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IN THE HIGH COURT OF DELHI AT NEW DELHI

Decided on: 29th November, 2018

+ CRL.M.C. 4664/2015

DALIP SINGH & ORS

..... Petitioners

Through: Mr. Rajat Anaja and Mr.
Muhammad Parbesh, Advocates

versus

STATE & ANR

..... Respondents

Through: Mr. Kewal Singh Ahuja, APP for
the State with ASI Dinesh Kumar

Mr. Multan Singh, Advocate for R-2

CORAM:

HON'BLE MR. JUSTICE R.K.GAUBA

ORDER (ORAL)

1. The first information report (FIR) no.224/98 was registered by police station Srinivaspuri, at the instance of the second respondent (complainant), allegations of offences punishable under Sections 147, 148, 448, 380, 34 of the Indian Penal Code, 1860 (IPC) having been leveled against the petitioner. The police, after investigation, submitted report (charge-sheet) under Section 173 of the Code of the Criminal Procedure, 1973 (Cr. PC) to seek trial of the petitioners herein for the said offences. The Metropolitan Magistrate took cognizance on the said report and having secured the presence of the petitioners who had been summoned, the question of charge was

considered. By order dated 23.03.2010, the Additional Chief Metropolitan Magistrate (ACMM) held that no case for putting the petitioners on trial was made out, the background facts showing clearly that the complaint was nothing but a bundle of lies. He thus ordered discharge of the petitioners thereby closing the proceedings. Noticeably, for reaching the said conclusion, the Magistrate went into documentary material beyond the one that had been submitted with the charge-sheet by the police, observing that the same had been relied upon without contest by the parties.

2. The complainant challenged the said order in the court of the Sessions by criminal revision petition (no.37/14). The revisional court held with reference, *inter alia*, to the rulings in *Raj Kumar Sharma vs. State of Delhi*, 2009 SCC Online Del 2203 and *State of Orissa vs. Debendra Nath Padhi*, (2005) 1 SCC 568 that the approach of the ACMM was erroneous, he having impermissibly gone into scrutiny of probative value of the material filed with the charge-sheet and having taken into account extraneous material, the order of discharge was thus set aside and the matter was remanded by the revisional court to the concerned Metropolitan Magistrate for fresh consideration in accordance with law.

3. The petition at hand was filed under Section 482 of the Cr. PC assailing the above mentioned view of the revisional court.

4. The error in consideration of extraneous material is vivid in the order of the ACMM discharging the petitioners. It is also noticeable that the ACMM acted upon material substantial part of which was not

even authenticated and consequently impermissible for being looked into at the stage of consideration of charge, the scrutiny to which the case was subjected being more in the nature of final adjudication.

5. In the given facts and circumstances, this court declines to interfere, the contentions of the petitioners of their innocence being kept open.

6. The petition is dismissed.

R.K.GAUBA, J.

NOVEMBER 29, 2018

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