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

\+ **CRL.L.P. 496/2019**

SHIVENDER TOMAR ..... Petitioner

Through: Mr Kirti Uppal, Sr. Advocate with Mr Pramod Kumar, Mr Arbind Yadav and Mr Ravish Verma, Advocates.

versus

STATE & ANR. ..... Respondents

Through: Mr Amit Gupta, APP for State.
SI Pravin Kumar, DIU/SED.

**CORAM:**
**HON'BLE MR. JUSTICE VIBHU BAKHRU**

**O R D E R**

**% 02.09.2019**

**CRL.M.A. 34889/2019**

1. For the reasons stated in the application, the delay in filing is condoned.

2. The application is disposed of.

**CRL.M.A. 34888/2019**

3. Allowed, subject to all just exceptions.

**CRL.L.P. 496/2019**

4. The petitioner has filed the present petition, *inter alia*, impugning an order dated 12.04.2018 passed by the learned Metropolitan Magistrate, discharging respondent no.2 (Mr Rajiv Arora) on the ground that the material on record was not sufficient to proceed against respondent no.2 in

respect of the allegation levied by the petitioner.

5. Both the petitioner and respondent no.2 are officers of IFCI Limited. It is the petitioner's grievance that he had called respondent no.2 to his office for certain official work at about 9:40 AM on 15.05.2013. He has alleged that while he was discussing the matter, respondent no.2 got agitated. The petitioner claims that he asked respondent no.2 to cool down but respondent no.2 did not do so. He alleges that respondent no.2 caught hold of his collar and started slapping him. The petitioner further claims that he tried to run away from the room but was blocked by respondent no.2 who continued to hit him. It is also alleged that respondent no.2 threatened to kill the petitioner.

6. The petitioner claims that while respondent no.2 was slapping him, respondent no. 2 lost his balance, fell down and hit the chair. It is the petitioner's case that notwithstanding that he was being beaten up by respondent no.2, he sympathised with him and try to assist him to stand up.

7. The learned MM had observed that the eye witnesses did not confirm the case as sought to be set up by the petitioner. None of the witnesses had recorded the statement that they had seen respondent no.2 hitting the petitioner. The footage from the CCTV was also not available. The petitioner was not medically examined and there was no evidence of the petitioner suffering any injury.

8. The court also noticed that respondent no.2 had filed an FIR prior to the petitioner reporting any incident, making allegations against the petitioner. He had, accordingly, observed that the FIR lodged by the petitioner was an afterthought.

9. The petitioner's statement that he had tried to assist respondent no.2

after he had fallen down was also doubted. It is highly improbable that the petitioner would do so after being incessantly assaulted by respondent no. 2.

10. This Court finds no infirmity with any of the observations made by the Trial Court in the impugned order.

11. There is clearly no material on record to substantiate the allegations made by the petitioner except his statement. This too does not seem to be credible as it is difficult to accept that respondent no. 2 would have lost his balance while slapping the petitioner and petitioner would have attempted to assist respondent no.2 to stand up. This also runs contrary to the petitioner's claim that he wanted to get out of the room and had attempted to do so, but was blocked by respondent no.2. In such circumstances, it would have been natural for the petitioner to make use of the opportunity presented by respondent no.2 falling down, to get away from the room.

12. The petition is, accordingly, dismissed.

**VIBHU BAKHRU, J**

**SEPTEMBER 02, 2019**
**MK**