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

+ CRL.M.C. 3049/2013
MANINDER SINGH

..... Petitioner

Through: Mr. Anand Nandan & Mr. Vipul
Sharda, Advocates

versus

STATE OF NCT OF DELHI & ORS. Respondents

Through: Ms. Ritu Gauba, Additional Public
Prosecutor for State

CORAM:

HON'BLE MR. JUSTICE SUNIL GAUR

ORDER

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31.07.2013

Crl.M.A.No. 11437/2013 (Exemption)

Allowed subject to all just exceptions.

Crl.M.C.No.3049/2013 & Crl.M.A.No.11438/2013

In this petition, quashing of complaint case No. CC/RO3/2/13 titled "*Ajit Singh Maker v. State & Ors.*" and setting aside of order of 8th April, 2013 is sought.

Vide impugned order of 8th April, 2013 petitioner, his co-accused Pritpal Singh and Mrs. Mohinder Singh (*wife of Pritpal Singh*) have been summoned for commission of offence under Section 386/388/34 IPC. Learned counsel for petitioner submits that it is evident from petitioner's passport that he was not in India in February/March, 2012 when the offence in question was purportedly committed and there are no call

records to prima facie show that petitioner had made any phone calls to the respondent-complainant. It is pointed out that impugned order summoning petitioner as an accused is silent on the aspect of call records and that petitioner's name finds mention only in the complaint of 26th February, 2012 whereas in the earlier complaint of 2nd February, 2012, it is not stated by the respondent-complainant that petitioner had made any phone call for committing the offence in question.

To assert that impugned order suffers from non-application of mind, it is pointed out that firstly trial court had called for the status report on complainant's application under Section 156(3) Cr.P.C. and when time was sought by local police on 30th May, 2012 then trial court without granting time to furnish the status report, hastily passed the impugned order. Thus, it is submitted on behalf of petitioner that complaint case as well as the impugned summoning order deserve to be set aside as it is abuse of process of the Court because civil proceedings between the parties are already pending.

Learned Additional Public Prosecutor for respondent-State drew the attention of this Court to the list of documents of 15th March, 2012 which was filed alongwith the complaint case to point out that it is clearly stated that with the permission of the court, telephone records of the complainant and the accused persons will be produced before the court.

On hearing and on perusal of the aforesaid complaint, impugned order and material on record, I find that Apex Court in *K.K.Ahuja v. V.K.Vora & Anr* (2009) 10 SCC 48 has reiterated that at the initial stage, the complaint has to be taken on its face value. The pertinent observations in *K.K.Ahuja* (supra) are as under:-

“24. Therefore, the averment in a complaint that an accused is a Director and that he is in charge of and is responsible to the company for the conduct of the business of the company, duly affirmed in the sworn statement, may be sufficient for the purpose of issuing summons to him.....”

In the instant matter what is alleged by petitioner in the complaint in question is as under:-

“That Mr. Pritpal Singh and Mr. Maninder Singh Maker S/O Joginder Singh Maker (elder brother of applicant No.1) are continuously threatening the applicants that they would implicate the applicants in false criminal cases and have very good contacts with higher Police Officials and with their help would get them arrested, so that applicant will not be able to attend to the marriage of their son.”

Applying the ratio of Apex Court in *K.K.Ahuja* (supra), the complaint in question is taken on its face value and upon doing so, it cannot be said that ingredients of the offence alleged are lacking. Merely because trial court has not waited for the status report on complainant's application under Section 156(3) of Cr.P.C. impugned order summoning petitioner as accused cannot be faulted with as bare perusal of the impugned order discloses due application of mind. Supporting documents in the form of call records is a matter, which is required to be considered at the stage of pre-charge evidence as petitioner-accused will have an opportunity to cross-examine the complainant and his witnesses and thereafter only question of framing of charge would arise. I am of the considered opinion that this petition is pre-mature as petitioner would have liberty to raise the pleas raised herein before the trial court at the

stage of hearing on the point of charge after the pre-charge evidence is recorded.

This petition are application are accordingly dismissed while refraining to express any opinion on merits of the case, lest it may prejudice petitioner before the trial court.

(SUNIL GAUR)
Judge

JULY 31, 2013
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