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IN THE HIGH COURT OF DELHI AT NEW DELHI

Decided on: 14th January, 2019

+ CRL.M.C. 4410/2016

RAJ KUMAR AGGARWAL & ORS. Petitioners

Through: Mr. Feroze Ahmad, Advocate

versus

STATE NCT OF DELHI Respondent

Through: Mr. Kewal Singh Ahuja, APP for State

**CORAM:
HON'BLE MR. JUSTICE R.K.GAUBA**

ORDER (ORAL)

1. Allegations have been made against the petitioners about their complicity in offences punishable under Sections 186, 353, 332, 342, 34 of Indian Penal Code, 1860 (IPC) in first information report (FIR) no.376/15 registered in police station Mianwali Nagar at the instance of Constable Anil Kumar who was posted during the said period at the said police station and statedly had gone to the house of the petitioners accompanying ASI Dilbagh Singh. The petitioners have approached this court invoking the power and jurisdiction of this court under Section 482 of the Code of Criminal Procedure, 1973

(Cr.P C) to seek quashing of the said FIR and the proceedings arising therefrom primarily on the submissions that allegations against them are false, baseless and concocted.

2. The petition has been resisted by the respondent / State which craves reference to the facts gathered during investigation into the said FIR, the submissions being that the issues arising on the contentions of the petitioners be left for adjudication by the criminal court after proper inquiry and trial.

3. During the course of hearing, it was brought out that the investigation into the FIR in question was earlier concluded and a report (charge-sheet) under Section 173 Cr. PC was submitted on 31.10.2015 in the court of the jurisdictional Magistrate seeking trial of the petitioners for the aforementioned offences. Meanwhile, the petitioners had approached the Vigilance Branch of Delhi Police with the contention that a false case had been registered by the police officials with a malafide motive. It is brought to the notice of the court that the Vigilance Branch made an inquiry and submitted a report on 27.04.2016 under the signatures of Inspector (Vigilance) before the superior authorities in the police department. It appears that some adverse observations vis-à-vis the role and acts of commission or omission attributed to police officials were made in the wake of which the police decided to exercise its inherent jurisdiction under Section 173(8) Cr. PC to embark upon further investigation. The submission to this effect was made before the Metropolitan Magistrate on 30.07.2015 and the said court allowing

the said prayer had permitted the original charge-sheet as initially presented alongwith the document submitted therewith to be returned to the investigation agency to facilitate further investigation.

4. While the further investigation was underway, the present petition was filed with the aforementioned contentions and the prayer for quashing of the criminal case arising out of the FIR. The status reports have been filed from time to time by the investigating agency. The status report dated 16.04.2018 submitted by the Assistant Commissioner of Police of Crime Branch, which had later taken over the further investigation, reveals that the further investigation has already been concluded and a fresh charge-sheet submitted on 16.04.2018 reiterating the request for prosecution of the petitioners for the aforementioned offences.

5. Against the above backdrop, this court deems it improper to undertake an inquiry into the disputed questions of facts. Even otherwise, it would not be correct for this court to express any opinion only on the basis of consideration of the FIR to conclude as to whether the allegations against the petitioners are unfounded or motivated. There is no good reason why the normal procedure in law should not be allowed its due course. The questions of fact should rather be first addressed by the court of first instance. (*Rajiv Thapar and Ors. Vs. Madan Lal Kapoor, (2013) 3 SCC 330*).

6. The petitioners will be entitled to raise all the contentions set out in the petition before the concerned criminal court and pursue

remedies available in law in the event of an adverse order being passed against them.

7. With these observations, the petition is dismissed.

R.K.GAUBA, J.

JANUARY 14, 2019

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