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

+ **CRL.M.C. 2992/2011**

% Judgment delivered on: 22nd, September, 2011

RANI SONI @ JOGINDER KAUR SONI

& ORS

..... Petitioners

Through : Mr. Aman Mehta, Adv.

versus

STATE

..... Respondent

Through : Ms.Ritu Gauba, APP for State

CORAM:

HON'BLE MR. JUSTICE SURESH KAIT

1. Whether the Reporters of local papers may be allowed to see the judgment? YES
2. To be referred to Reporter or not? YES
3. Whether the judgment should be reported in the Digest? YES

SURESH KAIT, J. (Oral)

Crl.M.C.2992/2011

1. Vide the instant petition the petitioners have assailed the impugned order dated 21.01.2011 passed by Id. MM, South Delhi whereby Id. MM has passed the order as under :

“Accused are stated to be on police/court.

I have perused the challan,

statements of witnesses and the documents filed on record. Prima facie there is sufficient material on record to proceed with the case against all the accused persons namely Navdeep Soni, Rani Soni, Sandeep Soni and Dolly Soni. Accordingly, the cognizance is taken against all the accused persons u/s 498A/406/34 IPC.

Summons be issued to he accused persons and notice to surety through IO for 31.03.2011.”

2. Ld. counsel for the petitioners submits that petitioners were put in column 2 in the report filed under Section 173 Cr.P.C. before the Id. Magistrate.

3. Further submits that Navdeep Soni being the husband, the charge-sheet was filed against him. Rest of three accused namely, Rani Soni, Sandeep Soni and Dolly Soni were put in column 2. Ld. MM has not recorded any statement before summoning the three accused.

4. In support of argument, Id. counsel for the petitioners has relied upon a judgment passed by this Court in CrI.M.C.924/2005 titled as ***Atma Ram Singhal & Ors. Vs.***

State & Anr. pronounced on 02.05.2007 on the similar circumstances this Court has held as under :

“1. The respondent No.2 is the complainant, who lodged complaint under Section 498-A/406 of the Indian Penal Code (for short, 'IPC') against her husband Anil Singhal as well as other relations. This complaint was made to the ACP, Crime Against Women (CAW) Cell, Pitampura. Thereafter, an FIR was registered. Police, after investigation, filed challan under Section 173 of the Code of Criminal Procedure (for short, 'Cr.P.C.'). Names of the petitioners herein were put in Column No.2 in the said charge sheet. Complainant's husband, father-in-law and mother-in-law were shown as main accused. The relation of these petitioners, who were put in Column No.2, with the complainant's husband is as under :-

Petitioner No.1

“Uncle (chacha) of the complainant's husband

Petitioner No.2

“Son of the petitioner No.1

Petitioner No.3

“Another uncle of the complainant's husband

Petitioner No.4

“Wife of the petitioner No.3

Petitioner No.5

“Daughter of the petitioner No.3

Petitioner No.6

“Son of the petitioner No.3

Petitioner No.7

“Another uncle of the complainant's husband

2. After the filing of the charge sheet, the learned MM chose to summon all these petitioners, who were shown as accused in Column No.2, by passing the following order :-

"Present: APP for the State. Accused present on bail.

IO SI Bhagwan Dass present. SI Bhagwan Dass has given his explanation. I am not satisfied with the explanation given by him in respect of this specific allegation made in the complaint itself. In these circumstances, as there are sufficient grounds to proceed against the accused shown at column no.2 they be summoned on 29.10.04.

Sd/-
MM/Delhi
30.6.04."

The petitioners, feeling aggrieved against this summoning order, filed criminal revision before the learned ASJ, which has been dismissed by the learned ASJ vide order dated 19.2.2005. Challenging this order, the present petition is filed under Section 482 Cr.P.C.

.....
5. It may be noted that the revision petition was filed even by the father-in-law and mother-in-law, along with the present petitioners, which was dismissed by the learned ASJ. However, the mother-in-law and the father-in-law of the complainant have not joined these proceedings. Perusal of the order passed by the learned ASJ would show that after taking note of the argument of the petitioners that the learned MM passed the order without application of mind, which is not as per the report prepared by the Police under Section 173 of the Cr.P.C. This argument was brushed aside only on the ground that the Magistrate had the power to summon even those persons whose names are placed in Column No.2

and case law is cited in support thereof. There may not be any quarrel with this abstract proposition of law. Power of the learned MM is not in dispute. It is the manner in which the said power is exercised was challenged. But there is no answer to the argument that the impugned order was without application of mind, having regard to the report of the Police under Section 173 Cr.P.C.

6. Undoubtedly, the learned MM is not to act mechanically on the basis of the report filed by the Investigating Officer under Section 173 of the Cr.P.C. and has to apply his own mind. He may refuse to summon any of the persons named in the charge sheet. On the other hand, if he finds that there is prima facie evidence against those whose names are mentioned in Column No.2, he may even summon them along with others. However, what is important is that there should be depiction of application of mind in the order passed. More so, when as per the report of the Investigating Officer there is nothing against a particular person but the MM still wants to summon him. The learned ASJ, apart from stating the legal position to the effect that the Magistrate had the necessary power and dismissing the revision petition on that ground, did not deal with the argument of the petitioners herein to the effect that the order of the trial court was non-speaking order and even a semblance of reason was not recorded as to what were the considerations which persuaded the learned trial court to summon these petitioners, notwithstanding the fact that their names appear in Column No.2."

5. In my considered opinion, whenever a final report under Section 173 Cr.P.C. is filed for consideration by the Magistrate, it gives rise to two situations. Firstly, that the

report may conclude that the offence appears to have been committed by a particular person or persons. Secondly, that in the opinion of the officer-in-charge, no offence appears to have been committed. In the former case, i.e. where the report discloses the commission of an offence, three courses are open to the Magistrate viz. (a) he may accept the report and take cognizance of the offence and issue process; (b) he may disagree with the report and drop the proceedings; and (c) he may direct further investigation.

6. Coming to the latter case where the report states that no offence appears to have been committed, the Magistrate has again three choices: (a) he may accept the report and drop the proceedings; (b) he may disagree with the report and take the view that there is sufficient ground to for proceeding further, take cognizance of the offence and issue process; and (c) he may direct further investigation to be made by the police.

7. No doubt that even if the report discloses that no offence appears to have been committed, the Magistrate may disagree with the report and take a view that there is sufficient ground for proceeding further, take cognizance of

the offence and issue process. However, the question to be determined is as to when the MM decides to issue the process, notwithstanding the observations of the Investigating Officer; is he to indicate some reasons and reflect his thought process in the order as to why he is taking such a course.

8. In the present case, Id. MM has not considered any of the fact against the three accused who were put in column 2 in the report filed by the police under Section 173 Cr.P.C. Sufficient grounds should have been recorded by Id. M.M. for proceeding further against the persons, as they were not charge-sheeted in the report u/s 173 Cr.P.C., before taking the cognizance of the offence and issuing process.

9. Keeping in view above discussion, the impugned order dated 21.01.2011 is set aside and the matter is remanded to Id. MM. to consider the same afresh and pass appropriate order.

10. Accordingly, CrI.M.C.2992/2011 is allowed in the above terms.

11. Dasti.

**Crl.M.A.10554/2011 (stay) & Crl.M.A.11298/2011
(early hearing)**

In view of the order passed in Crl.M.C.2992/2011, these applications are dismissed as infructuous.

SURESH KAIT, J

SEPTEMBER 22, 2011

Vld/RS