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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ **CRL.M.C. 5947/2019 & CRL.M.A. 40874-40875/2019**
MOHAR SINGH & ANR Petitioners

Through: Mr. Amit Kumar, Adv.

versus

HC RAJ KUMAR & ORS Respondents
Through:

CORAM:
HON'BLE MS. JUSTICE ANU MALHOTRA
ORDER
% **06.01.2020**
CRL.M.A. 40874/2019 (Exemption)

Exemption allowed, subject to just exceptions.

CRL.M.C. 5947/2019 & CRL.M.A. 40875/2019

The petitioners vide the present petition have assailed the impugned order dated 24.05.2019 of the learned ASJ, South in Crl. Rev. P. 156/2019 which disposed of the criminal revision petition against the order dated 08.01.2019 of the learned MM-04/South in Case No.473012/2016.

Vide order dated 08.01.2019, the learned trial Court has observed to the effect that it was not inclined to exercise its discretionary powers directing registration of the FIR and the application under Section 156(3) of the Cr.PC, 1973 was dismissed, though an opportunity was granted to the complainant to prove allegations by leading evidence. It was further observed by the

learned trial Court to the effect that since the allegations were levelled against the police officials, the complainant must place on record a sanction to prosecute the police officials under Section 140 of the Delhi Police Act and under Section 197 of the Cr.PC. In relation to this aspect, it is essential to observe that vide para 6 of the impugned order of the learned ASJ, South dated 24.05.2019 in Crl. Rev. P.156/2019 it has categorically been observed to the effect:

“6. As far as the requirement of sanction u/s. 197 Cr.PC. and Section 140 DP are concerned, the stage had yet not reached to ask for the sanction. The complaint was filed within three months of the alleged incident and therefore it is also debatable whether sanction u/s. 140 DP Act was required. Complainants could have been allowed to lead pre-summoning evidence. Thereafter, Inquiry/ investigation may be conducted u/s. 202 Cr.P.C., if required. If Ld. MM comes to the conclusion that the alleged acts had nexus with the official duty and there are grounds to proceed against the respondents, complainant may be asked to produce the sanction u/s. 197 Cr.PC. and section 140 DP Act (if applicable to the present case).”

(emphasis supplied)

There is no infirmity in the said observations in the order of the learned ASJ observing to the effect that it was only after the inquiry/investigation is conducted under Section 202 of the Cr.PC, 1973, if required, if the MM came to the conclusion that the alleged acts had nexus with official duty and that there were grounds to proceed against the respondents, that the complainant may be asked to produce the sanction under Section 197 of the Cr.PC, 1973 and

Section 140 of the Delhi Police Act, if applicable to the instant case.

On behalf of the petitioner it has been submitted that the prayer seeking registration of the FIR under Section 156 (3) of the Cr.PC, 1973 ought to have been granted by the learned trial Court as well as by the Revisional Court in as much as it would not be possible for the petitioner to collect all evidence. It is apparent on a perusal of the petition as well as on a perusal of the impugned orders of the learned trial Court and the Revisional Court that all evidence that is alleged against the respondents is within the knowledge of the petitioner.

In the circumstances, as directed by the Revisional Court, investigation and inquiry in terms of Section 202 of the Cr.PC, 1973 has essentially to be conducted as also held vide the order dated 08.01.2019 of the learned MM-04, South. The learned MM-04, South shall proceed in accordance with law as directed vide specific observations in para 6 of the order dated 24.05.2019 of the learned ASJ, (South) in Crl.Rev.P.156/2019.

With these observations, the petition is disposed of.

ANU MALHOTRA, J

JANUARY 06, 2020

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