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

Decided on : 30th May, 2017

+ CRL.REV.P. 329/2017 and Crl. M.(B) 816/2017 and Crl. M.A.
7360/2017

NABIL AHMED

..... Petitioner

Through: Mr. M.N. Dudeja and Mr. Anuj
Chauhan, Advocates

versus

STATE & ANR

..... Respondents

Through: Mr. Akshai Malik, APP for R-
1/State

Mr. S.Q. Kazim, Mr. Luqman S. Hasan, Mr.
Santosh Pandey, Mr. Suyash Bhatnagar and
Mr. Bushra Kazim, Advocates for the victim

CORAM:
HON'BLE MR. JUSTICE R.K.GAUBA

ORDER (ORAL)

1. The second respondent had instituted a criminal complaint on 22.06.2007 in the court of Additional Chief Metropolitan Magistrate, New Delhi (ACMM) against the petitioner alleging offence punishable under Sections 354 / 448/ 506 of Indian Penal Code, 1860 (IPC). It appears the petitioner stood summoned on the basis of preliminary inquiry and, thereafter, was put on trial on the basis of charge for offences punishable under Sections 448, 354, 506 IPC framed on 08.08.2014 to which he pleaded not guilty. On the conclusion of the

trial held thereafter, by judgment dated 24.05.2016 of the Metropolitan Magistrate-01 (Mahila Courts) of South-East District at Saket, the petitioner was held guilty and convicted for offence under Section 354 IPC but acquitted of the charge on other two counts. By subsequent order dated 04.06.2016, he was sentenced to undergo rigorous imprisonment for 15 months (referred to in the order as “vigorous imprisonment”) and a fine of Rs.10,000/- to be paid as compensation to the victim and in case of default to undergo further imprisonment of 15 days. He preferred criminal appeal 10/2017 in the court of sessions which was dismissed by judgment dated 03.04.2017.

2. He has come up with the criminal revision petition at hand before this court assailing the said judgment, and order of the trial court, as also of the first appellate court, primarily raising the question of propriety of the procedure.

3. In view of the contentions urged, the trial court record has been called for and perused. The second respondent has also appeared and accepted notice on the basis of advance copy and has been heard through counsel.

4. A perusal of the trial court record does indicate that the Metropolitan Magistrate did not apply the correct procedure. The proceedings rather give rise to serious anxiety as to the manner in which the parties to the case were given indulgence at several stages so as to not only result in a protracted trial but also vitiating the procedure and consequently the result.

5. As mentioned above, the criminal complaint, presented on 22.06.2007, resulted in pre-summoning inquiry under Section 200 of

the Code of Criminal Procedure, 1973 (Cr. PC) on 16.11.2007. The affidavit of the complainant was taken on record as evidence and, thereafter, the case was posted for hearing arguments on the question of summoning. This was not a correct method to apply. Eventually, the Magistrate rose to the occasion and, on 31.03.2008, recorded the formal statement of the complainant, she appearing as CW-1 at that stage. On the basis of such statement of CW-1, apparently statement made in inquiry under Section 200 Cr. PC, the Magistrate recorded *prima facie* satisfaction as to commission of offence by the accused and, therefore, proceeded to issue summons, thereby dispensing with the further inquiry under Section 202 Cr. PC.

6. The presence of the petitioner was secured on 02.08.2008. After admitting the petitioner on bail, the matter was adjourned for cross-examination of the complainant to be conducted on 20.12.2008 in “PCE” – it apparently meant to convey “pre-charge evidence”, adding that the counsel for the complainant had “adopted” the chief-examination recorded in “PSE” (the abbreviation apparently meant to indicate “pre-summoning evidence”). It may be observed here itself that the use of abbreviations in judicial proceedings must be minimal and only such abbreviations ought to be used as are common in practice. Tendency to coin new abbreviations without explaining them is not proper.

7. The case remained at the stage of pre-charge evidence for a long time thereafter for some reason or the other, including the absence of the presiding officer from the court. The matter kept hanging fire and it is noted that the petitioner also added to the reasons for delay.

8. By order dated 27.06.2011, the Magistrate adjourned the matter for arguments on charge to be heard on the next date observing “pre-charge evidence led”. This apparently was incorrect as no pre-charge evidence had been adduced. The case thereafter remained at the stage of arguments on the question of charge. Against this backdrop, an application under Section 311 Cr. PC was moved by the petitioner on 13.08.2013 seeking recall of the complainant for cross-examination. The said application was eventually withdrawn and dismissed accordingly on 19.07.2014.

9. On 19.07.2014, the Magistrate adjourned the case for “framing of formal notice”, forgetting that the case had been earlier put through the procedure of warrant trial. On 08.08.2014, the Magistrate found *prima facie* case for charge for aforementioned offences made out and, thus, proceeded to frame the charges and fixed the case accordingly for prosecution evidence. It is pertinent to add that the evidence examined thereafter on 09.09.2014, was captioned as “pre charge evidence” and it resulted in the conviction of the petitioner by the trial court for offence under Section 354 IPC which has been upheld by the court of sessions.

10. The case before the Metropolitan Magistrate arose out of a private complaint. Since the case so merited and was accordingly put through the warrant trial procedure, it was incumbent on the Magistrate to first record the pre-charge evidence and offer opportunity to the petitioner facing the trial as accused to cross-examine the complainant and her witnesses, if any. It was only thereafter that the court could hear the parties on the question of

charge and if on that basis charge was made out to proceed further accordingly. The manner in which, at the stage of pre-charge evidence, the pre-summoning evidence was allowed to be “adopted” has vitiated the entire subsequent proceedings.

11. It is trite that in criminal prosecution, after the issuance of process under Section 204 Cr. PC, the evidence is to be recorded in the presence of the accused [S. 273 Cr. PC]. There is no occasion for the pre-summoning evidence to be allowed to be adopted in as much as that would be a departure from the normal procedure and in the teeth of the requirement of evidence to be gathered in the presence of the accused.

12. As noted earlier, the evidence recorded after framing of charge was captioned as “pre-charge evidence”. It appears the Magistrate was confused as to the stage and the appropriate procedure to be adopted. As also noted above, the Magistrate at one stage had adjourned the matter for framing of notice. It appears she assumed it was a case being tried through summons trial procedure forgetting what had gone before in the previous proceedings wherein warrant trial procedure stood adopted. The warrant trial procedure once adopted as the proper procedure, would not allow an about turn. It will have to be followed through the procedure prescribed for warrant trial cases to the logical end.

13. For the foregoing reasons, the proceedings post appearance of the petitioner as accused, pursuant to the issuance of the process in the case at hand are rendered vitiated. Therefore, all proceedings recorded in the wake of order dated 02.08.2008 will have to be set at naught.

14. In the result, the impugned judgment and order on sentence of the trial court, as indeed the impugned judgment of the first appellate court, are set aside. The trial proceedings are restored on the file of the Metropolitan Magistrate to be taken up further from the date where they stood as on 02.08.2008.

15. The Metropolitan Magistrate will be obliged to record pre-charge evidence in the presence of the petitioner, allowing him opportunity to cross-examine such witnesses of the complainant as are produced and, thereafter, proceed to consider the question of framing charge in accordance with law. Ordered accordingly.

16. Given the old pendency of the case, it would be desirable that the case is now proceeded with all expedition, without any undue indulgence in the matter of adjournments. The trial court shall make all endeavour to conclude the trial as early as possible preferably within six months of the date of first appearance being hereby fixed.

17. The petitioner is in custody pursuant to the order of conviction upheld by the court of sessions. He shall be released from custody forthwith. He shall be obliged to appear before the trial court on 01.08.2017 and furnish fresh bail bond in terms of the earlier orders passed for the purposes of trial before the court of Magistrate. Needless to add, the complainant shall also appear on the same date i.e. 01.08.2017.

18. The Registry shall communicate the directions to the Superintendent Jail for the petitioner to be released forthwith.

19. The captioned petition and the pending applications are accordingly disposed of.

20. A copy of this order be given *dasti* to both sides under the signatures of the Court Master.

R.K.GAUBA, J.

MAY 30, 2017

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