

warranting the summoning of the petitioner. In this regard, the learned counsel for the petitioner has drawn the attention of the court to the impugned order and the documents filed along with the petition.

3. I have carefully considered the submissions. The respondent No.2 filed a complaint case against the petitioner. It was alleged in the complaint that the complainant, Suraj Bharti, was a permanent resident of Khasra No.67, Village Sahurpur, near Chadanhola Bus Stop, New Delhi-110074. He met accused No.1, Sarita Dode, the present petitioner, in the office of Davish Group in the month of April, 2011, where she was working as a receptionist. The said company was dealing in money trading. It is alleged by the complainant/respondent No.2 that the petitioner became familiar with him and in the month of May, 2011, he was induced by the petitioner to part with a sum of ₹1 lac on the pretext that she would invest the same in some money trading business which will double his amount to ₹2 lacs within a period of two months. On the basis of the said representation, the respondent No.2 is alleged to have handed over an amount of ₹1 lac to the petitioner in the presence of Vishal Baitha and Dhanraj Dode, who are accused Nos.2 and 3 respectively in the complaint. This amount was handed over on

10.5.2011. After a couple of months, that is, in the month of August, 2011, the respondent No.2 stated that he demanded his money back from the petitioner but the amount was not returned, on the contrary, the petitioner is alleged to have given a photocopy of her PAN card and voter ID card to him with a view to gain his faith regarding the genuineness of the investment being made by her.

4. The second allegation which is made by the respondent No.2/complainant is that on 20.9.2011, the petitioner, who had come to stay with complainant, left the house of the complainant whereupon, he found out that a gold ring and a gold chain belonging to him were missing. On 30.9.2011, the petitioner along with accused No.2, namely, Vishal Baitha, again came at the residence of the complainant and it was then that the complainant noticed that the accused No.2 was wearing his gold chain and gold ring. It seems that the respondent/complainant had an impression that both these items were stolen from his residence while the present petitioner was living with him. The respondent/complainant alleges that he made repeated complaints to the police and since they failed to take any action, he lodged the complaint before the learned Metropolitan Magistrate.

5. After filing of the complaint, the respondent No.2/complainant examined himself as CW-1 and proved the complaint exhibit CW 1/A, the notice exhibit CW1/B, he testified against the present petitioner in respect of the averments made by him in the complaint. On the basis of the averments made in the complaint as well as the statement of the respondent, the present petitioner and accused No.2, Vishal Baitha, were summoned for offences under Section 380 and 420 IPC. The learned Metropolitan Magistrate did not summon accused No.3, that is, Dhanraj Dode.

6. The present petitioner is feeling aggrieved by the aforesaid summoning order. The learned counsel for the petitioner has raised questions which go into the merit of the case or which raise the disputed question of facts which can be adjudicated only once he enters into the appearance and cross-examines the witness/complainant at the stage of pre-charge evidence because both these offences, for which the present petitioner has been summoned, are warrant trial offence where pre-charge evidence has to be recorded. The learned counsel has not been able to

point out any abuse of the processes of law or any order required to be passed in the interest of justice.

7. The law regarding summoning is very clear that in case, a *prima facie* case of involvement of the accused in the commission of the offence is made out, he is required to be summoned meaning thereby that at the stage of summoning, the court does not have to conduct an elaborate examination of the evidence adduced by the party concerned. The court has to only see as to whether *prima facie* the ingredients of the offence in respect of which the accused is summoned are made out.

8. In the instant case, the allegations were for various offences out of which offences only under two sections *prima facie* have been held to be substantiated by the learned Metropolitan Magistrate. These are the offences of cheating inasmuch as the respondent alleges in his complaint that the petitioner had induced him to part with a sum of ₹1 lac on the pretext that she would get the amount doubled within a period of two months. To that extent, the ingredients of Section 420 IPC, that is, representation having been made to the complainant/respondent by the present petitioner and the fact that the complainant has handed over a sum

of ₹1 lac to the petitioner, which means he has parted with the property in cash, are satisfied. The other ingredients, that is, dishonest intention, causing wrongful gain to herself and wrongful loss to the respondent/complainant are also *prima facie* satisfied. Accordingly, the petitioner has been rightly summoned for an offence under Section 420 IPC.

9. So far as the second aspect of summoning both these persons under Section 380 IPC with the help of Section 34 IPC for having committed the house theft and stealing a gold chain and a gold ring are concerned, the respondent/complainant made an oral statement on the basis of which the FIR was registered to the effect that a gold chain and a gold ring was taken away from his residence. The said gold items were found to be worn by the accused No.2, that is, Vishal Baitha. Section 114 sub-clause (a) clearly lays down that if a person is found to be in possession of a stolen property immediately after a theft, then either he may be presumed to be a thief or he has received the goods knowing them to be stolen. In the instant case, it seems that since there was proximity of time between theft and wearing of these gold items by accused No.2, the learned

Metropolitan Magistrate was right in presuming that the petitioner was a thief and accordingly, invocation of Section 380 IPC read with Section 34 IPC is also correct.

10. At the stage of summoning the petitioner as an accused, the court has to undertake a limited exercise, that is to say, as to whether *prima facie* the ingredients of Sections 380/420/34 IPC are made out or not. This exercise, in my view, *prima facie* is amply established by the respondent/complainant.

11. I do not find any gross abuse of the processes of law or any order required to be passed in the interest of justice. Accordingly, the present petition seeking quashing of the order of summoning dated 14.8.2012 is totally misconceived and the same is dismissed.

V.K. SHALI, J.

NOVEMBER 05, 2012
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