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

Date of Decision: August 17, 2015

+ **CRL.M.C. 1719/2012 & Crl.M.A.No.6015/2012**

MOHD MEHARBAN & ORS. Petitioners

Through: Mr. Haneef Mohd., Advocate for
Mr.L.K. Upadhyay, Advocate

versus

STATE & ANR.Respondents

Through: Mr. Ashish Dutta, Additional
Public Prosecutor for respondent-
State
Mrs. Kanwaljeet Kaur & Ms. Rani
Chhabra, Advocates for respondent
No.2-complainant

CORAM:
HON'BLE MR. JUSTICE SUNIL GAUR

JUDGMENT
(ORAL)

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In FIR No.238/2001 registered at P.S. Adarsh Nagar, Delhi for the offence under Sections 307/324 of IPC, a cancellation report was filed which was followed by a protest petition. The concerned magistrate vide impugned order of 19th January, 2011 takes note of the fact that the cancellation report in the aforesaid FIR and the protest petition have not been decided so far, but still chooses to proceed with the Criminal Complaint No.171/2004 for the same very offences and after recording of the pre-summoning evidence, decides to summon petitioners as accused in the aforesaid criminal case.

The challenge to the impugned order in this petition is on the ground that mandatory provisions of Section 210 of Cr.P.C. have been violated thereby causing prejudice to petitioners.

At the hearing, learned counsel for petitioners submitted that in the pre-summoning evidence, out of 11 witnesses, the deposition of all the 11 witnesses has not been recorded and only after recording the evidence of 5 witnesses, the summoning order has been passed and so, it is liable to be quashed.

On the other hand, learned counsel for respondent No.2 had supported the impugned order and had submitted that there is no illegality in it. Reliance was placed by learned counsel for respondent No.2 upon decisions of Apex Court in *Santosh De and Another v. Archana Guha and Ors.* (1994) 2 SCC 420, *Monica Kumar (Dr.) and Anr. v. State of Uttar Pradesh and Ors.* (2008) 8 SCC 781 and *Central Bureau of Investigation v. K.M. Sharan* (2008) 4 SCC 471.

Upon hearing both the sides and on perusal of the impugned order, the material on record and the decisions cited, I find that there is no requirement of recording deposition of all the witnesses in the pre-summoning evidence and that the cancellation report as well as protest petition in a case relating to offence of attempt of murder has to be heard by the Sessions Court and as per the mandate of Sub-Section 2 of Section 210 of Cr.P.C., the cancellation report along with protest petition and the complaint case pertaining to the same incident, in which petitioners have been summoned as accused, are to be heard together by the Sessions Court.

On a bare perusal of the complaint in question and the pre-

summoning evidence, I find that the impugned order does not suffer from any palpable error. After summoning of petitioners, they have to be sent to the Sessions Court for proceeding in accordance with the law.

Thus, finding no palpable error in the impugned order, this petition and application are dismissed while refraining to comment upon the merits of the case, lest it may prejudice petitioner before the trial court.

(SUNIL GAUR)
JUDGE

AUGUST 17, 2015
s/r