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

Judgment delivered on: 6th July, 2015

+ CRL.M.C. 2633/2015

JAI PRAKASH SINGH Petitioner
Represented by: Petitioner in person

Versus

STATE OF DELHI (NCT) Respondent
Represented by: Mr. M.N. Dudeja, APP
for the State.
SI Sanjeev Kumar, PS Connaught Place.

**CORAM:
HON'BLE MR. JUSTICE SURESH KAIT**

SURESH KAIT, J. (Oral)

CRL M.A. No.9418 of 2015 (Exemption)

Exemption allowed subject to all just exceptions.

The application is disposed of.

CRL.M.C. 2633/2015

1. Vide the present petition, petitioner seeks direction thereby setting aside the impugned order dated 16.03.2015 passed by learned ASJ-02/FTC New Delhi District, Patiala House Courts and remaining accused may be directed to be summoned by the Trial Court.

2. The facts of the case are that vide FIR No.701/99, a case was registered on 26.09.1999 at PS Connaught Place for the offences punishable under sections 420/468/471/120B IPC against the accused persons, namely, Ranjodh Singh, Daljeet Singh, Kuldeep Singh, Yadvinder Singh, Amarjeet Singh and Karnail Singh. The accused Daljeet Singh and Kuldeep Singh were arrested by the police. Both the accused were Directors of the company M/s Neer Tara Shelters Pvt. Ltd.

3. The petitioner is appearing in person and submits that during investigation, the Investigating Officer was behind the blood of the petitioner and his wife, thus apprehending arrest the petitioner approached the District Court for anticipatory bail, but the same was declined. Thereafter, the petitioner approached this Court and the same was considered and their arrest was stayed till further orders.

4. On 26.02.2000, the IO filed the chargesheet against the accused, namely, Daljeet Singh and Kuldeep Singh under section 420/467/468/471/120B IPC, while recording in the chargesheet that the investigation has been conducted in the aforesaid FIR on the basis of the statements under section 161 CrPC and documents recovered by the IO.

5. Thereafter, on 07.04.2000, the IO filed a supplementary chargesheet against the accused Daljeet Singh and Kuldeep Singh wherein it is mentioned that accused namely Ranjodh Singh has

expired and that further investigation will continue and very soon supplementary chargesheet will be filed.

6. The petitioner further submitted that on 25.04.2002, third chargesheet was filed wherein the petitioner and his wife were impleaded as co-accused while the other accomplices, named as under, were not impleaded:-

- i. Veeru Dhasmana,
- ii. Virender Khanna,
- iii. Shivinder Singh; and
- iv. Rajiv Nayar.

7. Petitioner further submitted that the learned Trial Court issued summons against the petitioner and his wife and pursuant thereto they appeared and moved an application under section 190 CrPC. The said application was dismissed vide order dated 20.09.2014, despite the fact that the concerned IO did not appear and gave no clarification, the concerned court passed the said order.

8. Being aggrieved, the petitioner challenged the order dated 20.09.2014 by way of Criminal Revision No.108/14. The same was also dismissed vide order dated 16.03.2015. The petitioner submits that in his statement recorded under section 161 CrPC, he has specifically mentioned the name of the above our persons, despite that the IO has not made the said persons as accused in the chargesheet. He submits that when during investigation if name of

any of the accused come in the notice of the IO those persons have to be impleaded as accused.

9. The fact remains that on 25.04.2002, a supplementary chargesheet was filed against Jai Prakash Singh (petitioner herein) and his wife Smt. Chinta Singh. Thereafter, vide order dated 25.09.2003, summons were issued against them and they appeared before the Court. The learned MM vide its order dated 20.09.2014 passed the order as under:-

“File perused. Arguments on the application dated 04.07.2008 moved on behalf of accused J P Singh and Chita Singh have been heard. Application gone through. Accused J P Singh stated that there is sufficient evidence against other persons namely, Veeru Dhasmana, Virender Khanna, Shivinder Singh and Rajiv Nayar, however despite their involvement, the prosecution has not filed chargesheet against them. With these submissions, accused prays for summoning of the abovesaid persons in the present case as accused persons.

On the other hand, Ld. APP for State strongly opposed the abovesaid application on the ground of its maintainability and prays for dismissal. Record reveals that accused persons have already summoned by the Ld. Predecessor Judge of this court on filing of chargesheet/ supplementary chargesheets. Record further reveals that case has already been fixed for

arguments on the point of charge vide order dated 11.05.2009 and the stage of summoning of the additional persons as accused persons has already gone and the stage of Section 319 Cr.P.C. has yet to come. Hence, keeping in view the facts of the case, the present application is not maintainable and is hereby dismissed.

Put up for arguments on the point of charge
on 13.11.2014”

10. Being aggrieved, the petitioner filed revision against above order passed by Ld. MM. The learned revision Court has relied upon a case of *M/s Swil Ltd. vs. State of Delhi & Anr. Appeal (Crl.) 820 of 2001 decided on 14.08.2001* wherein the FIR was registered on 28.08.1997. In the charge-sheet one accused was shown in column no.2. On 03.08.1999 the Magistrate issued summons to all the accused shown in the FIR and on the next date of hearing on 20.12.1999 issued summons to the accused. The summons issued were challenged before the Hon'ble High Court which set aside the same on the ground that as the accused was not shown in the column of accused persons in the charge-sheet, he could have been summoned only under Section 319 of the Cr.P.C. after evidence was recorded. Accordingly, the Supreme Court set aside the order of the High Court and held that the Magistrate had summoned the accused while exercising his jurisdiction under Section 190 of the Cr.P.C. and that there was no bar under the said

provision that once process was issued against some accused, the Magistrate could not issue process against some other accused against whom there was some material in the charge-sheet.

11. However, in the present case, the supplementary charge-sheet against the petitioner was filed on 25.04.2002 and by order dated 25.09.2003, summons were issued to the petitioner. The petitioner, who is an accused in this case, moved an application under Section 190 of the Cr.P.C. on 04.07.2008, i.e. after a gap of more than six years after filing of the charge-sheet against him.

12. No doubt, after seeing statements recorded under section 161 CrPC of the witnesses such as PW-4, PW-8, PW-12 to PW-15, the police has filed the chargesheet against the respective accused persons, including the petitioner. The IO might not have found any evidence against the four persons named above, therefore, has not filed chargesheet against them.

13. But it is a fact that IO of the case is not the final authority. If it comes before the court that some other persons are also involved in the offence, the court has power to issue summons under section 319 CrPC. It is not necessary that at this stage itself summons should be issued against any other person. The trial court as well as the revision court recorded its satisfaction and stated that the case is pending for argument on charge and the petitioner has come belatedly before the court.

14. Dismissal of the application of the petitioner under section 190 CrPC does not close the case; and if on the allegations made by the petitioner or the witnesses mentioned above, during trial, the learned trial court finds that there is material against the four persons named above, certainly the trial court is not powerless and it can accordingly summon those persons under section 319 CrPC.

15. The present petition is under section 482 CrPC and directions can be issued on limited grounds. The petitioner has failed to establish any illegality or perversity in the orders passed by the two courts below. Therefore, I am not inclined to interfere with the impugned order.

16. In view of the above, the petition is dismissed with no order as to cost.

CRL M.A. No.9417 of 2015 (Stay)

Dismissed as infructuous.

SURESH KAIT, J

JULY 06, 2015
RS