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

+ CM(M) 36/2017

DAULAT RAM

..... Petitioner

Through: Mr.Anuj Saxena & Mr.Ankit
Parashar, Advocates.

versus

USHA GUPTA & ORS

..... Respondents

Through: Mr.Yudhvir Singh Chauhan,
Advocate for R-1.

CORAM:

HON'BLE MS. JUSTICE PRATIBHA RANI

ORDER

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25.05.2017

1. The petitioner has invoked the jurisdiction of this Court under Article 227 of the Constitution of India impugning the order dated 24th May, 2016, whereby the learned ADJ declined his prayer for impleadment of the second IO in case FIR No.19/2005 dated 7th January, 2005 under Section 406/498A/34 IPC and the then SHO, PS Dabri to be impleaded as defendants.

2. In brief, the case of the petitioner is that he was married to respondent No.1/defendant No.1, Smt.Usha Gupta on 9th December, 1986. After about 18 years of their marriage, his wife got registered a criminal case registered against him on false and fabricated grounds. The matter was investigated by respondent No.2/defendant No.2 and a charge-sheet was filed against the petitioner for committing the offence punishable under Sections 498A IPC.

3. The case of the petitioner is that he has been acquitted in the criminal case by the learned MM vide order dated 19th December, 2012 and thereafter he filed a suit for damages, impleading his wife and the IO ASI Dharamvir

Singh, Belt No.1505/D PIS no.28680310 and SHO Inder Singh upon whose instructions the charge sheet was submitted after investigation, as defendants.

4. The application under Order I Rule 10 CPC has been filed for impleadment of second IO and the then SHO, PS Dabri who was officer in charge of the case and under whose signatures charge-sheet was submitted against him as inadvertently they could not be impleaded as defendant in the said suit.

5. Learned Trial Court has dismissed the application for the following reasons:

“In the present applicaton ASI Dharamvir Singh, second IO and then SHO PS Dabri Sh.Inder Singh were sought to be impleaded as party but the statutory requirement under 140 D.P. Act are not complied with by the plaintiff no statutory notice has been given to them. In his plaint, plaintiff has impleaded defendant no.3 then SHO PS Dabri but he has not stated anything about proposed defendants namely then SHO PS Dabri Sh.Inder Singh and ASI Dharamvir Singh and no where their roles have been discussed. In application, he has stated that he has pleaded them as necessary parties but not complied with requirements or section 140 D.P. Act, therefore, application is not maintainable, hence, dismissed.”

6. I have perused the application under Order I Rule 10 CPC filed along with this petition. There is not a single averment made in the application that in the suit for damages, necessary facts requiring impleadment of the second IO and the then SHO, PS Dabri have been made but inadvertently and only their names could not be mentioned as defendants. Filing of charge-sheet or conducting the investigation is part of the investigating agency. Unless specific allegations have been made, either by leading defence in the criminal case or while filing the suit for damages, merely

because at a subsequent stage acquitted in FIR No.19/2005 dated 7th January, 2005 under Section 406/498A/34 IPC, PS Dabri. The petitioner felt aggrieved against the officers who conducted the investigation on the complaint filed by his wife and filed the charge-sheet, they are neither necessary nor proper parties. In fact, the grievance, if any, for false implication in a criminal case is likely to be only against the complainant/his wife.

7. The impugned order does not suffer from any illegality or perversity.
8. Dismissed.

PRATIBHA RANI, J.

MAY 25, 2017
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