



\$~69

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

+ **CRL.M.C. 1602/2024**

GARIMA GUPTA

..... Petitioner

Through: Mr. Asim Naeem &
Ms. Cherry Gupta,
Advocates

versus

STATE OF NCT OF DELHI

..... Respondent

Through: Mr. Sanjeev Bhandari,
Addl. Std. Counsel for the
State with DCP Rashmi
Sharma, Insp. Pawan
Tomar & Insp. Sandeep
Shrivastava.

CORAM:

HON'BLE MR. JUSTICE AMIT MAHAJAN

ORDER

% **28.02.2024**

CRL.M.A. 6219/2024 (exemption)

1. Exemption allowed, subject to all just exceptions.
2. The application stands disposed of.

CRL.M.C. 1602/2024 & CRL.M.A. 6218/2024 (stay)

3. The present petition is filed under Section 482 of the Code of Criminal Procedure, 1973 ('CrPC') challenging the order dated 18.01.2024, passed by the learned Chief Metropolitan Magistrate ('CMM'), Tis Hazari Courts, New Delhi, in CR Case No. 10946/2023 (hereinafter '**the impugned order**').
4. The learned CMM by the impugned order dismissed the application filed by the petitioner seeking preservation of CDR and IPDR of certain persons in relation to FIR No. 123/2022.
5. The FIR bearing no. 123/2022 was registered at the



instance of the petitioner under Section 507/509 of the Indian Penal Code, 1860 ('IPC') read with Section 66D/84C of the Information Technology Act, 2000. The respondent/State pursuant to the investigation, filed cancellation report in the said FIR. As per the respondent/State, no evidence could be found to prove the allegations made by the petitioner.

6. While the cancellation report was pending before the learned CMM, the petitioner filed an application seeking preservation of the CDR and IPDR of certain persons. It was contended that the same is relevant for the purpose of investigation, as it is an important piece of evidence. The learned CMM by the impugned order dismissed the application filed by the petitioner noting that no FIR is pending investigation at this stage and no order directing further investigation can be passed. It is also noted that the petitioner is yet to file the protest petition despite the opportunity being granted.

7. The petitioner filed yet another application for supply of documents in order to enable the petitioner to file a comprehensive application protesting the closure report. The learned CMM disposed of the said application by order dated 15.02.2024. By the said order the right of the petitioner to file a protest petition was also closed and the matter was listed thereafter for consideration of the cancellation report.

8. The petitioner challenged the order dated 15.02.2024 by filing petition under Section 397 of the CrPC and the same is pending consideration before the Court of learned Additional Sessions Judge ('ASJ')-04 and is now stated to be listed on 02.03.2024 for further consideration.

9. Mr. Sanjeev Bhandari, Additional Standing Counsel for the State, who appears on advance notice, states that the present

CRL.M.C. 1602/2024

Page 2 of 5



petition has been filed by concealing the material facts. He submits that the impugned order has been challenged only to delay the proceedings. He submits that pursuant to passing of the impugned order, the petitioner had preferred another application pursuant to which the petitioner's right to protest was closed. The challenge to the said order is already pending consideration before the learned ASJ. In such circumstances, the present petition is not maintainable. The petitioner cannot be allowed to agitate the same cause before multiple forums.

10. He further submits that even otherwise CDR of four mobile numbers and IPDR of three mobile numbers have already been obtained by the State and has been placed on record before the learned CMM alongwith the cancellation report. He submits that the fifth mobile number for which CDR and IPDR is sought is not related to the present investigation. He thus contends that the application was filed by the petitioner without any cause or merits and was filed only for the purpose of delaying the proceedings.

11. The grievance of the petitioner essentially relates to certain evidences which according to the petitioner would be relevant for deciding the protest petition that may be filed by the petitioner opposing the closure report filed by the State. The petitioner is aggrieved in the manner the investigation has taken place. It is the case of the petitioner that the data, of which the petitioner sought preservation, would be essential for ultimate decision that the Magistrate may take on the closure report filed by the respondent/State.

12. It is not disputed that the investigation in relation to FIR 123/2022 has already been conducted which led to filing of the closure report by the State. In such circumstances, any order



of preservation of data would amount to further investigation which *prima facie* in the opinion of this Court is not permissible.

13. The cancellation report is still pending consideration. The learned CMM after considering the cancellation report can either close the investigation by accepting the closure report or take cognizance under Section 200 CrPC or direct further investigation by the State. However, before any such order is passed, no directions to investigate further can be issued by the learned CMM.

14. It is also not in doubt that the learned CMM while considering the petition for protest can pass further directions that may be necessary for the purpose of deciding the protest petition in a just manner. However, in the absence of any petition for protest of the closure report, I find no infirmity in the order passed by the learned CMM refusing the application for preservation of the CDR and IPDR.

15. The learned counsel for the petitioner, however, points out that in terms of the circular of the Ministry of Communication, Department of Telecommunication, the record of the CDR and IPDR may not be preserved for more than two years. He submits that in such circumstances, if the petitioner succeeds, the investigation may remain incomplete without the relevant evidence.

16. Admittedly, the revision petition filed by the petitioner challenging the order dated 15.02.2024, whereby the right of the petitioner to protest was closed by the learned CMM is listed for consideration on 02.03.2024.

17. This Court is of the opinion that to balance the equities it would be apposite to direct the learned ASJ to expeditiously dispose of the revision petition filed by the petitioner.



18. The learned CMM is directed to adjourn the proceedings till the decision is taken by the learned ASJ.
19. No further orders are required to be passed at this stage in the present petition.
20. The petitioner is at liberty to challenge the orders passed by the learned CMM or learned ASJ in case of any grievance.
21. It is made clear that this court has not expressed any opinion on the merits of the case or on the maintainability of the proceedings pending before the learned ASJ. The same be decided on its own merits and in accordance with law.
22. The petition is disposed of in the aforesaid terms.

AMIT MAHAJAN, J

FEBRUARY 28, 2024
'hkaur'