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

+ **CRL.A. 847/2017 & CrI.M.A. 14360/2017 (stay)**

SUDHIR & ORS

..... Appellant

Represented by: Mr. Sunil K. Mittal, Ms. Maya Dagar, Mr. Vipin K. Mittal, Mr. Sushant Bali, Advs.

versus

STATE & ANR

..... Respondent

Represented by: Mr. Kusum Dhalla, APP for State/R-1 with ACP Rajender Singh SI Sandeep Malik PS Dwarka.

Mr. Milind Kumar, Dr. Sunil, Mr. Amit K. Tanwar, Mr. Vikramjeet Singh, Mr. Vishal, Mr. Satya Prakash Gautam, Ms. Jyotisheel, Advs. for R-2.

CORAM:

HON'BLE MS. JUSTICE MUKTA GUPTA

ORDER

20.03.2018

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1. By the present appeal the appellants Sudhir @ Dhillu, Sushila, Seema and Dharambir challenge the order dated 24th August, 2017 passed by the learned Special Judge exercising jurisdiction under Section 156(3) Cr.P.C. and directing registration of FIR on the complaint of respondent No.2 for provisions under the Scheduled Caste and Scheduled Tribes (Prevention of Atrocities) Amendment Act, 2015 (in short the Act). When the present appeal came up before this Court, this Court while issuing notice to the **CRL.A. 847/2017**

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respondent No.2/ the complainant stayed the operation of the impugned order till the next date of hearing which interim order is continuing.

2. Learned counsel for the appellant vehemently contends that the learned Special Judge had no power to exercise jurisdiction under Section 156(3) Cr.P.C. which is available only to a Magistrate. A perusal of the record itself would reveal that the complaint lodged by the respondent No.2 with the SHO PS Baba Haridas Nagar on 15th July, 2017 vide DD No.4B did not implicate the appellant No.4, however when the complaint case is filed before the learned Special Judge even appellant No.4 has been implicated in the same. The allegations against the appellants are false and fabricated as is evident from the action taken report filed by the Police before the learned Special Judge copy whereof is annexed as Annexure A-5 to the present petition.

3. Learned APP for the State on instructions submits that before the order dated 1st September, 2017 staying the operation of the impugned order could be passed by this Court, FIR No.168/2017 under Sections 4 of the Act read with Section 506 IPC had already been registered and investigation started thereon. However, after the passing of the order dated 1st September, 2017 the investigating officer has kept the investigation in abeyance in deference to the order of this Court.

4. Indubitably, the contents of the complaints before the SHO under Section 154(1) Cr.P.C. and on the failure of the SHO to take action thereon to the senior officers under Section 154(3) Cr.P.C. should be same as in the complaint before the learned Metropolitan Magistrate/ Special Judge. However, if the complaint before the learned Special Judge who is the Court

of original jurisdiction reveals commission of cognizable offence as envisaged in the Special Statute, the Special Judge has jurisdiction to pass directions under Section 156(3) Cr.P.C. for registration of the FIR. [see Dr. A.S. Narayana Rao Vs. CBI 189 (2012) DLT 747]

5. Be that as it may, whether appellant No.4 was involved in the offence or has been falsely implicated would be a fact to be determined during the course of investigation and since the FIR has already been registered if the investigation reveals that no offence is made out against the appellants or any of the appellant a report will be filed accordingly by the investigating officer. At this stage, this Court will not quash the direction of the learned Special Judge merely on the count that the first complaint to the SHO did not name one of the proposed accused and that there are material improvements in the allegations in the complaint before the learned Special Judge based on which FIR was registered against the appellants.

6. In view of this fact situation, the interim order dated 1st September, 2017 staying the operation of the impugned order dated 24th August, 2017 passed by the learned ASJ, Special Court is vacated. However, needless to note that in view of the facts and averments in the appeal and also the action taken report/ status report, the appellants are required to be protected against coercive measures. In case the appellants are required to be arrested for completion of investigation, the investigating officer would move an appropriate application before the learned Special Judge and give a notice of one week prior to the arrest. It is however clarified that as and when called upon by the investigating officer appellants would join the investigation and in case they fail to comply with the said order liberty is granted to the

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investigating officer to seek custodial interrogation by moving an appropriate application before the Special Judge.

7. Appeal is disposed of. Order dasti.

MUKTA GUPTA, J.

MARCH 20, 2018

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