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

+ **CRL.M.C. 6209/2024**

AMIT KUMAR SHUKLA & ANR.Petitioners

Through: Mr.Parveer Singh and Mr.Arjun Singh,
Advocates

versus

STATE NCT OF DELHI AND ORSRespondents

Through: Mr. Nawal Kishore Jha, APP for State
with SI Deepak Kumar

CORAM:

HON'BLE MR. JUSTICE MANOJ KUMAR OHRI

ORDER

% **12.08.2024**

CRL. M.A. 23706/2024 (exemption)

1. Allowed, subject to all just exceptions.
2. The application is disposed of.

CRL.M.A. 23708/2024 (delay in re-filing)

1. By way of present application, the petitioners seek condonation of delay of 26 days in re-filing the petition.
2. For the reasons stated in the application, the same is allowed and the delay of 26 days in re-filing the petition is condoned.
3. The application is disposed of.

CRL.M.C. 6209/2024 and CRL.M.A. 23707/2024 (stay)

1. By way of present petition, petitioner No.1, who is the complainant in FIR No.286/2017 registered under Sections 323/451/34 IPC at P.S. Subzi



Mandi, Delhi and petitioner No.2 are aggrieved by the fact that all the accused persons have not been sent for trial. He submits that though the petitioners sent various communications to higher officers subsequent to the complaint, however, all the accused persons have not been sent for trial and furthermore, those who have been sent for trial have been sent for lesser offences.

2. Learned APP for the State submits that petitioners' request for further investigation was rightly rejected by the trial court in terms of the decision of the Supreme Court in Vinubhai Haribhai Malaviya and Others v. State of Gujarat and Another reported as **2019 SCC OnLine SC 1346** and Anant Thanur Karmuse v. The State of Maharashtra & Ors. in **Criminal Appeal No.13 of 2023**. He submits that since the charges have already been framed, the trial court rightly refused to direct further investigations. He further submits that the CCTV footage as claimed by the petitioners was never received by the police during the investigation and that in case any additional evidence comes on record, the same would be considered in terms of Section 216 or Section 319 Cr.P.C.

3. I have heard learned counsel for the petitioners as well as learned APP for the State and have also gone through the material placed on record.

4. As noted above, petitioner No.1 is the complainant, on whose statement the aforesaid FIR came to be registered in the year 2017. The chargesheet came to be filed in February, 2019. Concededly, neither any application under Section 156(3) Cr.P.C. was preferred nor any protest petition was filed against the filing of the alleged defective chargesheet. The proceedings travelled further and the charges came to be framed on 24.04.2019. The petitioners' prayer is premised on a CCTV footage of the



incident and that according to him not only justifies invocation of higher offences but also summoning of additional accused persons.

5. In Vinubhai Haribhai Malaviya (supra), the Supreme Court has held as under:

20. With the introduction of Section 173(8) in CrPC, the police department has been armed with the power to further investigate an offence even after a police report has been forwarded to the Magistrate. Quite obviously, this power continues until the trial can be said to commence in a criminal case...

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42. ... To say that a fair and just investigation would lead to the conclusion that the police retain the power, subject, of course, to the Magistrate's nod under Section 173(8) to further investigate an offence till charges are framed, but that the supervisory jurisdiction of the Magistrate suddenly ceases midway through the pre-trial proceedings, would amount to a travesty of justice, as certain cases may cry out for further investigation so that an innocent person is not wrongly arraigned as an accused or that a prima facie guilty person is not so left out. There is no warrant for such a narrow and restrictive view of the powers of the Magistrate, particularly when such powers are traceable to Section 156(3) read with Section 156(1), Section 2(h) and Section 173(8) CrPC, as has been noticed hereinabove, and would be available at all stages of the progress of a criminal case before the trial actually commences...

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6. As noted above, the petitioner did not challenge the filing of charge sheet on any account. The trial has begun and witnesses are being examined. Vinubhai (supra) and Anant Thanur Karmuse (supra) lays down in no uncertain terms that until the trial begins, the provision of 173(8) Cr.P.C remains available, however, at the same time, the Code also provides that in



case any additional material/evidence comes on record, the trial court can exercise powers under Section 216 or Section 319 Cr.P.C., as the case may be in accordance with law. No interference is called for at this stage.

7. Needless to state that this Court has not expressed any opinion on the merits of the case. However, it shall be open for the trial court to proceed under above provisions in accordance with law, if required.

MANOJ KUMAR OHRI, J

AUGUST 12, 2024

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