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

+ W.P.(CRL) 3127/2018 & CrI.M.A.No.34013/2018

KAVITA DURGPAL

..... Petitioner

Represented by: Ms.Surabhi Dhar and Ms.Tusharika
Mattoo, Advocates

versus

STATE OF DELHI

..... Respondent

Represented by: Ms.Richa Kapoor, ASC for the State
with Ms.Amita Sachdeva, Advocate
for the State

CORAM:

HON'BLE MS. JUSTICE MUKTA GUPTA

ORDER

08.01.2019

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1. By this petition, the petitioner challenges the order dated 1st August, 2018 passed by the learned Metropolitan Magistrate whereby the complaint of the petitioner, wherein two witnesses of the petitioner/ complainant had been examined was stayed as it was revealed that one FIR pursuant to the complaint of the petitioner bearing No.325/2017 has been lodged at PS R.K.Puram.

2. Learned counsel for the petitioner contends that the FIR in question was registered only under Section 304-A IPC whereas the complaint of the petitioner was for offence punishable under Section 304 IPC. She further contends that in the FIR in question, only the landlord of the premises was being proceeded with whereas the petitioner/ complainant made allegations against the two sons of the landlord also who were monitoring and looking after the premises. Thus the learned Metropolitan Magistrate could not have stayed the proceedings in the complaint case under Section 210 Cr.P.C.

3. It is trite law that when a first information regarding commission of a cognizable offence is registered resulting into investigation, it is the culmination of the investigation which would finally reveal what offence/offences are made out. Thus the contention of learned counsel for the petitioner that the police was only investigating under Section 304-A IPC hence Section 210 Cr.P.C. is not applicable to the complaint of the petitioner is unfounded. If during the course of investigation, the police finds that there are further offences made out or further accused involved in it they are duty bound to investigate the same and file report accordingly.

4. Faced with this situation, learned counsel for the petitioner states that the charge sheet now stands filed in case FIR No.325/2017 before the learned Metropolitan Magistrate which is only against the landlord and under Section 304-A IPC and thus Section 210 Cr.P.C. would not apply to the facts of the case. A perusal of Section 210 Cr.P.C. as noted above itself reveals that it is applicable when an investigation on the same cause of action is going on. Since a final report has already been filed by the investigating agency it will be for the learned Metropolitan Magistrate to form an opinion both on the final report filed by the Police and also whether the complaint case is to be proceeded with. Thus no cause of action against the order dated 1st October, 2018 arises with the petitioner who would be at liberty to take remedies in case a further order adverse to the petitioner is passed by the learned Metropolitan Magistrate.

5. Petition is dismissed with liberty to take remedies as available in law.

MUKTA GUPTA, J.

JANUARY 08, 2019

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