

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

% Decided on: 5th December, 2016

+ **CRL.M.C. 3081/2016 & Crl.M.A. 13280/2016 (stay)**

YASHODA SHARMA

..... Petitioner

Represented by: Mr. Nishit Kush, Mr. Sanjeev
K. Balyan, Mr. Nirbhay
Sharma, Ms. Shivani Tyagi,
Advs.

versus

STATE

..... Respondent

Represented by: Mr. Ashok Kumar Garg, APP.
Mr. Sachin Sangwan, Adv. for
R-2.

CORAM:

HON'BLE MS. JUSTICE MUKTA GUPTA

MUKTA GUPTA, J. (ORAL)

1. Despite service none is present on behalf of respondent No.3.
2. Respondent No.3 who is an accused in case FIR No.283/2007 registered at PS Vasant Vihar filed an application under Section 319 Cr.P.C. wherein four accused i.e. Janardan Rai, Baleshwar Rai, Yashoda Sharma, the petitioner herein and P.K.Srivastava were summoned. The allegations in the FIR were that on 2nd July, 2007 at about 8.00 AM at Upras Vidhayalaya, Vasant Marg, Vasant Vihar, Hira Lal outraged the modesty of respondent No.2 by obstructing her way and wrongfully restraining her and also caused simple injury.

3. In her testimony PW-4/ respondent No.2/ complainant of above-noted FIR stated that besides Hira Lal there were four other accused persons, namely Baleshwar Rai, Janardan Rai, P.K. Srivastava and Smt. Yashoda Sharma. On an application filed by Hira Lal, the four above-noted accused were also summoned.

4. Challenging the said order revision petitions were filed by the three summoned accused i.e. Baleshwar Rai and Janardan Rai. Revision petition of Baleshwar Rai and Janardan Rai were allowed remanding the matter back to the learned Metropolitan Magistrate to hear them whether any issue for charge is made out or not. Later petitioner also filed a revision petition which was dismissed only on the ground that there was lapse of 21 months in filing the revision petition i.e. order summoning the accused was passed by the learned Trial Court on 30th May, 2014, however the revision petition was filed on 25th February, 2016.

5. Learned counsel for the petitioner submits that pursuant to the order dated 30th May, 2014 issuing summons to the petitioner, however the petitioner was not even served for 28th November, 2015. The order dated 28th November, 2015 passed by the learned Metropolitan Magistrate reads as under:

“28.11.2015.

*Present: Ld. APP for the State
Counsel Sh. Pankaj Kumar for the accused along
with accused Hari Lal in person.
Accused Baleshwar Rai, Janardhan Rai, Yasoda
Sharma and P.K. Srivastava are absent.*

As per order dated 30.05.2014 the abovenamed four absentee accused persons were summoned. However, vide an order of Ld. ASJ Sh. Raj Kapoor dated 10.09.14 and another order of Ld. ASJ Sh. Amit Bansal dated 24.02.2015, the said order dated 30.05.2014 qua accused Janardhan Rai and Baleshwar Rai have been set aside with directions to pass a fresh orders.

No challenge of the said order has been preferred by other two accused persons, who are absent despite calls. Therefore, let notice be issued to both the said accused persons, Yasoda Sharma and P.K. Srivastava through IO/SHO concerned.

Put up for appearance of said persons / further consideration on 30.01.2016.”

6. It is thus evident that though the petitioner and three other accused were summoned on 30th May, 2014 there is nothing on record to suggest that the petitioner had received the summons and thus she was also obliged to file a revision petition. Since no summons were served, the learned Metropolitan Magistrate was constrained to issue fresh notice to the petitioners on 28th November, 2015 returnable for 30th January, 2016 on which day the petitioner appeared through counsel.

7. Considering the fact that fresh summons were issued to the petitioner only on 28th November, 2015 and there is no material whatsoever to show that the petitioner had been summoned earlier, the objection of the learned Additional Sessions Judge in the impugned order dated 26th April, 2016 that the revision petition was filed belatedly i.e. after 21 months of passing of the order dated 30th May, 2014 summoning them, deserves to be set aside for the

reason the learned ASJ failed to note that though summons were issued but they were not served on the petitioner. The cause of action accrued to the petitioner only on service of the summons. Consequently, the order dated 26th April, 2016 is set aside and the petitioner is also entitled to the benefit of the order dated 10th September, 2014 whereby the learned ASJ set aside the impugned order dated 30th May, 2014 summoning Janardan Rai and Baleshwar Rai with directions to the Trial Court to pass a reasoned and speaking order in view of the law laid down. The order dated 30th May, 2014 passed against the petitioner is also set aside. The learned Metropolitan Magistrate would pass a speaking order after considering the evidence of PW-4 the complainant and legal position whether a case is made out for summoning the petitioner or not.

8. Petition and application are disposed of. Order dasti.

(MUKTA GUPTA)
JUDGE

DECEMBER 05, 2016
‘ga’