

\$~45

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ CRL.M.C. 4656/2019 & CRL.M.A. 35879/2019
PRATIBHA DEVI VERMA & ANR Petitioners
Through: Mr. Gautam Khazanchi, Adv.

versus

STATE OF NCT OF DELHI Respondent
Through: Mr. Kewal Singh Ahuja, APP for
State with SI Amit Prakash, PS Amar
Colony.
Ms. Richa Dhawan, Standing Counse
(DHCLSC) for R-2.

CORAM:
HON'BLE MS. JUSTICE ANU MALHOTRA

ORDER

29.01.2020

%

The learned counsel from the Delhi High Court Legal Services Committee is present. She represents the legal representative of the deceased complainant and vide proceedings dated 16.09.2019 in as much as the record brought forth that the petitioner nos.1 & 2 are daughter-in-law and grand daughter of the complainant who has since expired in relation to the FIR No.585/2017, PS Amar Colony, under Section 448 of the Indian Penal Code, 1860 qua which charge of allegations was framed on 28.02.2019 in as much as the offence is one which is punishable for a sentence of period of two years, it was considered that the possibility of a mediation may be explored. Pursuant thereto, on 15.11.2019, notice of the proceedings was directed to be issued to the legal representative of the complainant to be executed by the Investigating Officer of the case in relation to which, the learned counsel

is present for the legal representative of the complainant stated to be Mr. Sushil Kumar Verma, the younger son of the complainant and stated that he is not amenable to mediation.

The status report has been submitted on behalf of the State.

The petitioner assails the impugned order dated 28.02.2019 of the learned MM-08 (SE), Saket Courts in Cr. Case No.5939/2018 as well as the order dated 08.07.2019 of the learned ASJ-04, South-East, Saket in Cr. Case No.296/2019. Vide order dated 28.02.2019 the learned MM-08, South-East in relation to Cr. Case No.5939/2018, on a perusal of the record produced before it observed to the effect that from the statement it was clear that on 04.11.2017, the complainant had found the lock of his balcony broken and a carpenter was doing wood work in the said balcony and upon inquiry from the neighbours, the complainant came to know that in October 2017 the accused persons had entered into his balcony on the pretext of saving of an injured cat, which was disclosed by witness Ajay Sharma, Manjeet Sharma and Bimla Devi Verma. The learned trial Court thus observed vide the said impugned order to the effect that prima facie an offence punishable under Sections 453/34 of the Indian Penal Code, 1860 was made out against the accused persons as they had allegedly committed house breaking after breaking the lock of the balcony of the complainant and the notice was thus framed to that effect on 28.02.2019 against the petitioner.

Vide order dated 08.07.2019, the learned ASJ-04, South-East upheld the order of the learned trial Court observing to the effect that the charges under Sections 453 r/w Section 34 of the Indian Penal Code, 1860 had rightly been framed. It is *inter alia* observed vide the said order dated

08.07.2019 of the learned ASJ-04, South-East to the effect that there are statements under Section 161 of the Cr.PC, 1973 of Bimla Devi Verma, Sushil Kumar Verma and Girish Verma showing that there was a carpenter doing wood work in the balcony with it having been observed to the effect that the revisionist thereof i.e. the petitioner herein was not in possession of the said balcony and had allegedly broken the lock of the balcony and that the carpenter was doing wooden work at the instance of the revisionist i.e. the petitioner herein with there being no reason on the part of revisionist i.e. the petitioner herein to use the balcony once the injured cat ran away after getting alleged medical aid from PW Ashish.

Undoubtedly, there are statements on the record recorded during the course of investigation of the witnesses as mentioned in the order of the learned trial Court dated 28.02.2019 of Bimla Devi Verma, Sushil Kumar Verma and Girish Verma to the effect that there was an injured cat in the balcony in relation to which on behalf of the State it is now sought to be submitted that in proceedings before the District Magistrate, South-East indicated that the said cat was alleged to have been dead.

Be that as it may, the statements that have been recorded and produced along with the charge sheet, copies of which are placed on record of the witnesses Bimla Devi Verma, Sushil Kumar Verma and Girish Verma that have been recorded during the course of investigation mentioning the presence of carpenters at the behest of the petitioner doing wooden work in the balcony with the statement of Mr. Girish Verma also *inter alia* to the effect that the lock of the balcony was found broken, there is no infirmity in the impugned order dated 28.02.2019 of the learned MM-08 (SE), Saket

Courts in Cr. Case No.5939/2018 and the order dated 08.07.2019 of the learned ASJ-04, South-East, Saket in Cr. Case No.296/2019.

The petition is declined.

Nothing stated hereinabove, shall amount to any expression on the merits or demerits of the trial in progress.

ANU MALHOTRA, J

JANUARY 29, 2020

vm