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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ W.P.(CRL) 1651/2018 & CRL.M.A. 10204/2018 Call for the records
of "State v. Anju Kapoor and Ors."

ANIL KHANNA

..... Petitioner

Through: Mr. Samir Singh Kachwaha & Mr.
Agnish Aditya, Advs.

Versus

STATE (NCT OF DELHI) & ANR

..... Respondents

Through: Ms. Rupali Bandhopahdya, ASC with
Mr. Abhijeet Kumar, Adv. for State
with SI Rahul Kumar, P.S. New
Friends Colony.

CORAM:

HON'BLE MR. JUSTICE AMIT SHARMA

ORDER

03.04.2024

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1. The present petition under Article 226 and 227 of the Constitution of India read with Section 482 of the Cr.P.C. seeks the following prayers:-

“a) Set aside the Order dated 08.11.2017 by way of which the Ld. Metropolitan Magistrate discharged the accused persons mentioned in the FIR No. 688/ 1999 registered under sections 464, 465, 467, 468, 471, 474 read with Section 120-B of the IPC at P.S. New Friends Colony

b) Direct the Investigating Officer or the concerned police official of P.S. New Friends Colony to further investigate the instant matter arising out FIR No. 688/1999 under sections 464, 465, 467, 468, 471, 474 read with Section 120-B of the IPC at P.S. New Friends Colony

c) Direct the Commissioner of Police, Delhi Police (Respondent No. 7) to monitor the further investigation as prayed for hereinabove.



d) Direct the Investigating Officer or the concerned police official of P.S. New Friends Colony to comply with the Order dated 29.05.2008 passed by the Ld. Metropolitan Magistrate, by way of which the Ld. Court had directed the Investigating Officer to collect and subject the following to a forensic examination: (i) Will in question (ii) voice samples of the Petitioner and Respondent No. 5 and (iii) recorded conversation between the Petitioner and Respondent No. 5.

e) Pass any such other orders in light of the abovementioned facts and circumstances and in the interest of justice.”

2. Learned counsel appearing on behalf of the petitioner submits that he is not pressing for prayer ‘a’ at this stage in view of the directions passed by the learned ACMM *vide* order dated 29.05.2018 which have not been revoked while discharging the present respondents.

3. So far as prayer ‘b’ and ‘d’ are concerned, it is pointed out that during the pendency of the probate proceedings bearing no. 157/13/97 titled Anju Kapoor vs. State, the Investigating Officer had moved an application seeking production of the original will for its forensic analysis. Learned counsel appearing on behalf of the petitioner submits that the said application was dismissed on the ground that at the relevant point of time, the aforesaid proceeding was at the stage of evidence. It is a matter of record that the said probate case was decided in favour of the petitioner therein i.e. Anju Kapoor (respondent no.2 herein), who propounded the Will dated 07.11.1996. Subsequently, in the FAO filed by the petitioner herein bearing no. 144/2014 another CM bearing No. 6107/2019 was filed by the Investigating Officer, in the present FIR, seeking to take into possession the impugned original Will so as to get it forensically examined. The said application was dismissed by learned Single Judge *vide* order dated



09.02.2024 while observing as under:-

“20. Therefore, unhesitatingly this Court finds that the present application has no legal foundation to be considered or to be allowed under Order XLI Rule 27 of the CPC. That brings us to CM APPL. 6107/2019, and at the cost of repetition, it is stated that the accused Suresh Kumar (PW-1), an eyewitness to the holographic Will dated 07.11.1996 and accused Anju Kapoor/respondent No.1 stood discharged in FIR No. 668/99 of PS New Friends Colony as per order dated 08.11.2017 passed by the then learned ACMM. Indeed, there was inaction on the part of the Investigating Officer who failed to seize the original Will in question by adopting appropriate legal measures but the said order on discharge is assailed in CM APPL.6107/2019 and to my mind, it would not be appropriate to even consider this application when a final order is yet to be passed on the same. In any case, it is well ordained in law that a judgment in a probate matter is a judgment in rem which would be binding on the Criminal Court and it is never *vice-versa*”.

4. It is pointed out that the said order has been assailed by way of SLP, which has been filed, however, the same is yet to be listed.
5. It is pertinent to note that while passing the impugned order, learned ACMM has observed as under:-

“Therefore, this is a fit case for discharge of the accused under Section 239 of Cr.PC. Ld. AFP submits that order of discharge will prejudice the complainant. In my view, a person discharged under Section 239 of Cr.PC is not entitled to any benefit under Section 300 Cr.PC. The earlier direction to carry out further investigation has not been revoked. The harassment of the accused which has been going on for 9 years even though there is no sufficient material on record has to stop till the investigating agency puts its house in order. Since cognizance was taken on the basis of chargesheet, this case cannot proceed as a complaint case as well and the documents now being relied upon by the complainant cannot form the basis of framing the charge. This material has to be supplied by the investigating agency.



Accused Suresh Kumar is accordingly discharged. He is directed to furnish a bond to appear in court as and when summoned to face trial in future, if required. Accused Anju Kapoor and Radha Tyde are exempted through counsel. They are also discharged and directed to furnish bond. Accused Neena Kapoor is already proclaimed offender. So no orders are required as far as she is concerned.

Copy of this order be sent to the Commissioner of Police with a direction to report as to why for 9 years the IO could not complete this simple investigation. Any action proposed by the Commissioner of Police be intimated to this court as well. It is painful that there is no supervision of the investigating officers who do not take interest in matters after chargesheets are filed in the court (even if incomplete). Copy of this order be served on the Naib Court for onward transmission to the SHO and Commissioner of Police, No separate notice shall be issued.”

6. The directions as stated above, continue to operate. In case the petitioner is successful in the SLP, the Investigating Officer can take necessary steps.
7. The other aspect of further investigation, with respect to the voice samples of respondent no. 5, learned Additional Standing Counsel, on instructions of the Investigating Officer, submitted that an appropriate application has been moved before the learned Trial Court for obtaining the necessary voice samples.
8. The aforesaid statement is taken on record.
9. So far as prayer ‘c’ is concerned, learned Additional Standing Counsel, on instructions submitted that a senior officer at the rank of ACP shall be deputed to ensure that the investigation is monitored.
10. In view of the above, learned counsel appearing on behalf of the petitioner, seeks leave to withdraw the present petition.



11. Leave granted.
12. The present petition is dismissed as withdrawn and disposed of accordingly.
13. Pending application, if any, also stands disposed of.

AMIT SHARMA, J

APRIL 03, 2024/nk

[Click here to check corrigendum, if any](#)