

\$~R-203

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

Date of Decision: August 04, 2015

+ CRL.M.C. 1713/2014
AZAD SINGH DAGAR

..... Petitioner

Through: Mr. Pawan Sharma, Advocate

versus

THE STATE & ORS.

.... Respondents

Through: Mr.Karan Singh, Additional Public
Prosecutor for respondent-State
Mr. Satise Bhankhar & Mr.
Vikramjeet Ranga, Advocates for
Respondents No.2 to 4

CORAM:

HON'BLE MR. JUSTICE SUNIL GAUR

JUDGMENT
(ORAL)

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In pursuance to the order passed on application under Section 156(3) Cr.P.C., an FIR No.15/09 for the offence of murder was registered at PS Jaffarpur Kalan, Delhi in which cancellation report was filed by the Investigating Agency on 8th July, 2009. Thereafter, the concerned Magistrate had fixed the matter for recording of pre-summoning evidence. Vide order of 21st May, 2012, the accused were summoned for the offence under Section 302/34 IPC and after supplying the copies of orders etc. to the accused persons, case was committed to the Court of Sessions. Before Sessions Court, at the stage of hearing on the point of charge, learned counsel for respondent-accused persons had relied upon

decision of a Coordinate Bench of this Court in *Dhano v. State & Anr.* 2009 (1) JCC 145 wherein it was held that without recording of pre-charge evidence, committal of the complaint for the offence of murder to the Sessions Court is a gross irregularity as Section 244 Cr.P.C. mandates for recording of pre-charge evidence prior to committal.

At the hearing, learned counsel for petitioner had placed reliance upon Apex Court decision in *Raj Kishore Prasad v. State of Bihar & Anr.* 1996 Cri.L.J.2523 and *Bhola Rai & Anr. v. State of Bihar & Anr.* 1997 (3) Crimes 48 to submit that power to record pre-charge evidence is not vested with the Magistrate Court and infact the Magistrate at the stage of Section 209 Cr.P.C. is forbidden to apply his mind to the merits of the case and to determine whether to commit the case to Sessions Court for trial. Learned counsel for respondent-accused persons had submitted that decisions in *Raj Kishore* (supra) and *Bhola Rai* (supra) have no application to the facts of the instant case as those were not the complaint cases and infact were FIR cases. Thus, it is submitted on behalf of respondent-accused persons that trial court's reliance upon decision in *Dhano* (supra) is well merited and there is no substance in this petition.

Upon hearing and perusal of complaint in question, impugned order, material on record and the decisions cited, I find that reliance placed by petitioner's counsel upon *Raj Kishore* (supra) and *Bhola Rai* (supra) is of no avail as those cases do not pertain to criminal complaint and the decision directly deal on the issue at hand is of *Dhano* (supra). Since Magistrate is not required to apply its mind before committing the case to Sessions, therefore, the concerned Magistrate has to abide by the provisions of Section 244 of Cr.P.C. In the impugned order, the decision

in *Dhano* (supra) has been considered in right perspective.

Finding no palpable error in the impugned order, this petition is dismissed while not commenting upon merits of this case, lest it may prejudice petitioner at trial.

(SUNIL GAUR)
JUDGE

AUGUST 04, 2015
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