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

DECIDED ON : 9th SEPTEMBER, 2016

+ **CRL.M.C.2386/2015**

MISS.Y (Changed name) Petitioner

Through : Mr.Gurbaksh Singh, Advocate with
Mr.Avtar Singh, Advocate.

versus

THE STATE & ANR. Respondents

Through : Mr.Arun K.Sharma, APP.
Mr.Sudarshan Rajan, Advocate with
Md.Qamar Ali & Mr.Arjun Gadhoke,
Advocates for R2.

**CORAM:
HON'BLE MR. JUSTICE S.P.GARG**

S.P.GARG, J. (Oral)

1. Present petition under Section 482 Cr.P.C. has been preferred by the petitioner to challenge the legality and correctness of an order dated 17.03.2015 of learned Addl. Sessions Judge in case FIR No.186/11 registered at PS C.R.Park whereby case committed to the Court of Sessions under Section 323 Cr.P.C. by the learned Metropolitan Magistrate was remanded with the directions to arrive at a fresh finding after recording victim (PW-3)'s statement completely whether it was a case triable by the Sessions. Petition is contested by respondent No.2 (hereinafter referred as 'accused').

2. I have heard the learned counsel for the parties and have examined the file.

3. Admitted position is that the accused was facing trial in a case registered vide FIR No.186/11 under Sections 506/509 IPC registered at PS C.R.Park before the Court of learned Metropolitan Magistrate. On 19.11.2012, he was charged for commission of the said offences. The complainant / petitioner examined herself as PW-3. On various dates, her examination-in-chief was partly recorded. In her Court statement, she levelled allegations of rape against the accused. The Trial Court vide its order dated 09.03.2015 came to the conclusion that the case should be tried by the Sessions Court and committed it under Section 323 Cr.P.C. The Sessions Court upon committal remitted the case observing that complete examination of the complainant was necessary to ascertain if it was just and proper to exercise powers under Section 323 Cr.P.C.

4. Section 323 Cr.P.C. contemplates the procedure as to when the Magistrate should commit the case before the Court of Sessions. It reads :

“Section 323 - Procedure when, after commencement of inquiry or trial, Magistrate finds case should be committed

If, in any inquiry into an offence or a trial before a Magistrate, it appears to him at any stage of the proceedings before signing judgment that the case is one which ought to be tried by the Court of Session, he shall commit it to that Court under the provisions hereinbefore contained [and thereupon the provision of Chapter XVIII shall apply to the commitment so made].”

5. Section 323 Cr.P.C. confers powers upon the Magistrate to commit any case to the Court of Sessions, even if it is not exclusively triable by that Court. The provision is independent and does not make an inroad into Section 209 Cr.P.C. The provisions can be invoked by the Magistrate suo moto or on an application of any of the parties. Power of the Magistrate under Section 323 Cr.P.C. is discretionary but has to be exercised judicially and not arbitrarily. It can be exercised at any stage of the proceedings.

6. Apparently, to invoke the provisions of Section 323 Cr.P.C, the Magistrate during inquiry or trial, if he comes to the conclusion, on the materials placed before him, that the case has to be committed to the Sessions, he has no other alternative but to commit the case to the Sessions. What is essential for the commitment of the case to the Court of Sessions is merely the 'opinion' of the Magistrate that the case is one which ought to be tried by the Court of Sessions.

7. In the instant case, the learned Metropolitan Magistrate has indicated valid reasons for committal of the case to the Court of Sessions under Section 323 Cr.P.C. It is based upon materials on record and is not whimsical. The prosecutrix had examined herself as PW-3 on various dates levelling allegations of commission of rape by the accused. The learned Trial Court on scanning her partly-recorded statement committed the case to the Court of Sessions being exclusively triable by it under Section 323 Cr.P.C. as it was of the 'opinion' that a case under Section 376 IPC has been made out. Learned counsel for the respondent No.2 urged that during the course of cross-examination, the accused, if permitted would have made out the case to show that the prosecutrix was levelling false allegations of commission of rape. I am of the considered view that in view of the specific

provisions of Section 323 Cr.P.C. the Magistrate has committed the case in question on the material placed before him to the Sessions Court and if the accused wants to prove that the complainant was uttering falsehood, nothing prevents him to cross-examine the witness to testify the veracity when the case is taken up by the Sessions Court.

8. This Court in '*Bal Kishan S/o Sh.Harbans Lal, New Delhi vs. Local Health Authority, Department of PRA, Govt. of NCT of Delhi State*', 99 (2002) DLT 339, discussing the ambit of Section 323 Cr.P.C. culled out the following conclusions :

"16.From the aforesaid following conclusions can be drawn:-

i) The expression "it appears to him at any stage of proceedings" will not be a substitute for satisfaction of the Magistrate that offence as such has been committed. This opinion can be formulated at any stage of the case before signing the judgment;

ii) As a general rule if the case is triable by a Magistrate, he should so try it;

iii) However, if the learned Metropolitan Magistrate has to act under Section 323 which would come in the form of an exception to what has been stated above he must record his reasons before committing the case to the Court of Sessions.

iv)Its should only be in rare cases that such commitment should be made to the court of Sessions when it is triable by a Magistrate;

v) Even if a special act provides that the case should be tried by a Magistrate still unless the Code of Criminal Procedure does not apply the

Magistrate can act in rare cases under Section 323 of the Code of Criminal Procedure; vi)The High Court ordinarily will not interfere in the discretion exercised unless it is totally arbitrary, without jurisdiction and no cogent reasons exist."

9. In the light of above, it is clear that there is no error warranting any intervention by this Court in the order of learned Metropolitan Magistrate. Impugned order dated 17.03.2015 being unsustainable is set aside.

10. The case be sent back by the learned Magistrate to the Court of Sessions for trial as per law.

11. The petition stands disposed of.

(S.P.GARG)
JUDGE

SEPTEMBER 09, 2016 / tr