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IN THE HIGH COURT OF DELHI AT NEW DELHI

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CRL.M.C. 3545/2014

NEERAJ KUMAR CHAUHAN & ORS

..... Petitioner

Through: Mr. Manoj Singh, Mr. Abhay Singh,
Mr. Abhishek Sharma, Advocate

versus

SEEMMA CHAUHAN & ANR

..... Respondent

Through: Mr. H.C. Mittal, Advocate for
respondent No. 1

CORAM:

HON'BLE MR. JUSTICE P.S.TEJI

ORDER

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10.08.2016

By this petition filed under Section 482 of Cr. P.C., the petitioner is seeking an order thereby setting aside the impugned order dated 31.05.2014 passed by the learned Additional Sessions Judge – 05, Rohini Courts, Delhi, in Crl. Revision No.18 of 2014 filed against the order dated 03.07.2013 passed by learned Metropolitan Magistrate in CC No.125/03/2008.

The learned Metropolitan Magistrate had passed the order dated 27.07.2010 thereby disposing the petition being compromised. However, vide order dated 03.07.2013 the court restored the complaint to its original stage.

It is the submission of learned counsel appearing on behalf of

the petitioner that once the complaint has been finally decided and the file is consigned to record room, the Magistrate does not have any power to recall the order and file from the record room to review its decision. It is further submitted that the review petition was filed against the order dated 03.07.2013 which has been dismissed by the learned Additional Sessions Judge vide order dated 31.05.2014 on the ground that it is not maintainable and as a result of the same the petitioner has approached this court under Section 482 of Cr. P.C.

On the other hand, learned counsel for the respondent has submitted that the order dated 27.07.2010 was not passed on the merit and it was passed only on the basis of settlement arrived at between the parties, therefore, the Magistrate was well within its power to restore the original complaint or the petitioner could have filed the fresh complaint under Section 300 of Cr. P.C. as the decision was not on the merit of the case.

The further submission made by learned counsel for the respondent is that in the facts and circumstances of this case, the petitioner chose to file the application for restoration which was allowed by the learned Metropolitan Magistrate and even in the absence of the restoration order, the petitioner had still a remedy to file a fresh complaint on the same facts. But the petitioner was bonafidely using the remedy of the restoration as the counsel was of the opinion that under Section 28(2) of the Domestic Violence Act the Magistrate could have formed its own procedure and only he could have recalled the same.

After hearing the parties, this court is of the considered opinion that the Magistrate has been appointed under the Cr. P.C. and is governed by the Cr. P.C. and as per the Domestic Violence Act itself, the provisions of Cr. P.C. are applicable, however, the Cr. P.C. does not empower the Magistrate to review its order and in the considered opinion of this court, the Magistrate could not have laid its own procedure contrary to the Cr. P.C. Consequently, the present petition is disposed of with the observation that the restoration of the order does not survive. However, the respondent shall be at liberty to file fresh complaint, if permitted in law, within a period of 15 days and it shall be treated as complaint filed on the date 26.06.2012 and shall proceed in accordance with law.

It is made clear that the period already spent in the bonafide litigation shall not come in the way of filing the fresh complaint.

With aforesaid directions, the present petition is disposed of.

P.S.TEJI, J

AUGUST 10, 2016

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