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

+ **CRL. M. C. 2846/2016**

MUSTAQ HUSSAIN & ORS.

..... Appellants

Through: Mr. Shakil Ahmed Saifi and Mr. M. H. Ansari, Advocates with petitioners in person.

versus

STATE

..... Respondents

Through: Mr. Ashok Kumar Garg, APP for the State.

CORAM:

HON'BLE MS. JUSTICE SANGITA DHINGRA SEHGAL

ORDER

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11.09.2017

The present petition has been preferred by the petitioners under Section 482 Cr.PC assailing the order dated 29.04.2016 passed by the Metropolitan Magistrate (Mahila Court)/North East/Karkardooma, New Delhi in case title State Vs/ Mohd. Islam & Ors. in case FIR No. 101/2009 under Section 498-A/406/34 IPC registered at Police Station – Seelampur and the proceedings emanating therefrom.

Notice of the petition was given to the State.

Learned counsel for the petitioner assailing the impugned order contended that the same is illegal and contrary to the established principal of law. He further contended that after conclusion of the investigation, charge sheet was filed before the Trial Court and the petitioners were kept in column 12 for lack of evidence. He further added that the Trial Court without disclosing any material, summoned the petitioners to face trial.

I have heard the learned counsel for both the parties and perused the material available on record.

On 29.04.2017, the Trial Court passed the following order:

“An application moved on behalf of the IO for summoning all remaining accused persons who have been kept in column No. 12 is pending consideration. Arguments on the said application advanced by both sides heard. For reasons stated in the application as well as facts of the present case, application is allowed. All remaining accused persons who have been kept in column be summoned for next date.”

Perusal of the record shows that no application was moved on behalf of the Investigating Officer for summoning the remaining accused persons whose names were shown in column 12 of the chargesheet. Infact, the said application was moved by the complainant wherein she submitted that *“2. That the all accused persons shown in column No. 12 by the IO are named in FIR and sufficient evidence are on record against the accused persons and are liable to be summoned in the above noted case.”*

Chargesheet under Section 173 Cr.PC was filed by the prosecution wherein it is stated that :

“During the investigation statement of witnesses under Section 164 Cr.PC was rcoreded and according to the order dated 24.04.2009 of the Court, refrigerator and washing machine got recovered and deposited to the Malkhana and complainant also received Rs.20,000/- which is done by the order of the Court dated 24.02.2009 and also the order of anticipatory bail of the

*accused were passed. That by seeing the record no sufficient evidence was there accept the husband of the complainant namely Mohd. Islam and he was formally arrested and thereafter arrested by the permission of DCP and released on bail as per the order of the Court. **Because no sufficient proof is there against the other accused persons, they were not arrested but sufficient evidence is collected against the husband of complainant so charge-sheet was got prepared and husband kept in column No. 11 and other members also kept in column No. 12**”*

During the course of arguments learned APP concedes that the State had not filed any application for summoning the petitioner.

Undoubtedly, the petitioners are shown in column 12 of the final report under Section 173 Cr.PC. The Trial Court did not indicate as to why she is disagreeing with final report under Section 173 Cr.PC wherein it was categorically stated that “*Because no sufficient proof is there against the other accused persons, they were not arrested but sufficient evidence is collected against the husband of complainant so charge-sheet was got prepared and husband kept in column No. 11 and other members also kept in column No. 12*”. The Trial Court though allowed the application of the complainant for summoning the petitioners but did not ascribe material and evidence found on record against them to proceed further after taking cognizance of the offences under Section 498-A/406/34 IPC.

Keeping in view the facts and circumstances of the present case, this Court finds that the impugned order dated 24.04.2017 is bad in law and deserves to be set aside.

Accordingly, the petition is allowed and the order dated 24.04.2017 passed by the Metropolitan Magistrate (Mahila Court)/North East/Karkardooma, New Delhi in case title State Vs/ Mohd. Islam & Ors. in case FIR No. 101/2009 under Section 498-A/406/34 IPC registered at Police Station – Seelampur, is set aside.

A copy of this order be communicated to the concerned Trial Court.

SANGITA DHINGRA SEHGAL, J

SEPTEMBER 11, 2017

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