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

+ **W.P.(CRL) 2103/2020 & CRL.M.A. 17427/2020 (Stay)**

SHAILENDRA GUPTA & ORS.

..... Petitioners

Through: Mr. Puneet Singh Bindra, Mr. Akshay
Sharma, Mr. Sameer Sethi & Ms.
Rishabh Gupta, Advocates.

versus

STATE (NCT OF DELHI) & ANR.

..... Respondents

Through: Mr. Amol Sinha, ASC (criminal) for
the State with Mr. Kshitiz Garg and
Mr. Arjun Singh Kadian, Advocates.
SI Shivali, P.S. Keshav Puram.

CORAM:

HON'BLE MR. JUSTICE AMIT SHARMA

ORDER
21.02.2024

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1. The present petition under Article 226 of the Constitution of India read with Section 482 of the CrPC seeks the following prayers:

“a. It is, therefore, most respectfully prayed that this Hon'ble Court be pleased to quash the FIR No. 393 OF 2017, dated 20.07.2017, P.S. - KESHAV PURAM, U/S 498A/406/34 IPC;

b. Any Such other or further order and or orders that This Hon'ble Court may deem fit and proper considering the facts and circumstances of the present case.

AND FOR THIS ACT KINDNESS THE PETITIONERS AS IN DUTY BOUND SHALL EVER PRAY.”

2. At the outset, learned Additional Standing Counsel for the State raises a preliminary objection and submits that the chargesheet in the present case was filed and thereafter, the petitioners have already addressed arguments on



charge before the learned Trial Court. It is submitted that the matter before the learned Trial Court is now pending for pronouncement of orders on charge. In view of the above, it is submitted that the prayer of quashing of the FIR in the present petition cannot be considered at this stage.

3. *Per contra*, learned counsel for the petitioner submits that filing of a chargesheet does not bar this Court from exercising writ jurisdiction to quash the FIR. It is submitted that since no orders on charge have been passed, at this stage, this Court, in the interest of justice, can quash the FIR. It is submitted that existence of an alternate remedy does not bar a Court from exercising jurisdiction under Article 226 of the Constitution of India. In support of the said contention, reliance is placed on paragraph 11 of **Abhishek v. State of Madhya Pradesh, 2023 SCC OnLine SC 1083**, wherein it has been held as under:

“11. This being the factual backdrop, we may note at the very outset that the contention that the appellants' quash petition against the FIR was liable to be dismissed, in any event, as the chargesheet in relation thereto was submitted before the Court and taken on file, needs mention only to be rejected. It is well settled that the High Court would continue to have the power to entertain and act upon a petition filed under Section 482 Cr. P.C. to quash the FIR even when a chargesheet is filed by the police during the pendency of such petition [See *Joseph Salvaraj A. v. State of Gujarat* ((2011) 7 SCC 59)]. This principle was reiterated in *Anand Kumar Mohatta v. State (NCT of Delhi), Department of Home* [(2019) 11 SCC 706]. This issue, therefore, needs no further elucidation on our part.”

4. Heard learned counsel for the parties and perused the record.
5. The proposition of law relied upon by learned counsel for the petitioners is not in dispute.
6. A perusal of the record reflects that the chargesheet in the present case



was filed in July, 2020. On a pointed query from this Court, learned counsel for the petitioners submits that an application was moved seeking to make necessary amendments in the prayer sought in the present petition, *vide* diary number 1449101/2023. It is submitted that the said application was moved in August 2023, however, it is not on record.

7. It is pertinent to note that the application seeking amendment in the prayers sought, as pointed out hereinabove, was moved on 17.08.2023. The same was returned under objection. Thereafter, *vide* order dated 18.08.2023 passed by a predecessor bench of this Court, the parties were referred to the Delhi Mediation and Conciliation Centre, to explore the possibility of arriving at a settlement. Thereafter, *vide* order dated 06.11.2023 passed by a predecessor bench, it is recorded that the mediation process had failed and the matter was listed for 20.02.2024. On 20.02.2024, the matter was renotified for today, at request of learned counsel for the petitioners.

8. Be that as it may, it is noted that in the interregnum, arguments on charge on behalf of the petitioners were addressed before the learned Trial Court on 09.01.2024 and the learned Trial Court reserved orders on charge.

9. In the facts and circumstances of the case, this Court is of the considered opinion that the petitioners have already exercised their remedy before the learned Trial Court, which is seized of the matter and has not pronounced any orders on charge. Once a chargesheet is filed pursuant to registration of an FIR, it is open to an accused to invoke jurisdiction of this Court for quashing of the FIR and consequent proceedings. In the alternate, the accused can make a case for discharge before the learned Trial Court. It is trite law that existence of an alternate remedy is no bar to exercise of writ jurisdiction. However, it is pertinent to note that in the present case, the



petitioners have already availed of their alternate efficacious remedy, inasmuch as arguments on charge have been addressed before the learned Trial Court. The petitioners cannot seek similar relief before two forums, simultaneously. The learned Trial Court has heard the petitioners on the point of charge, which as per the scheme of the CrPC, it is competent to do. In the facts and circumstances of the present case, any interference at this stage would amount to preventing the learned Trial Court to proceed with the passing an order in a proceeding/hearing which is legitimate and in accordance with law.

10. The present petition is accordingly dismissed and disposed of.

11. Pending applications, if any, also stand disposed of.

12. Needless to state, nothing stated hereinabove is an opinion on the merits of the case and any observations made are only for the purpose of disposal of the present petition.

13. Order be sent to the concerned learned Trial Court for necessary information.

AMIT SHARMA, J

FEBRUARY 21, 2024/K