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

+ CRL.M.C. 4572/2018, CRL.M.A. 31715/2018 (stay)

REKHA KAKKAR

.....Petitioner

Through: Mr. Dhruv Gupta, Ms. Liza Arora,
Mr. Yash Mehran and Mr. Anubhav
Garg, Advocates.

Versus

STATE OF NCT OF DELHI

.....Respondent

Through: Mr. Shoaib Haider, APP for the State
with Inspector Vijay Singh, PS
Kapashera.

CORAM:

HON'BLE MS. JUSTICE NEENA BANSAL KRISHNA

ORDER

% **17.01.2025**

CRL.M.C. 4572/2018

1. The Petition under Section 482 of the Code of Criminal Procedure, 1973 (*hereinafter referred to as 'CrPC'*), has been filed on behalf of the Petitioner, against the impugned Order dated 13.07.2018 whereby the learned Metropolitan Magistrate has rejected the Objection taken on behalf of the Petitioner for the cognizance of the offence taken in FIR No. 23/16 under Section 304A read with Section 34 of the Indian Penal Code, 1860 (*hereinafter referred to as 'IPC'*) registered at Police Station Kapashera, as bad in law.

2. **Briefly stated**, the FIR No. 23/16 under Section 304A read with Section 34 of the IPC, was registered at Police Station Kapashera, against the Petitioner, who is the MCD School Principal, JE Contractor and one School maid, on the allegations that one child, aged four years, had died due



to drowning in a Septic Tank on account of the negligence of the aforesaid accused persons. The Charge-Sheet was filed in the Court on 05.07.2016 and the cognizance was taken. Thereafter, a Notice under Section 251 of CrPC and under Section 304A of IPC was directed to be framed against all the four accused.

3. Thereafter, the present Petitioner took an objection that the cognizance itself was bad since no prior Sanction had been obtained against the Principal of the School and the JE. The Prosecution thereafter, got the sanction against these two accused and submitted it in the Court. However, the learned counsel on behalf of the Petitioner again questioned the cognizance being bad in law as the subsequent sanction could not have cured the initial defect of taking the cognizance.

4. This Objection was dismissed by the learned Metropolitan Magistrate *vide* impugned Order dated 13.07.2018 by observing that the challenge to the cognizance tantamounts to a Review, which is not within the jurisdiction of the Court.

5. Aggrieved by the impugned Order, present Petition has been filed. It has been submitted that the Order of cognizance is bad and any subsequent sanction would not cure the inherent defect in taking cognizance.

6. *Learned counsel on behalf of the Petitioner* submits that if any subsequent Charge-Sheet against the Petitioner is filed, it would also have to be supported with an Application for condonation of delay.

7. *Learned APP for the State* submits that it is an admitted fact that the sanction had been obtained after the cognizance was taken. Learned APP for the State further submits that the Prosecution still has an option of submitting the Charge-Sheet against the Petitioner afresh after getting the



fresh Sanction for which they may seek a condonation of delay.

8. Submissions heard.

9. It is settled law that the Sanction had to be obtained prior to taking of cognizance. Subsequent sanction would not cure the initial defect in cognizance. Consequently, the Application for dropping of proceedings against the Petitioner, is allowed and she is hereby, discharged with the liberty to the Prosecution, to take appropriate action.

10. If the Application for condonation of delay is filed, the same may be considered, in accordance with law. However, *viz-a-viz* the other accused, Trial shall continue, in accordance with law.

11. The Petition is allowed and disposed of accordingly along with the pending Application.

NEENA BANSAL KRISHNA, J

JANUARY 17, 2025/RS