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

Judgment delivered on: 06th October, 2015

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CRL.M.C. 5058/2014

ABHISHEK KUMAR

..... Petitioner

Represented by: Mr. Mayank Jain, Advocate
with Petitioner in person.

Versus

STATE & ORS

..... Respondents

Represented by: Mr. Ravi Nayak, APP for the
State.
Mr. Sarvesh Kumar,
Advocate for Respondents
No. 2 to 4.

CORAM:

HON'BLE MR. JUSTICE SURESH KAIT

SURESH KAIT, J. (Oral)

1. Vide the present petition, the petitioner has assailed the orders dated 03.10.2013 passed by the learned Metropolitan Magistrate, Tis Hazari Courts, Delhi, in case bearing FIR No.233/2009, registered at Police Station Kotwali and order dated 08.05.2014 passed by the learned Additional Sessions Judge in Criminal Revision No.143/2013.

2. The present petition has been filed on the ground that both the courts below have wrongly concluded that the facts of the complaint dated 17.08.2009 and the FIR No.233/2009 are exclusive and have nothing to do with each other except the fact that both the incidents are attributed to same set of accused persons. Whereas, in fact, both the incidents form

same part of transaction which has been done for the same motive, i.e., to convert the room of Krishna Guest House into a shop, which was not possible without removing the Almirah of the father of the petitioner from one of the door of the room falling on the street side or without breaking open the locks of the said Almirah.

3. The courts below have also not appreciated that police has provided the information in response to the RTI application that the complaint dated 17.08.2009 has been made a part and parcel of FIR No.233/2009, and, therefore, the police was required to investigate the two complaints collectively and it cannot file the chargesheet without investigating an important aspect of the matter.

4. Learned counsel further submits that both the courts below also failed to appreciate the provisions mentioned under Section 220(1) Cr.P.C., which provides as under:-

“220.Trial for more than one offence.-

(1) If, in one series of acts so connected together as to form the same transaction, more offences than one are committed by the same person, he may be charged with, and tried at one trial for, every such offence.”

5. Learned counsel submits that when the two offences were reported to the SHO, PS Kotwali, vide complaint dated 17.08.2009 and 18.08.2009, are so connected as to form same transaction, then the accused persons were required to be charged with and tried at one trial for such offences.

6. On perusal of the order dated 03.10.2013 passed by the learned Metropolitan Magistrate, it is recorded therein that the FIR in question was registered at the instance of complainant/petitioner on 18.08.2009 in respect of the offence committed against him by all the accused persons in the nature of simple hurt, wrongful restraint and intimidation. It was averred by the complainant/petitioner that his father made a complaint on the intervening night of 17th and 18th August, 2009 in respect of certain offences committed by the accused persons at the relevant time. The police has not taken into consideration the said complaint made in the intervening night of 17th and 18th August, 2009 by petitioner's father while conducting investigation in the present FIR, although he has been informed under the RTI provisions that the said complaint forms a part of the chargesheet filed in the present case.

7. It is further noted by the learned Metropolitan Magistrate that from the averments/allegations made in the said complaint, it was revealed that the same pertains to the allegations of removal of the locks put upon an almirah by the father of the complainant in Krishna Guest House apart from allegations of theft of certain articles retained in the said almirah. Vide the said application, father of the complainant/petitioner prays to the police to get his stolen cash recovered as also the possession over the almirah in question.

8. Moreover, an apprehension was raised by the father of the petitioner in the said application that the accused Ashok Kumar could hand over the possession to some third party. The said application was received in the Police Station concerned vide DD No. 67B on the intervening night of 17th and 18th August, 2009, around 22:40 hours.

Thus, the facts stated in the complaint and the FIR mentioned above are mutually exclusive and have nothing to do with each other except the fact that both the incidents were attributed to the same set of accused persons. In the absence of any co-relation between two instances as referred above, separate incidents were dealt with separately and individually at the stage of investigation/inquiry. When the complaint made in the intervening night of 17th and 18th August, 2009 by father of the petitioner that pertains to a separate incident which allegedly occurred previous to the offences investigated after the registration of present FIR.

9. Keeping in view these facts, the learned Metropolitan Magistrate dismissed the application of the petitioner.

10. Being aggrieved, the petitioner challenged the same in Revision Petition No.143/2013. The same was also dismissed by the learned Additional Sessions Judge vide order dated 08.05.2014.

11. It is not in dispute that case bearing FIR No.233/2009 was registered on the complaint of the petitioner and the police had investigated the said complaint, filed the chargesheet in accordance with law. It is not the case of the petitioner that the police had let out certain accused persons or added the witnesses and that he had filed the complaint in question attributing specific role to the accused persons.

12. It is pertinent to note that what had been stated earlier by the father of the petitioner, who reported the matter to the police on the previous date and the written complaint filed by the petitioner, this fact has come to the knowledge of the petitioner through RTI and that the police had made

the same part and parcel of the chargesheet filed in the present case and had not investigated it separately.

13. In view of the facts noted above, it is established that there were two exclusive instances and the same do not pertain to the same set of offence as the complaint filed by the father of the petitioner refers to the incident of previous date while the written complaint made by the petitioner pertains to separate incident. Thus, the same cannot be clubbed together and tried together.

14. Considering the statements of the witnesses, if commission of other offence is disclosed, then the learned Metropolitan Magistrate is at liberty to take cognizance of the offence accordingly but not in the present case.

15. Accordingly, I am of the considered view that there is no perversity and illegality in the orders passed by the two courts below.

16. In view of the above, I do not find any merit in the present case. The is accordingly dismissed.

17. However, the petitioner is at liberty to pursue his complaint dated 17th/18th August, 2009 before the appropriate Forum.

**SURESH KAIT
(JUDGE)**

OCTOBER 06, 2015
Sb/RS