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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ **W.P.(CRL) 2503/2019 & CRL.M.A. 35303/2019 & 35305/2019**

SAMEER DHINGRA & ORS

..... Petitioners

Through: Mr J.P. Sengh, Senior Advocate with
Mr Manjit Singh Ahluwalia, Advocate,
Mr R.L. Sinha and Ms Vapika Malik,
Advocates.

versus

THE STATE GOVT. OF NCT OF
DELHI & ANR

..... Respondents

Through: Mr Rahul Mehra, Standing Counsel with
Mr Jamal Akhtar, Mr Chaitanya Gosain
and Mr Amarpreet Singh, Advocates.
SI Sanjay Kumar, IGIS Crime Branch.
Mr L.N. Rao with Mr Vaibhav Sharma,
Advocates for R2.

CORAM:
HON'BLE MR. JUSTICE VIBHU BAKHRU

ORDER
% **21.01.2020**

1. The petitioners have filed the present petition, *inter alia*, praying that FIR No. 598/2017 under Sections 420/193/209/120-B/34 of the IPC registered with PS Saket and all proceedings emanating therefrom, be quashed.
2. Mr Sengh, learned Senior Counsel appearing for the petitioners has assailed the FIR in question on two fronts. First, he submits that the said FIR has been lodged on the same allegations as were the subject matter of the

FIR bearing No. 27/2013, under Sections 376/354 of the IPC, registered with PS Hazrat Nizamuddin. He states that petitioners nos. 1 and 2 had been absolved of the offences alleged against them by a common order dated 22.09.2015 passed by this Court in CRL. M.C. 389/2014, CRL MC 1139/2014 and CRL. REV. P. 336/2014 (hereafter the 'Common Order dated 22.09.2015') and therefore, the present FIR on the same cause could not have been registered.

3. Second, he submits that the status report filed on behalf of respondent no. 1 clearly indicates that there was no fabrication of any evidence. He referred to Paragraph Nos. 7 and 8 of the said status report, which indicates that inquiries have revealed that a report dated 07.02.2013 made by W/Insp. Shashi, CAW Cell did, in fact, exist. He further submits that evidence obtained from CFSL has also established that W/Insp. Shashi had signed the said report. And, in the circumstances the allegation that fabricated evidence was used by the petitioners, is not sustainable. He has further referred to the Common Order dated 22.09.2015 and submitted that the same clearly indicates that the entire matter was considered by the Courts without relying on the report dated 07.02.2013 and therefore, an allegation under Section 293 of the IPC is not sustainable. He further submits that there is no material to even remotely indicate that an offence under Section 420 of the IPC had been committed by any of the petitioners.

4. Mr Mehra, learned Standing Counsel appearing for the State points out that the subject matter of FIR No. 27/2013 is materially different from the subject matter of the FIR in question (FIR No. 598/2017). FIR No. 27/2013 was in relation to an offence punishable under Sections 376 and

354 of the IPC.

5. Insofar as the allegation that petitioner no.3 has committed the offence punishable under Section 376 of the IPC is concerned, this Court is informed that the trial is underway and petitioner no.3 is being tried for the same although he has been released on bail.

6. Insofar as petitioner nos. 1 and 2 are concerned, it was alleged that they had, *inter alia*, committed offences punishable under Sections 354 and 506 of the IPC. This Court had examined the material on the basis of which such charges had been framed and had found that the material on record was insufficient to prosecute them for the said offences; accordingly, they were discharged. It is stated that a SLP was filed against the Common Order dated 22.09.2015 passed by this Court and the same was dismissed.

7. Thus, insofar as the allegation for commission of offence as stated in FIR No. 27/2013 is concerned, the same cannot be resurrected insofar as petitioner nos. 1 and 2 are concerned. However, it is noticed that the subject matter of the FIR in question (FIR no. 598/2017) is materially different. The allegation is not regarding any misbehaviour or outraging the modesty of the complainant. The gravamen of the allegation is that a false evidence had been used in judicial proceedings. Mr Mehra has also referred to the report of the preliminary departmental inquiry which had reported that the inquiry report dated 07.02.2013 prepared by W/Insp. Shashi, was not on record when the file was put up for the closure report. It has also been found that no copy of any such report had been furnished pursuant to any inquiry made under the Right to Information Act, 2005. It is, thus, contended that there is good reason to believe that the petitioners had fabricated the said report.

8. In view of the above, this Court does not consider it apposite to quash the FIR in question. The matter is still at the stage of investigation and the question whether the report dated 07.02.2013 was fabricated as alleged would be examined, in the first instance, by the investigating agency and if charges are framed in this regard, by the concerned court. The said FIR does set out a commission of an offence in this regard and therefore, this Court is not persuaded to accept that the said complaint is wholly bereft of any material. Although the status report does fairly indicate the result of the inquiries made and it does indicate that W/SI Shashi had signed the report, the merit of the same would have to be examined at an appropriate stage.

9. Insofar as addition of the offence under Section 420 of the IPC is concerned, this Court is of the view that there does not appear to be any material to substantiate an allegation of commission of offence punishable under Section 420 of the IPC. This Court, accordingly, directs that reference to the said provision be deleted from the said FIR. Further, it is clarified that if the investigating agency, during the course of investigation, finds facts that substantiate an offence under Section 420 of the IPC, it would not be precluded from adding the said offence as well.

10. The petition is disposed of with the aforesaid observations. The pending applications are also disposed of.

VIBHU BAKHRU, J

JANUARY 21, 2020

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