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

+ **CRL.M.C. 3271/2017**

GURMIT SINGH

..... Petitioner

Through: Mr. Vikas Pahwa, Senior Advocate with
Mr.Naaren Nath Sarvaria, Advocate.

versus

STATE OF NCT OF DELHI & ANR. Respondents

Through: Mr. Amit Ahlawat, APP for the State with
SI Sushil Sarwaria, PS-Defence Colony.

CORAM:

HON'BLE MS. JUSTICE SANGITA DHINGRA SEHGAL

ORDER

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11.09.2017

By the present petition, the petitioner is seeking quashing / setting aside of the order dated 23.03.2017 passed by the Metropolitan Magistrate, Mahila Court, Saket Courts, New Delhi in case FIR No. 51/2013 under Section 406/498-A/34 IPC registered at Police Station – Defence Colony.

Notice of the petition was given to the State. Trial Court Record was summoned.

Mr. Vikas Pahwa, learned Senior Counsel appearing for the petitioner/Gurmit Singh contended that accused Jagmit Singh, husband of the complainant was only person against whom sufficient evidence was found and he had been chargesheeted in the final report submitted under Section 173 Cr.PC; that the other accused persons Jaya Singh, Sharabjit Singh, Sonu Singh and Jung Bahadur Singh were not chargesheeted in the

final report under Section 173 Cr.PC; that similarly the petitioner/Gurmit Singh had also not been chargesheeted and his name was kept in column No. 12 as no sufficient evidence was found against him.

During the course of arguments, the attention of this Court was drawn to the impugned order dated 23.03.2017 wherein the Trial Court noted that that accused Gurmit Singh is absent and he was summoned for 21.04.2017.

The impugned order dated 23.03.2017 reads as under:

*“xxxxx
Accused Jagmit Singh and Gurmit Singh are absent.
Accused Jaya Singh, Sharabjit Singh, Sonu Singh, Jung Bahadur Singh not chargesheeted.
Complainant Sonia Singh absent.
Cognizance taken.
Let accused Jagmit Singh, Gurmit Singh be summoned for the next date of hearing with notice to surety.
Complainant be summoned for the next date.
Put up for further proceedings on 21.04.2017.”*

The Final Report submitted by the State under Section 173 Cr.PC reads as under:

“During the investigation no evidence found against (1) Gurmit Singh S/o Late Shri Sarbjit Singh (2) his wife Mrs. Jaya Singh both r/o D-2, (FF) Rajouri Garden, New Delhi (3) Mrs. Lali Sarabjit Singh (aged about 75 years) w/o Late Shri Sarbjit r/o D-2 (GF) Rajouri Garden, New Delhi (4) Mrs. Sonu Singh w/o Jasjit Singh r/o 182/14, Phase-1, Industrial Area, Chandigarh and (5) Dr. Jang Bahadur Singh (aged about 74 years)

s/o Late Sh. Balwant Singh r/o 50, Centerwood Drive, Holden, Massachusetts, USA (brother-in-law his wife, mother-in-law, sister-in-law and uncle respectively of the complainant) to lead their arrest in this case. Due to lack of sufficient evidence they were not arrested in this case and kept their names in column No. 12 of the charge-sheet. The Hon'ble Court may begin trial against them if found suitable."

Learned APP for the State does not dispute that the name of the petitioner/Gurmit Singh was shown in column No. 12 of the final report and concedes that the summons against the petitioner/Gurmit Singh may have been issued inadvertently and.

Perusal of the record shows that the chargesheet in the instant matter was filed on 06.05.2016 before the Trial Court and the matter was fixed for consideration on 10.08.2016 and thereafter for the same purpose on 17.11.2016 and 23.03.2017. On 23.03.2017, the Trial Court directed the summoning the petitioner herein through the Investigating Officer for 21.04.2017 despite the fact that the name of the petitioner was shown in column No. 12 of the final report.

In *Crl. M. C. 924/2005* titled as "*Atma Ram Singhal and Ors. Vs. State and Ors.*", this Court has observed that :

"6. Undoubtedly, the learned MM is not to act mechanically on the basis of the report filed by the Investigating Officer under Section 173 of the Cr.P.C. and has to apply his own mind. He may refuse to summon any of the persons named in the charge sheet. On the other hand, if he finds that there is prima facie evidence against those whose names are mentioned in Column No.2, he may even summon them along with

others. However, what is important is that there should be depiction of application of mind in the order passed. More so, when as per the report of the Investigating Officer there is nothing against a particular person but the MM still wants to summon him. The learned ASJ, apart from stating the legal position to the effect that the Magistrate had the necessary power and dismissing the revision petition on that ground, did not deal with the argument of the petitioners herein to the effect that the order of the trial court was non-speaking order and even a semblance of reason was not recorded as to what were the considerations which persuaded the learned trial court to summon these petitioners, notwithstanding the fact that their names appear in Column No.2. 7. Section 173 Cr.P.C. prescribed that whenever a final report under that provision is filed for consideration by the Magistrate, it gives rise to two situations. Firstly, that the report may conclude that the offence appears to have been committed by a particular person or persons. Secondly, that in the opinion of the officer-in-charge no offence appears to have been committed. In the former case, i.e. where the report discloses the commission of an offence, three courses are open to the Magistrate viz. (a) he may accept the report and take cognizance of the offence and issue process; (b) he may disagree with the report and drop the proceedings; and (c) he may direct further investigation. Coming to the latter case where the report states that no offence appears to have been committed, the Magistrate has again three choices: (a) he may accept the report and drop the proceedings; (b) he may disagree with the report and take the view that there is sufficient ground to proceed further, take cognizance of the offence and issue process; and (c) he may direct further investigation to be made by the police. 8. Thus, there is no doubt that even if the report discloses that no offence appears to have been committed, the Magistrate may disagree with the

report and take a view that there is sufficient ground for proceeding further, take cognizance of the offence and issue process. However, the question to be determined is as to when the MM decides to issue the process, notwithstanding the observations of the Investigating Officer; is he to indicate some reasons and reflect his thought process in the order as to why he is taking such a course.”

Undoubtedly, the name of the petitioner/Gurmit Singh was shown in column No. 12 of the final report under Section 173 Cr.PC and he was not sent up for trial but vide order dated 23.03.2017 the Trial Court summoned him to face trial. Had the Trial Court intended to summon the petitioner/Gurmit Singh, the Court would have atleast indicated its mind that there was sufficient evidence/material against the petitioner. The summoning of petitioner/Gurmit Singh being bad in law, the impugned order dated 23.03.2017 is liable to be set aside.

The present petition under Section 482 Cr.PC is allowed and impugned order dated 23.03.2017 summoning the petitioner/Gurmit Singh is quashed.

Trial Court Record be returned along with the copy of this order.

SANGITA DHINGRA SEHGAL, J

SEPTEMBER 11, 2017

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