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

+ **CRL.M.C. 3044/2024 & CRL.M.A. 11743/2024**

NAVENDU AGGARWALPetitioner

Through: Mr. Rajneesh Bhasker,
(DHCLSC) & Mr. Rachit
Raushan, Advs. through
V.C.

versus

STATE OF NCT OF DELHI & ANR.Respondents

Through: Mr. Naresh Kumar
Chahar, APP for the State
along with Ms. Neha
Sharma, Adv.
SI Mamta, PS Dwarka
Sector-23.
Mr. Dhruv Sharma, Adv.
for R-2 through V.C.

CORAM:

HON'BLE MR. JUSTICE AMIT MAHAJAN

ORDER

% **08.08.2024**

1. The present petition is filed under Article 227 of the Constitution of India read with Section 482 of the Code of Criminal Procedure, 1973 ('CrPC') against the order dated 14.03.2024, passed by the learned Additional Sessions Judge ('ASJ') (SFTC), Dwarka Courts, Delhi in Criminal Revision No. 488/2023 (hereafter '**the impugned order**').
2. By impugned order, the learned ASJ remanded the case to the learned Trial Court for reconsideration on the point of charge, while noting that there was sufficient material on record to *prima facie* prove the commission of an offence under Section 380/411 of the Indian Penal Code, 1860 ('IPC').
3. It is alleged that the petitioner was working as a Business



Developer in M/s Jai Prakash Security Agency (hereafter ‘**the agency**’). It is alleged that on 24.10.2017, the proprietor of the agency had transferred a sum of ₹4,52,000/- into the bank account of the petitioner for the preparation of a Demand Draft (‘**DD**’) needed for the submission of earnest money for a tender. It is alleged that the petitioner had prepared a DD for a sum of ₹4,50,000/- from his account and when the agency could not qualify for the tender, the said DD was returned to the agency.

4. It is alleged that the petitioner had left the agency in December, 2017, however, he allegedly came into the office in January, 2018, stole the DD kept in the drawer of the proprietor, and encashed the same for his benefit.

5. Charge sheet in the present case is filed under Section 380 of the IPC.

6. The learned ACMM, South West, Dwarka Courts *vide* order on charge dated 10.01.2022, and subsequently formal charge dated 23.03.2022, framed charge under Section 406 of the IPC against the petitioner.

7. By impugned order, the learned ASJ remanded the case to the learned Trial Court for reconsideration on the point of charge.

8. The learned counsel for the petitioner submits that no charge under Section 380 of the IPC could be framed against the petitioner. He submits that Respondent No. 2 had himself handed over the DD to the petitioner, consequently there can be no question of any theft of the DD. He submits that since the DD was made through the petitioner’s account, and the same could have been cancelled/encashed only by him, the petitioner being the owner of the said DD had no reason to steal it.

9. The learned Additional Public Prosecutor for the State submits that learned ASJ rightly remanded the matter back for



framing of charge under Section 380 of the IPC, since the allegation against the petitioner was one of theft of the DD from the office drawer of the complainant and not of entrustment of any amount.

10. While the expanse of the power of the High Court under Article 227 of the Constitution of India, or Section 482 of the CrPC, is wide, the same ought to be exercised only sparingly, and only in the interest of justice. It is also well settled that at the stage of framing of charges, only a *prima facie* case must be made out against the accused.

11. In the present case, from a bare perusal of the complaint, it is apparent that the allegations against the petitioner was that he stole the original DD from the office drawer of the proprietor, in his absence. As has been rightly observed by the learned ASJ, while the petitioner was initially entrusted with ₹4,52,000/-, the said entrustment was complete when the DD was returned to Respondent No. 2 after it failed to qualify for the tender. Further, as rightly noted by the learned ASJ, the case of the prosecution is not that the petitioner was once again entrusted with the DD for encashment. The allegation against the petitioner, thus, was *prima facie* one of theft.

12. Specific allegation has been made that since the agency could not prepare the demand draft on time, had transferred an amount of ₹4,52,000/- into the petitioner's account. It is not denied that the demand draft for a sum of ₹4,50,000/- was made in the name of Superintendent, MDM Hospital, Jodhpur.

13. It is alleged that the demand draft was returned to the agency with a covering letter, which was kept in the office drawer. The petitioner has also submitted the copy of the demand draft and the covering letter.



14. It is alleged that the demand draft was meant for encashment by the agency but was taken by the petitioner illegally and was also encashed by him. The allegation, therefore, was in regard to theft of the demand draft, which as per the allegation was meant to be encashed for the benefit of the agency.

15. The contentions of the petitioner that he had no reason to steal the said DD or that the said DD was given to him by Respondent No. 2 himself, are a subject matter of trial, and cannot be looked into at this stage.

16. In that light, the learned ASJ rightly remanded the matter to the learned Trial Court for reconsideration on the aspect of charge.

17. In view of the above discussion, I find no infirmity in the order passed by the learned ASJ, and the same cannot be faulted with. The learned Trial Court is directed to frame charges uninfluenced by the observations made in this order.

18. The present petition is dismissed in the aforesaid terms.

AMIT MAHAJAN, J

AUGUST 8, 2024