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

+ CRL.M.C. 786/2003

BHARTENDU RAI

..... Petitioner

Through: Mr. Dinesh Mathur, Sr. Advocate
with Mr. Amish Dabas & Mr.
S.P.Kaushal, Advocates

versus

THE STATE & ORS.

.....

Respondents

Through: Mr. Mukesh Gupta, Additional
Public Prosecutor for State

CORAM:

HON'BLE MR. JUSTICE SUNIL GAUR

ORDER

% **23.07.2013**

Vide order of 18th January, 2013 petitioner alongwith his co-accused has been summoned as an accused in FIR No. 828/98 under Section 147/149/365/356/323/448 read with Section 120-B IPC registered at PS Mehrauli/District Crime Cell (South), Delhi. Quashing of the aforesaid summoning order and FIR of this case is sought in this petition. Cancellation Report submitted in the aforesaid FIR has not been accepted by the trial court and vide impugned order, petitioner and his co-accused have been summoned to face the trial for the aforesaid offences. The factual background of this case stands noted in the impugned order.

Suffice it would be to note that the allegations against petitioner

and his co-accused are that they had formed unlawful assembly and had shared common intention in committing the offence in question.

Learned senior counsel for petitioner while relying upon decisions in *Atma Ram Singhal & Ors. v. State & Anr.* 2007 V AD (Delhi) 717, *Hiralal Mallick v. The State of Bihar* 1977 SCC (Cri.) 538 and *M/s Pepsi Foods Ltd. And Anr. v. Special Judicial Magistrate and Ors.* 1998 SC 128 assailed the impugned order by contending that when a crime is committed by the concerted action of a plurality of persons constructive liability implicates each participant, but the degree of criminality may vary depending not only on the injurious sequel but also on the part played by each of the accused. It is vehemently urged that in the instant case, it has not been disclosed by the prosecution as to what role petitioner had played and impugned order simply records that petitioner had participated in the crime but what was the kind of participation by petitioner is not known. Thus, it is submitted that the summoning of petitioner as an accused in FIR in question is an abuse of process of court, so impugned order deserves to be set aside qua petitioner.

Learned Additional Public Prosecutor has supported the impugned order but had submitted that inadvertently name of witness is written as Rajnath whereas the witness is Raghunath, who had disclosed, in no uncertain terms, that petitioner was a member of unlawful assembly, who had barged into the temple where he (Raghunath) was a *pujari*, and they had committed the

offence in question. However, learned Additional Public Prosecutor clarifies that due to inadvertence name was wrongly written and it is stated in the impugned order that Bhaskranand had also witnessed this incident and in fact his statement is silent about the participation of petitioner in incident in question. However, it is submitted by learned Additional Public Prosecutor that in cases of criminal conspiracy, direct evidence is not available and no detailed reasons are required to be given for summoning the accused as *prima facie* satisfaction is sufficient.

The parameters governing exercise of inherent jurisdiction as reiterated by the Apex Court in *Rajiv Thapar and Ors. v. Madan Lal Kapoor* (2013) 3 SCC 330, are as under:-

“The High Court, in exercise of its jurisdiction under Section 482 of the Code of Criminal Procedure, must make a just and rightful choice. This is not a stage of evaluating the truthfulness or otherwise of allegations levelled by the prosecution/complainant against the accused. Likewise, it is not a stage for determining how weighty the defences raised on behalf of the accused is. Even if the accused is successful in showing some suspicion or doubt, in the allegations levelled by the prosecution/complainant, it would be impermissible to discharge the accused before trial. This is so, because it would result in giving finality to the accusations levelled by the prosecution/complainant, without allowing the prosecution or the complainant to adduce evidence to substantiate the same. The converse is, however, not true, because even if trial is proceeded with, the accused is not subjected to any irreparable consequences. The accused would still be in a position

to succeed, by establishing his defences by producing evidence in accordance with law. There is an endless list of judgments rendered by this Court declaring the legal position, that in a case where the prosecution/complainant has levelled allegations bringing out all ingredients of the charge(s) levelled, and have placed material before the Court, prima facie evidencing the truthfulness of the allegations levelled, trial must be held.”

The submissions advanced by both the sides have been duly considered and on perusal of the impugned order, FIR in this case and the decisions cited, I find that while applying the ratio of decisions cited, it becomes evident that when witness-Raghunath has clearly stated in his statement that petitioner was part of the unlawful assembly, who had trespassed in the temple to commit the offence in question, then there is no reason to disbelieve the said witness at this initial stage.

In the face of the statement of aforesaid Raghunath, summoning of petitioner as an accused cannot be said to be an abuse of process of the court. Impugned order does not suffer from any palpable error as this is not the stage to extend benefit of doubt to petitioner merely because he is not named in the FIR or because the protest petition is silent about the role of co-accused Sant Nagpal. Merely because petitioner is shown as accused No.17, whereas in the protest petition he is shown as accused No.54, it will not justify discarding of material deposition of Raghunath at this initial stage.

Whether the version in the protest petition has been improved upon in the protest petition is also not an aspect which has to be weighed in golden scales as these are the aspects which have to be considered at the stage of framing of the charge. Petitioner is said to be a *sewadar* in the temple in question and neither has he any plea of alibi or any version to offer regarding this incident.

At this initial stage, it is only to be seen as to whether petitioner has been rightly summoned as an accused in FIR in question or not? Summoning of petitioner as accused in this FIR in the face of statement of Raghunath is *prima facie* justified.

This petition is dismissed while not commenting on the merits of this case lest it may prejudice petitioner at trial.

Let trial court record be remitted back forthwith, to enable the trial court to proceed with expedition in this case.

(SUNIL GAUR)
Judge

JULY 23, 2013
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