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

+ **CRL.M.C. 83/2025 & CRL.M.A. 429/2025**

**GIRDHARI LAL & ORS.**

.....Petitioners

Through: Mr. Anil Goel, Mr. Aditya Goel &  
Mr. Pranjali Sharma, Advocates  
through VC.

versus

**STATE/NCT OF DELHI & ANR.**

.....Respondents

Through: Mr. Sanjeev Sabharwal, APP for State  
A.S.I. Om Prakash, PS Sarai Rohilla,  
Delhi.

**CORAM:**

**HON'BLE MS. JUSTICE NEENA BANSAL KRISHNA**

**ORDER**

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**10.01.2025**

**CRL.M.A. 430/2025 (Exemption)**

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

**CRL.M.C. 83/2025**

3. The present Petition under Section 528 of the Bharatiya Nagarik Suraksha Sanhita, 2023 has been filed on behalf of the Petitioners to challenge the impugned Order dated 28.09.2024 *vide* which the learned Additional Sessions Judge has upheld the Order dated 27.06.2023 of the learned Metropolitan Magistrate directing framing of Charges against the Petitioner Nos. 1 and 2 under Sections 380/506/34 of the Indian Penal Code, 1860 (*hereinafter referred to as "IPC, 1860"*) and against the Petitioner Nos.



3 and 4 under Sections 380/34 of IPC, 1860.

4. Learned counsel for the Petitioners has vehemently argued that the Petitioners are the registered owner of the Property bearing H. No. 74, L Block, Shastri Nagar, Delhi (*hereinafter referred to as* “property in question”) and there is no question of they having trespassed into the property in question.

5. It is further submitted that the present FIR No. 1178/2015 under Sections 380/506/34 of IPC, 1860 registered at Police Station Sarai Rohilla, Delhi has been registered pursuant to the directions issued in a Complaint under Section 156(3) of the Code of Criminal Procedure, 1973 filed by the Complainant-Ashok Kumar. The Chargesheet was not filed under Section 380 of IPC, 1860 thereby indicating that after due investigations, the Police did not file any *prima facie* evidence of any theft having been committed by the Petitioners. Moreover, no recovery of the alleged stolen articles has been made from any of the Petitioners.

6. It is evident that from the averments made in the Complaint and also from the investigations carried out by the Police that no offence under Section 380 of IPC, 1860 is made out.

7. Learned counsel for the Petitioners also submits that the Complainant-Ashok Kumar has filed the Civil Suit bearing CS DJ No. 612940/2016 titled Ashok Kumar vs. Vimla Devi & Others under Section 6 of the Specific Relief Act for Possession, Mandatory and Permanent Injunction in respect of the property in question. However, no relief of alleged stolen articles has been sought in that said Suit by the Complainant. Moreover, the Petitioner Nos. 3 and 4 are not even a party to the said Suit.

8. It is argued on behalf of the Petitioners that no description of stolen



articles has been given by the Complainant-Ashok Kumar and also the proof of ownership thereof has not been furnished by him and the same is the clear abuse of process of law.

9. It is submitted that there is an error apparent in the Order dated 27.06.2023 of the learned Metropolitan Magistrate directing framing of Charge against the Petitioner Nos. 1 and 2 under Sections 380/506/34 of the IPC, 1860 and against the Petitioner Nos. 3 and 4 under Sections 380/34 of IPC, 1860 and its subsequent upholding by the learned Additional Sessions Judge *vide* Order dated 28.09.2024 *vide* which the Revision filed by the Petitioners has been dismissed, are liable to be set aside.

10. **Issue notice.**

11. **Mr. Sanjeev Sabharwal, learned Additional Public Prosecutor** appearing on advance notice, accepts notice on behalf of the Respondent and submits that there are clear averments made in the Complaint of theft of Washing Machine, Television and Double Bed and in the light of the specific averments made in the Complaint, the *prima facie* offence under Sections 380/506/34 of the IPC, 1860 against the Petitioner Nos. 1 and 2 and under Sections 380/34 of IPC, 1860 against the Petitioner Nos. 3 and 4 is made out and rest of the contentions raised on behalf of the Petitioners are subject matter of trial.

12. It is submitted that there is no infirmity in the impugned Order dated 28.09.2024 and the present Petition is liable to be dismissed.

13. **Submissions heard.**

14. The learned Metropolitan Magistrate in Order dated 27.06.2023 had considered in detail that a Civil Suit for Partition is pending between the co-sharers/Petitioners and the Complainant who are the relatives. Thus, it



was observed that there is no offence made out under Sections 448/453/34 of the IPC, 1860. However, in view of the specific allegations made by the Complainant, *prima facie* offence under Section 380/506/34 of the IPC, 1860 against the Petitioner Nos. 1 and 2 and under Sections 380/34 of IPC, 1860 against the Petitioner Nos. 3 and 4 was held to be made out.

15. The Order on Charge dated 27.06.2023 was challenged by the Petitioners by way of Revision before the learned Additional Sessions Judge who duly considered the Order on Charge and observed that from the averments made in the Complaint and the investigations conducted by the Investigating Officer, *prima facie* material exists for framing of charge under Sections 380/506/34 of IPC, 1860 against the Petitioner Nos. 1 and 2 and under Sections 380/34 of IPC, 1860 against the Petitioner Nos. 3 and 4.

16. Considering the Chargesheet and the investigations carried out by the Police, there is no infirmity in the impugned Order dated 28.09.2024.

17. Accordingly, the Petition along with pending Application is hereby dismissed.

**NEENA BANSAL KRISHNA, J**

**JANUARY 10, 2025**  
*S.Sharma*