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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ **W.P.(CRL) 3629/2024**

SPetitioner

Through: Mr. Mohit Monga, Advocate.

versus

THE STATE NCT OF DELHIRespondent

Through: Mr. Abhinav Kr. Arya, Advocate for
Mr. Sanjay Lao, Standing Counsel
(Crl.) for the State with SI Ridhima,
P.S.: Model Town.

CORAM:

HON'BLE MR. JUSTICE ANUP JAIRAM BHAMBHANI

ORDER

% **21.11.2024**

CRL.M.A. 34780/2024

Exemption granted, subject to just exceptions.

Let requisite compliances be made within 01 week.

The application stands disposed of.

W.P.(CRL) 3629/2024

By way of the present petition filed under Article 226 of the Constitution of India read with section 528 of the Bharatiya Nagarik Suraksha Sanhita 2023, the petitioner seeks a direction to the SHO P.S.: Model Town, Delhi to register an FIR under the appropriate sections of the Indian Penal Code, 1860 ('IPC')/Bharatiya Nyaya Sanhita 2023 and/or insert the correct provisions of the IPC in case FIR No. 523/2024 dated 28.08.2024 registered under sections 354/506 IPC at P.S.: Model Town, Delhi.

2. Mr. Mohit Monga, learned counsel appearing for the petitioner submits, that as is evident from a perusal of the petitioner's complaint



dated 31.05.2024, the petitioner's grievance is that on 12.01.2024 the accused person trespassed into her house at 02:00 a.m., which position is also reflected in a subsequent complaint dated 11.09.2024 filed by the petitioner.

3. It is pointed-out that even in the subject FIR, it is clearly recorded that the accused had trespassed into the petitioner's residence on 12.01.2024 at about 02:00 a.m. However, it is pointed-out that the only offences mentioned in the subject FIR are under sections 354/506 IPC whereas the offence under section 458 IPC viz. the offence of lurking house-trespass or house-breaking by night after preparation for hurt, assault etc., has not been mentioned, though it is clearly made-out.
4. Counsel further submits, that inclusion of section 458 IPC in the subject FIR would convert the offences alleged against the accused into non-bailable offences, with all other consequences following therefrom.
5. Issue notice.
6. Mr. Abhinav Kr. Arya, learned counsel appearing on behalf of Mr. Sanjay Lao, learned Standing Counsel for the State on advance copy; accepts notice; and submits on instructions of the Investigating Officer, who is present in court, that in chargesheet dated 29.10.2024 filed in the matter the I.O. has added the offence under section 451 IPC, which should address the petitioner's grievance.
7. Mr. Monga points-out however that section 451 IPC relates only to house trespass in order to commit an offence punishable with imprisonment, which is punishable by a period between 2 years and 7 years alongwith fine; but the offence under section 458 IPC, which



deals with lurking house-trespass or house-breaking by night is punishable by a term which may extend to 14 years alongwith fine.

8. Learned counsel states that adding the offence section 451 IPC is therefore still not in sufficient compliance with the ingredients of the offence that is clearly made-out against the accused, as mentioned in the petitioner's criminal complaints, as also recorded in the subject FIR.
9. In the circumstances, on instructions of the I.O., who is present in court, Mr. Arya submits that the I.O. will file a supplementary chargesheet before the learned trial court, adding the offence under section 458 IPC against the accused.
10. The statement made is taken on record.
11. Let the needful be done within the next 02 weeks.
12. The petition stands disposed-of in the above-terms.
13. Pending applications, if any, also stand disposed-of.

ANUP JAIRAM BHAMBHANI, J

NOVEMBER 21, 2024

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