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IN THE HIGH COURT OF DELHI AT NEW DELHI

Decided on:- 19th July, 2018

+ CRL.M.C. 3272/2016 and Crl. M.A. 13943-13944/2016

UNITED NEWS OF INDIA Petitioner
Through: Mr. Ajit Upadhyay, Advocate

versus

STATE & ANR Respondents
Through: Mr. Ravi Nayak, APP for the State
with IO Pushpa and Manish Kumar

+ CRL.M.C. 3308/2016 and Crl. M.A. 14064-14065/2016

VISHWAS TRIPATHI Petitioner
Through: Mr. Ajit Upadhyay, Advocate

versus

STATE & ANR Respondents
Through: Mr. Arun K. Sharma, APP for the
State with IO Pushpa and Manish Kumar

+ CRL.M.C. 3309/2016 and Crl. M.A. 14066-14068/2016

ASHOK TUTEJA Petitioner
Through: Mr. Ajit Upadhyay, Advocate

versus

STATE & ANR Respondents
Through: Mr. Ravi Nayak, APP for the State
with IO Pushpa and Manish Kumar

+ CRL.M.C. 3349/2016 and Crl.M.A. 14189/2016

SANJAY KUMAR TIWARY Petitioner
Through: Mr. Ajit Upadhyay, Advocate

versus

STATE & ANR Respondents
Through: Mr. Ravi Nayak, APP for the State
with IO Pushpa and Manish Kumar

+ CRL.M.C. 3350/2016 and Crl. M.A. 14193/2016

SHRIPATI ANKOLKAR Petitioner
Through: Mr. Ajit Upadhyay, Advocate

versus

STATE & ANR Respondents
Through: Mr. Mukesh Kumar, APP for the
State with IO Pushpa and Manish Kumar

+ CRL.M.C. 23/2017 and Crl. M.A. 137/2017

P K MAHESHWARI Petitioner
Through: Mr. Ajit Upadhyay, Advocate

versus

STATE & ANR. Respondents
Through: Mr. Akshai Malik, APP for the
State with IO Pushpa and Manish Kumar

CORAM:

HON'BLE MR. JUSTICE R.K.GAUBA

ORDER (ORAL)

1. These petitions take exception to the order dated 21.08.2015 passed by the court of the Additional Chief Metropolitan Magistrate

on the criminal complaint (30/1/15) instituted by the second respondent with the prayer for the proceedings in the said case, particularly the said order, to be set aside and quashed by this court in exercise of its inherent power under Section 482 of the Code of Criminal Procedure, 1973.

2. The petitioner in the first captioned petition describes itself as a company engaged in the business of news agency for collection and distribution of news to the media, print, electronic etc. The petitioner Sanjay Kumar Tiwary (Crl. M.C. 3349/2016) is described as the Administrative Officer of the company while other petitioners are described as directors of the said company. The criminal complaint case was instituted on 14.08.2015 by the second respondent seeking criminal prosecution of these petitioners for the offence under Section 18 of the Working Journalists and Other Newspaper Employees (Conditions of Service) and Miscellaneous Provisions Act, 1955 (for short, “the Act, 1955”). It may be mentioned here that the said offence is punishable with fine only and, thus, is to be tried as a summary case by the court of the Metropolitan Magistrate.

3. In the wake of recommendations of a panel described as “Majithia Wage Board”, the Government of India had issued an notification vide no.SO.2532 (E) dated 11.11.2011. It is stated that the said notification was upheld by the Supreme Court by order dated 07.02.2014 in a writ petition. The first petitioner is stated to be a news paper establishment covered by Section 2(d), it being an employer within the meaning of the Act, 1955 and consequently obliged to abide by the requirements *inter alia* of Section 17A. Against the said

backdrop, the Deputy Labour Commissioner of the Government of NCT of Delhi had called upon the company, its chairman and three directors by communication dated 15.06.2015 to produce certain records including the register of employees, service register in respect of working journalists, the leave register, muster roll and certain further information. It is alleged by the respondent that there was no compliance with the said communication and, therefore, show cause notices were issued on 16.06.2015 insisting on reply and information with caution that, in case of default, it would be presumed that the direction of the Supreme Court in the order dated 07.02.2014 in respect of Majithia Wage Board, recommendations had not been implemented, this leading to initiation of proceedings under the Act, 1955. A reply dated 24.06.2015 appears to have been sent on behalf of the company accused, *inter alia*, stating that the establishment had been running into heavy losses and was “not required” to pay the arrears, there being “no occasion” for it to revise the salary after implementation of the new pay scales. The records and information as required not having been produced or furnished, the complaint for penal action under Section 18 of the Act, 1955 was filed in the court of the Metropolitan Magistrate. The Metropolitan Magistrate by his order dated 21.08.2015 treated it as a complaint by a public servant and, thus, dispensed with the pre-summoning inquiry and on the basis of the material submitted therewith took cognizance issuing process against the petitioners.

4. The grievance urged in the petitions at the hearing is that the summoning order passed by the Magistrate is mechanical, there being

no application of mind, there being no proof that the individuals who have been added to the fray of accused were responsible for the conduct of the business of the company or were in charge of its affairs.

5. Having heard the learned counsel for the petitioners, this court finds no reason for any interference at the initial stage of the criminal process before the court of the Metropolitan Magistrate. The necessary averments about the individuals, who are added as accused being responsible for day-to-day affairs and business of the company / newspaper establishment have been made in (fourth para of) the criminal complaint. The complainant, should the case be contested, as the petitioners are entitled to do so, would be obliged to bring proof in respect of the said allegation so as to bring home their guilt.

6. Reserving the right of the petitioners to raise all defences available to them in law before the court of the Magistrate, these petitions and the applications filed therewith are dismissed.

R.K.GAUBA, J.

JULY 19, 2018

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