

* IN THE HIGH COURT OF DELHI AT NEW DELHI

Date of decision: 29th January, 2015

+ CRL.M.C. 3812/2014
MOHAN LAL

..... Petitioner

Through: Mr. Gaurav Bhargava & Mr. Raj
Kamal, Advocates along with
petitioner in person

versus

STATE & ANR.

..... Respondent

Through: Ms. Fizani Hussain, APP along with
SI Subhash Chandra, PS Mukherjee
Nagar
Mr. Pankaj Kumar Rajan Advocate
for R-2

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CORAM:

HON'BLE MS. JUSTICE SUNITA GUPTA

: SUNITA GUPTA, J. (ORAL)

1. This is a petition u/s 482 Cr.P.C. filed by the petitioner for quashing the charge sheet dated 16th March, 2010 in FIR No. 302/08 u/s 448/452/506 IPC registered with PS Mukherjee Nagar; framing of charge/notice dated 4th July, 2014 against the petitioner by learned MM.

2. During the course of argument, it is submitted by the learned counsel for the petitioner that earlier he had filed a petition bearing CrI.M.C.No.2472/2011 for quashing of FIR and the matter was referred to the Mediation but the same could not be settled. While disposing of petition, vide order dated 10th December, 2013, learned Metropolitan Magistrate was directed to deal with the pleas raised by the petitioner by passing a speaking and reasoned order, however,

without considering the application moved by the petitioner seeking his discharge and the submissions made by him, notice for offence under Section 323/354/506 IPC was served upon the petitioner which order is liable to be set aside.

3. The submission has force. While disposing of the petition filed by the petitioner following order was passed:-

“... this petition is disposed of with liberty to petitioner to urge the pleas taken herein before the trial court at the stage of hearing on the point of charge and if it is so done, then trial court shall deal with the pleas raised herein by passing a speaking and reasoned order. Till the time arguments on the point of framing of charge are heard, personal appearance of petitioner be not insisted upon by the trial court, provided petitioner is duly represented through counsel, who does not seek adjournment. However, it is made clear that if petitioner delays the proceedings before the trial court, then petitioner will not have the benefit of exemption from personal appearance extended to him by this Court. If the trial court finds that no case is made out against petitioner, then this order will not stand in the way of trial court to discharge petitioner and if trial court chooses to proceed against petitioner, then trial court shall obtain the presence of petitioner. Needless to say, if trial court chooses to frame charges against petitioner, then petitioner shall be at liberty to avail of the remedy as available to him in law, if so advised.

4. However, following order was passed by the learned MM on 4th July, 2014:-

“ 04.07.2014
Ld. Substitute APP for the State.
Accused with counsel.
Complainant with counsel.
Arguments qua charge heard at length.
Put up for order on charge at 2.00 pm.

(Shefali Barnala Tandon)
MM: MC:NW: Rohini
04.07.2014

“ At 2.00 PM
Ld. Substitute APP for the State.
Accused with counsel.
Record perused.
I have gone through the statement of complainant recorded u/s 161 Cr.P.C., charge sheet and annexing documents.
After hearing arguments and on perusal of material on record, I am of the considered opinion that prima facie notice for the commission of offence

punishable u/s 323/354/506 IPC appears to be made out against the accused namely Mohan Lal.

Accordingly, notice for commission of offence punishable u/s 323/354/506 IPC framed against accused to which accused pleaded not guilty and claimed trial.

Put up the matter for PE on 24th September, 2014.

Complainant be summoned for the said date.

(Shefali Barnala Tandon)

MM: MC:NW: Rohini

04.07.2014”

5. A perusal of the order goes to show that although the arguments on charge were heard at length but a reasoned and speaking order dealing with the contentions of petitioner was not passed by the learned Trial Court while framing notice against him.

6. Learned Additional Public Prosecutor for the State submitted that the impugned order be set aside and the learned Metropolitan Magistrate be directed to pass a speaking order.

7. Accordingly, the petition is allowed to the extent that the impugned order dated 4th July, 2014 passed by Ld. Metropolitan Magistrate framing notice under Section 323/354/506 IPC is set aside.

8. It is stated that the matter is listed before the learned Trial Court on 19th February, 2015. Parties are directed to appear before the Ld. Metropolitan Magistrate on the date fixed. It is impressed upon the learned Metropolitan Magistrate to pass a reasoned and speaking order within six weeks thereafter.

9. With these directions, the petition stands disposed of.

(SUNITA GUPTA)
JUDGE

JANUARY 29, 2015

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