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

+ CRL.M.C. 15/2019 & CrI.M.A. 51-52/2019, 240/2019

KRISHAN @ BABLU & ORS Petitioners

Through: Mr. Satish Kumar, Advocate

versus

STATE (GOVT OF NCT OF DELHI) & ORS Respondents

Through: Mr. Amit Ahlawat, APP for the State.

CORAM:

HON'BLE MR. JUSTICE R.K.GAUBA

ORDER

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07.01.2019

The petition at hand has been presented invoking inherent power and jurisdiction of this Court under Section 482 Cr.P.C. to seek quashing of the criminal case arising out of FIR No. 243/2009 of police station Burari involving offences punishable under Sections 323/452/427/506/34 IPC. The prayer for quashing is founded on the submission that the parties have resolved the dispute amicably. The petition appears to have been filed in the registry on 22.12.2018. Though the petition itself is undated, it not revealing the date on which it was prepared, it is supported by affidavits of the petitioners which were sworn before the Oath Commissioner on 22.09.2018, the affidavits of second to fourth respondents also having been filed in support, the same having been sworn before the Oath Commissioner on 20.09.2018. An advance copy of the petition was served on the Standing Counsel (Criminal) for State on 18.12.2018.

The averments in the petition referred to (at page 11), a previous petition CrI.M.C. 2257/2014 which statedly was dismissed in default due to non-appearance of the parties. In the list of dates, aside from the said CrI.M.C. 2257/2014, there is reference made to another petition (CrI.M.C. 4904/2017) stating that on the request of the counsel for the petitioner, the said petition was “dismissed as withdrawn and default due to non-appearance of the respondents” on 25.04.2018. This averment apparently cannot be correct since the petition either was dismissed in default or would have been dismissed upon withdrawal. The Court Master, on being directed, has placed before this Court copy of order dated 25.04.2018 passed by a co-ordinate bench on the said petition CrI.M.C. 4904/2017 whereby, on the request of the counsel for the petitioner, the said petition was dismissed as withdrawn. It is clear that the petition was not dismissed in default but had been withdrawn. The reasons why the previous petition CrI.M.C. 4904/2017 was withdrawn are not stated nor clarified, not even orally.

The case before the trial court is of 2009 vintage. On being asked, it is submitted by the counsel for the petitioners that it has been at the stage of prosecution evidence. Copy of the proceedings recorded on 24.09.2018 and 29.10.2018 of the trial court have been submitted along with similar proceedings of 05.11.2016. It appears, the matter has been adjourned by the trial court on submissions made that the matter had been settled and the parties intending to approach this Court for quashing the FIR at least since 2016.

What is disturbing, however, is also the fact that on 24.09.2018 and 29.10.2018, the Metropolitan Magistrate was informed that “a quashing

petition has already been filed before the Hon'ble High Court of Delhi". It is clear from the paper book and the material on record, that a factually incorrect statement was made before the trial court on 24.09.2018 and similarly factually incorrect submissions designed to conceal more than reveal have been made in the petition at hand also.

When the counsel Mr. Satish Kumar, Advocate under whose signatures the present petition was filed was asked to explain, he initially took the position that the petition had been drafted by brother of the wife of the first petitioner Mr. S.S. Tyagi, who is a practising advocate. On being asked, he stated that he concedes that before signing the petition and filing it, he should have cross-checked the facts and made truthful averments. On his request, the matter was passed over as he wanted to seek instructions.

His request was accordingly allowed and it was directed that the matter shall be taken up in the post lunch session. The matter has been taken up in the post lunch session at the end of the board. During the interregnum, the counsel Mr. Satish Kumar has submitted his affidavit along with application (Crl.M.A. 240/2019) which has been placed before the court by the registry. The counsel has explained in the affidavit that he had submitted the petition for quashing in September, 2018 but on account of some office objections, the matter could not come up before the court, it eventually having been filed in December, 2018 and having come up before the Court today. The counsel, at the same time, regrets the errors committed and orally assures that this would not be repeated. He submitted that the application moved today by the petitioners seeking permission to withdraw

the main petition may be allowed.

The petition CrI.M.C. 15/2019 is dismissed as withdrawn. The applications filed therewith are rendered infructuous and stand disposed of accordingly.

R.K.GAUBA, J.

JANUARY 07, 2019
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