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

+ **CRL.M.C. 5264/2023**

**DEEPAK KAPOOR**

.....Petitioner

Through: Mr.Hemant Kumar and Mr.Venkatesh  
Joshi, Advocates.

versus

**STATE**

.....Respondent

Through: Mr. Laksh Khanna, APP for State  
with SI Arvind Kkumar, PS Bara  
Hindu Rao.

**CORAM:**

**HON'BLE MR. JUSTICE MANOJ KUMAR OHRI**

**ORDER**

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**23.09.2024**

1. By way of the present petition, the petitioner seeks setting aside of impugned order dated 05.06.2023 passed by Id. ASJ, wherein the court has upheld the order on charge dated 20.12.2022 and formal charge dated 10.03.2023, whereby charges were framed against the petitioner for commission of the offence under Section 509 IPC.

2. Learned counsel for the petitioner submits that though the complainant has stated that the incident has occurred at a common toilet, the site plan placed on record, shows that no such toilet exists. Even the complainant herself has not made any such allegations in her statement under Section 164 Cr.P.C. or 161 Cr.P.C. He thus, submits that no purpose would be served by sending the petitioner to trial. Lastly, it is stated that the charge has been framed under Section 509 IPC only, however the same is not mentioned in the impugned order and as such the order on charge has



not clearly referred to the incident and allegation made by the complainant.

3. Learned APP for the State has defended the impugned order and while referring to the statement of the complainant submits that it has come on record that the petitioner is exercising control on the portion of the household, which includes the toilet. He further submits that enough allegations are there in the statement of the complainant for sending the accused to trial.

4. I have heard learned counsel for the parties and perused the material placed on record.

5. Insofar as the first contention is concerned, as to whether there is a common toilet or not, this fact can be left open to be decided during the trial taking into account the testimony of the complainant. Secondly, the contention that there are variations in the complainant's statement under Section 164 Cr.P.C. and 161 Cr.P.C., is not to be tested at this stage. What is to be seen is whether the ingredients of offence which is alleged, are made out from the averments in the complaint and the material collected during investigation. It is well settled that at the stage of framing charge, the court has to see if the prima facie case offence is established against the accused (Ref: Amit Kapoor v. Ramesh Chander and Anr. reported as **(2012) 9 SCC 460**). It is with this limited scope that the Court proceeds to analyze and evaluate the complaint/FIR while exercising its powers against order framing charge.

6. Pertinently, no submissions are advanced that the ingredients of the offence are not made out. It is stated that the date of incident i.e., 21.06.2017 is not mentioned in the chargesheet. However, a perusal of the FIR would show that the complainant has stated that the incident had occurred in the



toilet and the date of 21.06.2017 is also specifically mentioned therein.

7. Considering the aforesaid, I find no ground to interfere with the impugned order and accordingly the present petition stands dismissed.

**MANOJ KUMAR OHRI, J**

**SEPTEMBER 23, 2024**

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