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

+ CRL.M.C. 1852/2016

MANOJ BIHARI & ANR Petitioner

Through Mr.Ashok Agrawal and Mr.Anuj
Kapoor, Advs.

versus

STATE OF NCT OF DELHI & ANR Respondent

Through Mr.Izhar Ahmad, APP.

CORAM:

HON'BLE MR. JUSTICE P.S.TEJI

ORDER

% **13.05.2016**

Crl.M.A. 7859/2016 (Exemption)

Application is allowed subject to just exceptions.

Crl.M.C. 1852/2016 & Crl.M.A. 7858/2016 (Stay)

Counsel for the petitioners has submitted that in the present case complaint bearing CC No.170/1/10 has been filed against the petitioners in which the application under Section 156(3) Cr.P.C. was filed before the Trial Court which has been dismissed vide order dated 28.01.2009. The grouse of the petitioners is that the complaint is being proceeded with and during the pendency of the complaint prior to the passing of the summoning order dated 21.06.2012, order on the application under Section 156(3) Cr.P.C. of the complainant/respondent no.2 was passed and the status report was called. Thereafter on the basis of the status report, application under

Section 156(3) Cr.P.C. was declined on 28.01.2009. Thereafter, evidence was recorded and the summoning order was passed against the petitioners on 21.06.2012. Subsequently, the petitioners appeared before the Trial Court in pursuance of the summoning order and pre-charge evidence was recorded on 04.03.2013 and 04.07.2013. The parties submitted before the Trial Court that they wanted to enter into compromise and the matter was adjourned. Thereafter, the matter remained pending for settlement proceedings. It is however mentioned that on 11.01.2016, an application under Section 311 Cr.P.C. was filed and the same was dismissed. Thereafter, the petitioners absented themselves from the Trial Court and Bailable Warrants were issued against them. Thereafter, accused persons appeared before the Trial Court on 23.03.2016 and now the matter has been adjourned to 03.06.2016 giving last opportunity to the petitioners to cross-examine the complainant witness in pre-charge evidence.

Counsel for the petitioners has submitted that the status report filed on 03.09.2008 in pursuance of the filing of the application under Section 156(3) Cr.P.C. has not been taken into account by the Trial Court while issuing the summoning order dated 21.06.2012.

In the facts and circumstances, it is evidence that the status report was called in the application under Section 156(3) Cr.P.C. and relying on the same, the application under Section 156(3) Cr.P.C. was dismissed in 2009. Thereafter, the summoning order was passed. Apparently, the summoning order was never challenged till the date and as on today, the petitioners are seeking setting aside of the order

dated 21.06.2012 summoning the petitioners and that too on the basis of the status report which was called for a limited purpose i.e. for deciding the application under Section 156(3) Cr.P.C., cannot be a ground for setting aside the summoning order.

Consequently, the present petition as well as CrI.M.C. 7858/2016 are dismissed.

P.S.TEJI, J

MAY 13, 2016
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