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

Decided on: 19th May, 2017

+ CRL.M.C. 1712/2017 and Crl.M.A.6963-64/2017

ABHILASHA CHAHALIA

..... Petitioner

Through: Mr. Mohit Mathur, Senior
Advocate with Mr. J.P. Sengh, Sr. Adv.,
Mr. Pranav Rishi, Adv. & Ms. Manisha
Mehta, Adv.

Versus

STATE & ANR.

..... Respondents

Through: Mr. Tarang Srivastava, APP for
the State with ASI Rajbir Singh, DIU West
Distt. & W/SI Nirmala, PS Paschim Vihar.

CORAM:

HON'BLE MR. JUSTICE R.K.GAUBA

ORDER (ORAL)

1. This petition under Section 482 of the Code of Criminal Procedure, 1973 (Cr.P.C.) seeks to assail the order dated 26.11.2016 of the Metropolitan Magistrate, Mahila Court, West District on the file of criminal case arising out of report under Section 173 Cr.P.C. submitted by the investigating police on completion of investigation into First Information Report (FIR) No.207/2014 whereby cognizance was taken of offences punishable under Sections 354/395/144/147/34 of the Indian Penal Code, 1860 (IPC), against all the accused persons which include the petitioner herein thereby summoning them requiring their presence before the court on 15.03.2017.

2. Issue notice to respondent no.1/State. Mr. Tarang Srivastava, Additional Public Prosecutor for the State accepts notice.

3. The petitioner had impleaded Sanjeewan Kaur wife of Surjeet Singh, the first informant of the FIR as the second respondent. Since proceedings arise out of a police report, it being a State case, the status of the second respondent being that of a witness for the prosecution, there is no need to issue notice to her. She stands deleted from the array.

4. The status report has been submitted by the Station House Officer of Police Station Paschim Vihar. The same has been taken on record.

5. Arguments of the learned senior counsel for the petitioner and of the learned Additional Public Prosecutor for the respondent/State have been heard. Record including that of the investigation has been perused.

6. It is noted that the FIR was registered at the instance of Sanjeewan Kaur on 13.03.2014 regarding an incident that had allegedly occurred at house no.9, S.B.I. Nagar, Paschim Vihar, Delhi between 00:15 hours to 01:30 hours on that date. On the basis of the allegations made in the FIR police took up investigation into the offences punishable under Sections 323/354/356/379/506/34 IPC. It may be mentioned here that the incident alleged by the first informant had involved forcible assault that was committed by a group of persons on her and members of her family, the said group allegedly

including the petitioner herein and in the scuffle that had ensued, injuries were suffered besides the first informant suffering wrongful loss in that a chain made of gold worn by her around the neck had gone missing. It was this part of the allegation which was sought to be covered by inclusion of offences punishable under Sections 356/379 IPC in the FIR.

7. The report of the investigation under Section 173 Cr.P.C., copy whereof has been submitted, incorporates the statements of not only the first informant under Section 164 Cr.P.C. but also statements under Section 161 Cr.P.C. of her husband Surjeet Singh and, her son Sahab Singh Saini and an employee Ms. Pooja Chhetri. Noticeably, the first informant in her said statement under Section 164 Cr.P.C. while narrating the incident spoke about the assailants having not only assaulted her and members of her family but also having caused damage to certain household goods and in that process to have snatched the gold chain weighing 30 gms. The words used by her in the said statement are to the effect that during the assault “*these people*” had snatched her gold chain. (“मार पीट के दौरान इन लोगो ने मेरी गोल्ड चैन 30 ग्राम भी छीन ली”). The other witnesses Surjeet Singh and Sahib Singh, however, were not so sure on the issue as to whether the chain had been actually snatched away or had got broken to fall somewhere during the scuffle. They expressed doubts on both counts in their respective versions.

8. The investigating police, against the above backdrop, recommended prosecution of the persons mentioned in the charge

sheet, including the petitioner, for offences punishable under Sections 323/354/356/379/427/440/506/509/34 IPC. When the Metropolitan Magistrate considered the said report, however, she was of the view that the case involved an incident of unlawful assembly in which the persons sent up for trial had voluntarily joined, they being armed with deadly weapons and the acts committed in wake of such joining the unlawful assembly amounting to rioting, thereby attracting the offences punishable under Sections 144/147 IPC. She was also of the opinion that since the first informant had stated that her gold chain had been “*snatched*” the offence under Section 395 IPC was attracted of which she took cognizance.

9. Though the learned Additional Public Prosecutor, in resisting the petition, rightly submitted that the Magistrate was within her power and jurisdiction to take cognizance of the offences she found made out, he fairly conceded that such order of cognizance would have to be on the basis of evidence available. It does appear that the evidence presented with the charge-sheet *prima facie* shows the object of the unlawful assembly to assault and cause hurt or commit mischief by damaging the property of the first informant. But, the learned Public Prosecutor fairly conceded that in the impugned order, the learned Magistrate has recorded her impression from the perusal of the statements of the witnesses to the effect that seven accused persons along with 20-25 others had given beatings to the victim with iron rod, misbehaving with and outraging the modesty of the first informant, her gold chain having been snatched in the scuffle, and decided “*in*

view of the same” to “*take cognizance*” of the offences against “*all the accused persons*” under Sections 354/395/144/147/34 IPC.

10. It is trite that investigation into a crime, after registration of FIR under Section 154 Cr. PC is in the domain of the police. The Magistrate has no power, or jurisdiction, at that stage of the process to insist on the investigation resulting in a particular conclusion. The investigating police officer has the liberty of action in the sense, after gathering the requisite evidence, he makes an assessment and submits a report under Section 173 in its light. The report under Section 173 Cr. PC may take the shape of a charge-sheet so as to seek prosecution of the persons mentioned therein for offences specified in the report. It may seek cancellation of the case if, in the opinion of the police, the information (FIR) was false. It may seek closure of the case if, in the opinion of the investigator, sufficient evidence had not come up to either support the allegations, or to identify the perpetrator of the alleged crime, or to send them over to the court for trial.

11. The domain of the Magistrate, the court of cognizance, begins with the submission of the report, under Section 173 Cr. PC. The Magistrate is expected in law to apply his mind to the report, and the evidence submitted therewith, to take an appropriate view. Such view of the Magistrate may coincide with the view of the investigating police officer or it may be contrary to what the police has concluded. It is the Magistrate’s prerogative at that stage to pass such appropriate order as he deems requisite on the basis of the evidence presented before him through the police report. To put it clearly, the Magistrate

is not bound by the police report. He may accept it and allow cancellation or closure of the case, if so recommended, or conversely, take cognizance and issue process. Further, as is germane to the issue at hand, the Magistrate is not bound by the opinion of the police as to the nature of offences which are found committed. He may omit some of the offences mentioned in the police report while taking cognizance and issuing process if, in his view, the request for prosecution on such score is unfounded. In contrast, he may add some more offences which, in his opinion, also appear to have been committed for which there are sufficient grounds to proceed against the accused persons. [See *Bhagwant Singh v. Commissioner of Police*, (1985) 2 SCC 537].

12. It is well settled that the order of taking cognizance, or issuing process, is not expected to be very lengthy or detailed one. Reference in this context may be made to *Kanti Bhadra Shah Vs. State of W.B.*, (2000) 1 SCC 722, particularly to the following observations :-

“12. If there is no legal requirement that the trial court should write an order showing the reasons for framing a charge, why should the already burdened trial courts be further burdened with such an extra work. The time has reached to adopt all possible measures to expedite the court procedures and to chalk out measures to avert all roadblocks causing avoidable delays. If a Magistrate is to write detailed orders at different stages merely because the counsel would address arguments at all stages, the snail-paced progress of proceedings in trial courts would further be slowed down. We are coming across interlocutory orders of Magistrates and Sessions Judges running into several pages. We can appreciate if such a detailed order has been passed for culminating the proceedings before them. But it is quite unnecessary to

write detailed orders at other stages, such as issuing process, remanding the accused to custody, framing of charges, passing over to next stages in the trial.”

(emphasis supplied)

13. The above view finds resonance in later decisions including *Deputy Chief Controller of Imports and Exports Vs. Roshanlal Agarwal*, (2003) 4 SCC 139; *Nupur Talwar Vs. CBI*, (2012) 11 SCC 465; and *Sunil Bharti Mittal Vs. CBI*, (2015) 4 SCC 609. In *Nupur Talwar* (supra), the Supreme Court observed thus :-

“65. By writing a long order dated 9-2-2011 and not referring to some of the relevant materials on which the petitioner relies upon, the Magistrate has exposed herself to the criticism of the learned counsel for the petitioner that she had applied her mind only to the materials referred to in her order and not to other relevant materials collected in the course of investigation. Sub-section (1) of Section 204 Cr.PC quoted above itself does not impose a legal requirement on the Magistrate to record reasons in support of the order to issue a process and in U.P. Pollution Control Board v. Mohan Meakins Ltd. [(2000) 3 SCC 745] and Chief Controller of Imports & Exports v. Roshanlal Agarwal [(2003) 4 SCC 139 : 2003 SCC (Cri) 788] this Court has held that the Magistrate is not required to record reasons at the stage of issuing the process against the accused. In the absence of any legal requirement in Section 204 CrPC to issue process, it was not legally necessary for the Magistrate to have given detailed reasons in her order dated 9-2-2011 for issuing process to the petitioner and her husband...”

(emphasis supplied)

14. In *Sunil Bharti Mittal* (supra), it was held as under :-

53. However, the words “sufficient ground for proceeding” appearing in Section 204 are of immense importance. It is these words which amply suggest that an opinion is to be formed only after due application of mind that there is sufficient basis for proceeding against the said accused and formation of such an opinion is to be stated in the order itself. The order is liable to be set aside if no reason is given therein while coming to the conclusion that there is prima facie case against the accused, though the order need not contain detailed reasons. A fortiori, the order would be bad in law if the reason given turns out to be ex facie incorrect.

(emphasis supplied)

15. The above, however, does not mean that the order of taking cognizance under Section 190 Cr.PC, or issuing process under Section 204 Cr. PC, must invariably or always be cryptic or not reflecting the reasons. It cannot be ignored that the order of taking cognizance or issuing process is also a judicial order. The reasons are hallmark of a judicial order. Thus, if the Magistrate is not agreeing with the report under Section 173 Cr. PC submitted by the police, for any reasons whatsoever, and while dis-associating from that opinion, taking recourse to a direction different from the one recommended by the investigation report, such order must reflect some reasons, however, short or simply put, as would explain the course taken. In expressing this view, cue is taken from observations of the Supreme Court in (para 19 of) the judgment reported as *Dharmatma Singh v. Harminder Singh*, (2011) 6 SCC 102, albeit in the context of overruling the objections of the complainant taken to a closure report submitted by the police, the decision of the Supreme Court being that “it is just and

desirable that the reasons for overruling the objections of the complainant be recorded by the Court and this was necessary because the Court while exercising power under Section 190 Cr.PC whether to take cognizance or not to take cognizance exercises judicial discretion.”

16. In the case at hand, the Magistrate decided to pass a detailed order on summoning. From some of the observations recorded in the impugned order, it appears, that she was peeved with the station house officer of the police station over some of his submissions which, in the view of the Magistrate, amounted to he “*trying to teach the court its work rather than submitting the report on the lapses*”.

17. In the considered view of this court, such observations as above, were wholly unnecessary and uncalled for. A Judge, at all levels of the hierarchy, is expected to sit with open mind. He is expected to hear the submissions and take an appropriate judicial view thereupon. The submissions made are not to be taken as an umbrage or an affront. A Judge cannot afford to adopt know-all attitude. He learns from each submissions made before him because they are in the form of advice.

18. Be that as it may, having decided to pass a detailed order, at the stage of taking cognizance and issuing process, and rightly so because she was dissociating herself from the view submitted by the police before her, it was incumbent on the Magistrate to consider the material and give appropriate reasons, at least to the extent her view differed from the one commended in the police investigation report. It is in

this context, however, that the impugned order does not pass the muster.

19. It is clear from the impugned order that the Metropolitan Magistrate has not taken note of any evidence as might show the “common object” of the unlawful assembly being anything in tune with the above noted impression gathered from the statements of the witnesses. To put it simply, there is nothing in the impugned order to indicate the evidence noticed by the Magistrate from which it could be inferred that the common object of the unlawful assembly was to commit the theft of the gold chain, this in contrast to the possible scenario where one of the members of the unlawful assembly may have entertained such intention. Though the forcible snatching of the gold chain, *prima facie*, indicates the commission of the offence of theft, in order to show that such theft amounted to robbery within the meaning of the expression defined under Section 390 IPC (which is crucial for taking it further to the level of dacoity), it has to be shown by some evidence that the offender(s) in committing such theft, and “for that end” had, *inter alia*, voluntarily caused hurt. The impugned order contains no discussion whatsoever of any evidence to such effect.

20. It is noted that while taking cognizance and issuing process against the accused persons for offences under Sections 354, 395, 144, 147, 34 IPC (wherein inclusion of Section 395 IPC is not properly justified as held above), the Magistrate’s order is conspicuously silent with regard to the request in the charge-sheet submitted by police for

initiation of prosecution of the accused persons for other offences punishable under Sections 323, 427, 440, 506, 509 read with Section 34 IPC.

21. For the foregoing reasons, the impugned order suffers from the vice of non-application of mind and, thus, cannot be sustained. In the result, it is set aside. The matter is remitted to the concerned Metropolitan Magistrate for proper consideration of the report under Section 173 Cr.P.C. and for a fresh order thereupon to be passed. Need it be added that the magistrate shall be expected to take the fresh call dispassionately without feeling bound or influenced by her previous order or any observation made here touching upon the merits of the case.

22. This disposes of the petition and accompanying applications.

23. Copy of the order be given *Dasti*.

24. A copy of this order shall be sent to each District & Sessions Judge with direction to circulate amongst all judicial officers.

R.K.GAUBA, J.

MAY 19, 2017

vk/nk/yg