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

+ **W.P.(CRL) 3364/2018**

NASEEM

..... Petitioner

Through: Mr Ravindra Narayan and Mr
Shamim, Advocates along with the
petitioner in person.

versus

STATE & ORS

..... Respondents

Through: Ms Kamna Vohra, ASC for State.

CORAM:

HON'BLE MR. JUSTICE VIBHU BAKHRU

ORDER

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22.01.2020

1. The petitioner has filed the present petition, *inter alia*, praying that directions be issued to respondent nos. 3 and 4 to take appropriate action against respondent no.5 or, in the alternative, direct respondent no.2 to grant direction for prosecution of respondent no.5 in the appropriate forum/court.
2. The petitioner alleges that respondent no.5, in connivance with the local land mafia, had manipulated and filed a false FIR (FIR bearing no. 1559/2015 under Sections 323/354/509/34 of the IPC, registered with PS Malviya Nagar).
3. The learned counsel appearing for the petitioner has drawn the attention of this Court to the judgment dated 30.05.2017 passed by learned MM (Mahila Court) in the aforesaid FIR, wherein the Trial Court had noted that there were manipulations in the said FIR. Respondent no.5 who had deposed as PW-3 had, after initially resisting the allegations, subsequently

admitted that there were certain alternations in the FIR done by him. The Court had also noticed that the investigation done by respondent no.5 was done in a shoddy manner. The relevant extract of the said decision is set out below:

- “19. It is interesting to note that PW 3 i.e. IO SI Brahampal in his cross-examination alleged that the complainant visited the PS on 13.08.2015 along with her father. This averment is totally contrary to the allegations of the complainant that she had visited along with her mother. As per him, the complainant had visited at 2.00 to 3.00 pm and remained at the PS for half an hour. If that is the case, no explanation has been given by him that how the time of recording of FIR is 9.00 pm and what steps have been taken by him for such a long period of six hours. He also admitted that he had not recorded the statement of the father Df complainant. He also admitted the fact that he received the copy of FIR one hour after the handing over of the complaint. If that is taken to be a case then, the FIR would have been lodged till 5.00 pm but time of the FIR as already mentioned is 9.00 pm which is not matching with the version put forward by PW-3. He also admitted that he had gone through the contents of the FIR after he received the same. No explanation is given that if he had gone through the contents why he had not pointed out the discrepancies he had felt regarding the facts mentioned in FIR which are different from the facts recorded in the complaint.
20. It is interesting to note that he admitted that he had not carried out any investigation till recording of statement of complainant u/s. 164CrPC which was recorded on 01.09.2015. This strengthens the version put forward by the accused persons that IO has deliberately manipulated the record after filing of CD and CCTV footage by them in anticipatory bail application which was filed before Ld. ASJ on 31.08.2015. The above-said facts also gives credence to the defence taken by accused persons that

when IO got to know that there was nothing incriminating against the accused persons in relation to the alleged incident of 13.08.2015, he changed the date of incident to 12.08.2015 as the CCTV footage of said day was not available and the presence of accused persons was there in their respective shops on 13.08.2015. He also admitted that in the said CD **Ex.PW3/I**, the complainant was not visible.

21. In cross-examination of PW3 he admitted that on the date of receiving information ie on 13.08.2015 he had visited the spot of incident and prepared the site plan but had not noticed any CCTV cameras. This fact is again contrary to the version of complainant herself who is the victim and admitted in her cross-examination that she was aware that CCTVs were installed at the place of incident. To cover up his fault PW-3 tried to wriggle out from the trap which he had laid himself by stating that he came to know regarding CCTV cameras at the place of incident for the first time when he received anticipatory bail application. Thus apparently the said witness tried to cover up all the deliberate efforts and nefarious designs which he had coined to implicate the accused persons in the present case.
22. Initially, he kept on denying the fact that he made interpolations in the complaint **Ex.PW1/A** at point 'Z' and in **ExPW3/A** at point Z1 however, he failed to withstand the grilling cross-examination by Ld. Defence counsel and broke down at later stage and admitted that corrections were made by him in complaint **Ex.PW1/A** at point 'Z' and in **ExPW3/A** at point Z1, but as per him the same were made at the instance of the complainant on the same day when complainant left the PS. However, in the opinion of this court, if that would have been the case, contents of the complaint and FIR would not have been different. He further admitted that in the site plan **Ex.PW3/I**, passage at point 'X' was left incomplete and the same was not complete, which strengthens the stand of accused persons that he had deliberately not completed

the same so that it is not reflected on record that it was a shorter route. Further he also admitted that he had not made any enquiry from the teacher of complainant and had even not made any public person to join the investigation.

23. All the above said facts points towards only one inference that IO SI Brahmpal Singh had deliberately made interpolations and manipulations in the record in order to make a false case against accused persons. He has carried out investigations in such a shoddy manner that the farce nature of proceedings is apparent from the record. Considering the conduct of IO, this court deems it fit to issue notice to the IO to give explanation in writing clarifying that under what circumstances manipulations were made by him. The said explanation be filed by him in the court and should be forwarded through DCP concerned. Copy of present judgment be also sent to DCP concerned and SHO concerned for information and necessary. The said explanation be filed by the IO on record on 22.08.2017. It is impressed upon the worthy DCP that in case of action, if any being taken against the said IO, the same be reported to the present Court.”

4. In view of the above observations, it is incumbent upon the police authorities to examine the allegations against respondent no.5 by instituting an appropriate inquiry and to take such action as warranted in accordance with law.

5. It is also noticed that respondent no.5 had submitted an explanation which was also rejected by the learned MM. A copy of that explanation has also been shown to this Court. In the said explanation, respondent no.5 has sought to explain that the complainant in the said case has resiled from the earlier version due to a compromise between the families. However, the petitioner states that no compromise was entered into between the

complainant and the petitioner or their families.

6. Respondent no.5 is present in Court and was pointedly asked whether he has ascertained whether any such compromise had taken place and he states that he has no material to the said effect. This Court is unable to countenance the causal and to some extent misleading manner in which such explanation has been submitted.

7. In view of the above, the present petition is allowed and respondent no.3 is directed to initiate appropriate enquiry into the allegations made against respondent no.5 and take such steps as warranted in accordance with law.

8. Order *dasti* under signatures of the Court Master.

VIBHU BAKHRU, J

JANUARY 22, 2020
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