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

Judgment delivered on: 15th September, 2015

+ **CRL.M.C. No.3809/2015**

S P SINGH AND ORS

..... Petitioners

Represented by: Mr. Jai Gopal Garg,
Advocate.

Versus

STATE OF DELHI

..... Respondent

Represented by: Mr. Hirein Sharma,
Additional Public Prosecutor
for the State with SI Rambir
Singh, P.S. New Ashok
Nagar.

CORAM:

HON'BLE MR. JUSTICE SURESH KAIT

SURESH KAIT, J. (Oral)

CRL.M.C. No.3809/2015

1. By way of this petition filed under Section 482 of the Code of Criminal Procedure, 1973, petitioners seek setting aside of the order dated 04.04.2015 passed by the learned Additional Sessions Judge, Karkardooma Courts, Delhi, and to restore the order of discharge dated 22.08.2014 passed by the learned Additional Chief Metropolitan Magistrate (ACMM) of aforesaid Court.

2. Brief facts of the case are that one Ms. Neelam Singh filed a complaint against the petitioners under Sections 147/148/149/323/

494/506/34 of Indian Penal Code, 1860 ('IPC') alongwith an application under Section 156 (3) of Criminal Procedure Code, 1973 ('Cr.P.C.') in the court of learned ACMM.

3. After hearing arguments on the application, the learned ACMM passed the order dated 19.01.2006, whereby directed SHO PS New Ashok Nagar to register a case under the appropriate provisions of Law and to file a compliance report within three days. Accordingly, a case under Sections 323/494/506/34 IPC was registered and chargesheet under Section 173 Cr.P.C. was filed on 28.06.2006 in the Court. The petitioners were summoned by the learned Trial Court under Sections 323/494/506/34 IPC. Thereafter, the petitioners were admitted on bail.

4. The arguments on point of maintainability of the case was heard by the learned ACMM and vide order dated 22.08.2014, the petitioners were discharged from the offences mentioned above.

5. The learned ACMM passed the aforesaid order after observing that offences under Sections 323/506/494 IPC are non-cognizable and investigation of those Sections in absence of any cognizable offence can only be carried out after seeking permission from the Magistrate under Section 155 Cr.P.C., which was not taken in the present case.

6. Accordingly, the learned Trial Court relied upon the case of ***Narendra Kumar and Others Vs. State and Others, 2004 Cr.L.J. 2594*** of this Court, whereby Notification of 1933 making offence punishable under Section 506 IPC cognizable had been quashed. Accordingly, observed that no permission was taken by the Investigating Agency under Section 155 Cr.P.C. before investigating into the non-cognizable offences.

7. Consequently, the learned ACMM held that the Court cannot take cognizance of the offence punishable under Section 494 IPC on the basis of police report, thus, the charge framed on the said basis cannot be sustained.

8. The aforesaid order was challenged in Criminal Revision No. 104/2014, which was disposed of vide order dated 04.04.2015 by the learned ASJ.

9. Learned counsel appearing on behalf of the petitioner submits that there is bar under Section 198 Cr.P.C., therefore, the police cannot take cognizance of the offences which are non-cognizable in nature. Since offences punishable under Sections 323/494/506 IPC are of non-cognizable nature, therefore, the police had wrongly registered a case against the petitioners and taken cognizance.

10. As stated by the learned counsel for the petitioners that the complainant had filed a complaint and a case has been registered by the police for non-cognizable offences. Also submits, the complaint shall continue and let complainant lead evidence before framing of charge and opportunity be given to the petitioners to cross-examine the witnesses.

11. Section 198 Cr.P.C. provides that no court shall take cognizance of any offence punishable under Chapter XX of IPC except upon complaint of aggrieved person. This Section is mandatory in nature. As offence under Section 494 IPC falls under Chapter XX, it is required that a complaint is to be made by an aggrieved person.

12. In the case in hand, the first wife Ms. Neelam Singh had indeed

filed a complaint case. Accordingly, an FIR came to be registered consequent upon her application under Section 156 (3) Cr.P.C. and a chargesheet came to be filed after completion of the investigation.

13. As regards two other offences under Sections 323/506 IPC are concerned, before dealing with the same, it is necessary to peruse provisions of Section 2(d) Cr.P.C., which read as under:-

“ 2(d) “complaint” means any allegation made orally or in writing to a Magistrate, with a view to his taking action under this Code, that some person whether known or unknown, has committed an offence, but does not include a police report.

Explanation – A report made by a police officer in a case which discloses, after investigation, the commission of a non-cognizable offence shall be deemed to be a complaint; and the police officer by whom such report is made shall be deemed to be the complainant.”

14. Perusal of the aforesaid provisions shows that if after investigation of a case, which was done in a cognizable case, it is found that non-cognizable offence(s) is made out then police report is to be considered as a complaint and the Investigating Officer is to be considered as the complainant.

15. Accordingly, it was opined by the learned Revisional Court that the learned ACMM has failed to notice the said provisions and the fact that investigation was started upon directions of the Magistrate. Accordingly, there was permission from the Magistrate to investigate cognizable as well non-cognizable offences. Thus, there could not have been any defect in taking cognizance of the non-cognizable offences. There was implied

permission to investigate even the non-cognizable offence(s) as well. Directions given under Section 156(3) Cr.P.C. contained permission under Section 155 Cr.P.C. also. Even otherwise, the police report could be considered as a complaint and cognizance could be taken.

16. So far as offence punishable under Section 494 IPC is concerned, the complainant/aggrieved person had already filed a complaint case which had been clubbed with the main case. There was nothing wrong in taking cognizance of the said offence.

17. The fact remains that the police has already taken action under Section 156 (3) Cr.P.C. and even chargesheet has also been filed, therefore, in view of the above recorded facts, there is no substance in the submissions made by learned counsel for the petitioners.

18. Keeping in view the statutory provisions and facts recorded above, I am of the considered opinion that there is no illegality or perversity in the order dated 04.04.2015 passed by the Revisional Court.

19. Accordingly, finding no merit in the instant petition, the same is dismissed.

Crl. M.A.No. 13517/2015 (for stay)

With the dismissal of the petition itself, the instant application has become *infructuous*. The same is accordingly dismissed.

**SURESH KAIT
(JUDGE)**

SEPTEMBER 15, 2015/sb