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

+ CRL.REV.P. 312/2016

SUBHASH BANSAL

..... Petitioner

Through: Mr.B.K.Pandey, Advocate

versus

STATE

..... Respondent

Through: Mr.Sudershan Joon, APP for the State
with SI Roshan Lal PS Nangloi

CORAM:

HON'BLE MS. JUSTICE PRATIBHA RANI

ORDER

% **27.04.2016**

CRL.M.A.6778/2016

For the reasons stated in the application the delay in filing of the revision petition is condoned.

The application stands disposed of.

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1. This revision petition has been preferred by the petitioner impugning the order dated 18th September, 2015 whereby notice under Section 251 Cr.P.C. for offences punishable under Sections 288/304-A IPC was served on him to which he is pleaded not guilty.
2. The offence for which the petitioner is facing trial is a summon trial.
3. At this juncture, it would be worthwhile to reproduce Section 251 of the Code of Criminal Procedure, which is as under:

“251. Substance of accusation to be stated.

When in a summons-case the accused appears or is brought before the Magistrate, the particulars of the offence of which he is accused shall be stated to him, and he shall be asked whether he pleads guilty or has any defence to make, but it shall not be necessary to frame a formal charge.”

4. On bare reading of Section 251 it is manifest that at this stage all that is required under Section 251 of the Code is that the substance of the accusation is to be stated and the accused is to be asked whether he pleads guilty or has any defense to make. It is also not necessary to frame a formal charge.

5. Chapter XX which provides for the procedure for trial of summons cases, contains Sections 251 to 259. Section 251 provides that when an accused is brought before the Magistrate, the particulars of the offence of which he is accused of, shall be stated to him. After that, his plea of guilt is recorded. When a comparative study of Chapters XIX and XX is made, it makes it clear that charge has to be framed only in a warrant case and when the charge is not framed, the accused necessarily has to be discharged. This shows that the words "charge" and "discharged", are inter-linked and inter dependent and have been used only in that procedure where the charge has to be framed that is in warrant trial. Where the law does not provide for the framing of the charge there can be no question of discharge.

6. In summons cases, there is no question of discharge as the provisions do not comprehend such a situation. Under Section 251 of the Code only substance of accusation has to be stated. Technically, it might be taken akin to the framing of the charge, but when the question of discharge is to be considered relatively with this provision, it cannot be equated with the

framing of the charge.

7. None of the provisions regarding summons case speak of any possibility of discharge except under Section 258, which does not apply to the present case. From bare perusal of the aforementioned Section 251, CrPC it is clear that this provision does not empower the Magistrate to discharge the accused facing trial in summons cases. In this regard in Subramaniam Sethuraman Vs. State of Maharashtra, 2005 SCC (Crl.) 242, the Hon'ble Apex Court observed as under:

“16. The next challenge of the learned counsel for the appellant made to the finding of the High Court that once a plea is recorded in a summons case it is not open to the accused person to seek a discharge, cannot also be accepted. The case involving a summons case is covered by Chapter XX of the Code which does not contemplate a stage of discharge like Section 239 which provides for discharge in a warrant case. Therefore, in our opinion the High Court was correct in coming to the conclusion that once the plea of the accused is recorded under Section 252 of the Code the procedure contemplated under Chapter XX has to be followed which is to take the trial to its logical conclusion.

17. As observed by us in Adalat Prasad's case, (2004) 7 SCC 338, the only remedy available to an aggrieved accused to challenge an order in an interlocutory stage is the extraordinary remedy under Section 482 of the Code and not by way of an application to recall the summons or to seek discharge which is not contemplated in the trial of a summons case.”

8. In view of the above legal position, the revision petition is not maintainable and the same is hereby dismissed.

CRL.M.A.6777/2016

Dismissed.

PRATIBHA RANI, J.

APRIL 27, 2016/ 'pg'

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