hospital. It is stated that the story that the petitioners were fighting with each other is a concocted story.

5. Admittedly proceedings are pending pursuant to the Kalandara before SEM and notice has been issued to the petitioners. The petitioners would be at liberty to take all the pleas as noted above during the proceedings under Sections 107/151 Cr.P.C. As per the arrest memos, petitioner No.1 was arrested at 12:55 AM petitioner No.2 at 1:10 AM and petitioner No.3 at 1:15 AM on 30th August, 2018. The MLCs of the three petitioners note the timing of their arrival at the hospital as 1:36 AM, 1:37 AM and 1:39 AM and each of them is conscious and under the influence of alcohol. No fresh injury mark was seen. Prima facie, this Court finds no improbability that after getting the medical examinations done from 1:36 AM to 1:39 AM, the petitioners along with the police staff reached the police station at 3:00 AM. Two complaints coupled with applications under Section 156(3) Cr.P.C. have already been filed by Kartar Singh and Ravinder Kumar as noted in para 12 of the petition before the learned CMM, Rohini Courts. Since the proceedings before the SEM are pending and prima facie there is no material to show that the same is required to be quashed being vitiated by malafide or

illegality and alternate remedy has already been taken on behalf of the petitioners by filing complaint cases, this Court finds no ground to interfere in exercise of jurisdiction under Article 226 of the Constitution of India.

6. Petition is dismissed.

MUKTA GUPTA, J.

DECEMBER 20, 2018

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