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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ CRL.M.C. 471/2025 & CRL.M.A. 2263/2025, CRL.M.A. 2294/2025
HARIKANT TRIPATHI & ORS.Petitioners

Through: Mr. Neeraj Dutt Gaur, Advocate.

versus

STATE GOVT. OF NCT OF DELHIRespondent
Through: Mr. Sunil Kumar Gautam, APP with
SI Onkar, PS: Badarpur.

CORAM:
HON'BLE MR. JUSTICE SANJEEV NARULA

ORDER
24.01.2025

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1. The present petition has been filed under Sections 528 and 529 of the Bharatiya Nagarik Suraksha Sanhita 2023,¹ impugns order dated 8th October, 2024² whereby the Court of JMFC (Mahila Court)-01, South-East District, Saket Courts, has directed the Petitioner to show cause as to why proceedings under Section 340 read with Section 195 of the Code of Criminal Procedure, 1973³ not be initiated against him. The impugned order reads as follows:

“Matter is fixed for consideration on application u/s 256 r/w section 302 of the Cr.P.C moved on behalf of proposed LR of the deceased complainant.

Copy of the surviving member certificate alongwith affidavit cum NOC of the other LRs has been filed by the proposed LR Rohit Tripathi, who is also a practicing advocate.

It is submitted by Ld. counsel for the accused that Sh. Rohit Tripathi is not the son of the deceased complainant and is accordingly not her LR. He argued that the present application cannot be allowed in the capacity of LR of

¹ “BNSS”

² “the impugned order”

³ “Cr.P.C”



the complainant more specifically in light of the fact that death of the complainant was unnatural and the proposed LR alongwith Hari Kant Tripathi and Rahul Tripathi who are the witnesses in this case were named as accused in the said FIR. It is further submitted that Sh. Rohit Tripathi has been discharged from the said case but he is neither the adopted nor the biological son of the deceased complainant.

At this stage, after part arguments, the fact that Sh. Rohit Tripathi is neither the adopted nor the biological son of the deceased complainant has been admitted by him and he submits that he wishes to withdraw the present application

In view of the submissions made, the said application is accordingly disposed of as withdrawn.

However, this court is unable to comprehend as to how a surviving member certificate was issued in the name of the Sh. Rohit Tripathi wherein he is reflected as the son of the deceased complainant while he has admitted before this court that he is not her son.

It is further pertinent to note that there are affidavits cum NOCs of Sh. Rahul Tripathi and Sh. Hari Kant Tripathi who also state that Sh. Rohit Tripathi is the son of the complainant. In view of the submission made by Sh. Rohit Tripathi in the court today, both the affidavits filed before this court today as well as the application under consideration prime facie seem to be stating false facts.

Accordingly Sh. Rahul Tripathi, Sh. Hari Kant Tripathi and Sh. Rohit Tripathi are directed to show cause vide a written explanation to be filed on the NDOH as to why proceedings u/s 340 r/w 195 Cr.P.C be not initiated against them.

Notice be issued to Sh. Hari Kant Tripathi, Sh. Rahul Tripathi and Rohit Tripathi for NDOH with a direction to remain physically present on NDOH.

List for further proceedings on 25.01.2025."

2. It emerges that Mr. Rohit Tripathi, claiming himself to be the son of late Ms. Pinky Tripathi, (the deceased Complainant) had filed an application under Sections 256 read with Section 302 of Cr.P.C. seeking substitution as the Legal Representative of the deceased. However, during the course of arguments, Mr. Rohit Tripathi admitted that he was neither the adopted nor biological son of the deceased Complainant and accordingly withdrew the application. Notwithstanding the withdrawal, the Court observed a significant discrepancy in the surviving member certificate relied upon by Mr. Rohit Tripathi, which recorded his name as the son of the deceased Complainant. Additionally, the Court noted the existence of affidavits-cum-



No Objection Certificates issued by Mr. Rahul Tripathi and Mr. Hari Kant Tripathi, affirming Mr. Rohit Tripathi's claim as the son of the deceased. Taking *prima facie* view of these inconsistencies, the Court issued a show-cause notice to the Petitioner, directing him to appear and explain why proceedings under Section 340 read with Section 195 of Cr.P.C. should not be initiated against him. Instead of availing this opportunity to respond through a written explanation, the Petitioner has approached this Court, seeking to quash the impugned order.

3. Counsel for Petitioner submits that there was a misunderstanding regarding the Mr. Rohit Tripathi's statements before the Court. He further contends that Ms. Pinky Tripathi, during her examination in the aforementioned complaint, had acknowledged the Petitioner as her son. However, when specifically queried by the Court about any documentary evidence to substantiate the relationship of mother and son between the Petitioner and Ms. Pinky Tripathi, reliance was placed solely on the marriage invitation card of Mr. Rahul Tripathi.

4. Be that as it may, this Court is of the considered view that the present matter does not warrant the invocation of its jurisdiction under Section 528 of the BNSS. The issues raised by the Petitioner, including the factual assertion of being the son of Ms. Pinky Tripathi, are matters that fall squarely within the purview of the Judicial Magistrate.

5. Accordingly, the present petition is disposed of with liberty to the Petitioners to provide a written explanation, stating his defence to the Judicial Magistrate as to why an application for substitution was filed on the assertion of the Mr. Rohit Tripathi being son of Late Ms. Pinky Tripathi. The same shall be considered by the Judicial Magistrate on its own merits,



in accordance with law.

6. Disposed of, along with pending applications, with liberty as aforesaid.

JANUARY 24, 2025
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SANJEEV NARULA, J