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

+ CRL.M.C. 3333/2018

SANTOSH

.....Petitioner

Through: Mr. Nirmal Pandit, Adv.

versus

STATE (NCT OF DELHI) & ANR

.....Respondents

Through: Mr. Raghuinder Verma, APP for State  
with SI Narender PS Vikaspuri  
Mr. Mritunjay Kr. Singh, Adv.

**CORAM:**

**HON'BLE MR. JUSTICE DINESH KUMAR SHARMA**

**ORDER**

**13.09.2024**

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1. The present petition has been filed challenging the order dated 05.01.2018 whereby the Court of learned Session Judge, SFTC, South West, Dwarka Courts, New Delhi in criminal revision bearing CR No. 565/2017 upheld the impugned order dated 15.11.2017 whereby the learned Trial Court discharged the respondent No.2 in case FIR No. 1032/2015 under Section 354/354B/509 IPC registered at PS Vikas Puri titled as The State v. Himanshu Verma.
2. Learned counsel for the petitioner submits that the learned Trial Court and learned Sessions Court have fallen into grave error by recording order of discharge of respondent No.2. Learned counsel submits that the view of the learned Trial Court is that the charge can be framed only if there is grave suspicion is erroneous. Learned counsel submits that inter alia conclusion of the learned Trial Court that the respondent



No.2 is discharged as there is no grave suspicion against him is unfounded. Learned counsel has also challenged the assertion of the learned Trial Court that in case two views are possible and if the view gives right only to suspicion and not a grave suspicion, the Court should discharge the accused is being incorrect.

3. Learned counsel submits that the learned Trial Court has also failed to take into account the subsequent conduct of the respondent No.2 where the petitioner was challenged/threatened to withdraw the complaint. Learned counsel therefore, submits that both the orders should be set aside and the charges be ordered to be framed against the respondent No.2. Learned counsel also submits that there learned Sessions Court mechanically dismissed the revision petition.
4. Per contra, learned counsel for the respondent No2 states that the learned Trial Court and learned Sessions Court has given a reasoned finding and does not deserve any interference by this Court. Learned counsel also submits that the learned Trial Court and learned Sessions Court had meticulously examined the material available on the record.
5. The jurisdiction under section 482 of Cr. PC is very limited. The jurisdiction under section 482 of Cr. PC can only be exercised only to prevent abuse process of law or to secure the ends of the justice. The Court while exercising the jurisdiction could not ordinarily embark upon the enquiry whether the finding arrived at by the learned Trial Court is correct or not. It is also res-integra, the Court could not substitutes its own opinion with the opinion arrived at in the impugned order unless such an opinion is perverse.



6. The jurisdiction on framing of charge under Section 239 and 240 of Cr. PC is also well established. The bare perusal of the Section 239 makes it clear that if the charges against the accused are found to be groundless, the magistrate shall discharge the accused. Similarly, the charges can be framed under Section 240 only, if there are grounds for presuming, the accused has committed an offence.
7. The scope of the jurisdiction to be exercised under Section 239 has been laid down in ***Union of India v. Prafulla Kumar Samal, (1979) 3 SCC 4*** it was inter-alia held that if the Magistrate finds no sufficient ground to proceed, the accused should be discharged. The court should sift through the material only to determine whether there is reasonable suspicion or ground for presuming that the accused has committed an offence. The court does not need to go into detailed appreciation of evidence but should be able to see a prima facie case.
8. In ***State of Bihar v. Ramesh Singh, (1977) 4 SCC 39*** it was inter-alia held that at this stage, the court should not evaluate whether the case will ultimately result in conviction. If there is strong suspicion leading the court to think that the accused might have committed the offence, then the charges should be framed, and the case should proceed to trial.
9. It is a settled proposition that at this stage, the charges are not to be framed at the mere asking, the framing of charges in a criminal case is an importance step. The framing of the charges result into asking the accused to face the trial and it certainly amounts to curtail of liberty to



some extent. There is no fault with the proposition as set up by the learned MM i.e. if two views are possible, the view favourable to the accused has to be taken. I consider that there is no illegality or infirmity in the order of the learned Trial Court and learned Sessions Judge. Hence, the present petition along with pending applications stands dismissed.

**DINESH KUMAR SHARMA, J**

**SEPTEMBER 13, 2024**

*Pallavi/DG*