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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ **CRL.M.C. 1879/2016 & CRL.M.A. 8002/2016**

VINAY KUMAR JAIN & ORS Petitioners
Through: Mr. Lalit Gupta, Advocate.

Versus

THE STATE (GOVT OF NCT) DELHI & ORS Respondents
Through: Mr. Akshai Malik, APP for State.
Mr. Rajiv Mohan with Mr. M.A.
Karthik & Mr. Abhimanyu Kampani,
Advocates.

CORAM:

HON'BLE MR. JUSTICE R.K.GAUBA

ORDER

% **24.07.2018**

In the proceedings arising out of complaint case no. (CC No.660/13 and CC No.146/1) submitted by the private party respondents, having secured the presence of the petitioners, they having been summoned as accused on the basis of pre-summoning inquiry, the Metropolitan Magistrate by order dated 08.07.2014 heard arguments and on that basis framed the charge putting the petitioners on trial, formal charge having been framed on 12.01.2015 for the offence punishable under Section 448 read with Section 34 IPC. The petitioners feeling aggrieved had challenged the said order before the court of sessions invoking its revisional jurisdiction by a criminal revision petition (Crl. Rev. No. 6A/15) which was dismissed on 09.02.2016. It may be added here that the challenge before the

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revisional court was on merits of the allegations made in the complaint against the petitioners. The above mentioned orders of the Metropolitan Magistrate and of the revisional court have been challenged by the petition at hand invoking the inherent jurisdiction of this Court under Section 482 of Code of Criminal Procedure, 1973 (Cr.P.C.).

During the course of hearing, however, a procedural defect in the proceedings held in the trial by the court of magistrate has come to the notice which, in the opinion of this court, vitiates the order framing charge. It is for this reason that the petition must be allowed for the reasons set out hereinafter.

The accusations against the petitioners are that they had committed the offence of house trespass under Section 448 read with Section 34 IPC. The said offence is punishable for imprisonment of one year or fine of Rs.1000/- or both. In this view, the case is ordinarily to be put to trial as summons case where the process would begin with a notice under Section 251 Cr.P.C. being served. But then, it is conceded by the counsel for the complainant that it is the discretion of the Magistrate to switch over the procedure from a summons case to a warrant trial case. It is inherent in the impugned order of the Metropolitan Magistrate that upon it being so pressed at the instance of the complainant, the Magistrate had opted to try the case through the warrant trial procedure. In this view, in proceedings arising out of the complaint case, the charge could not have been

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framed without pre-charge evidence having been recorded in terms of Section 244 Cr.P.C.

The learned counsel for the complainant fairly concedes that no pre-charge evidence was adduced. In this view, the impugned orders of the Metropolitan Magistrate and, of course, of the revisional court are set aside. The formal charge framed on 12.01.2015 being not authorised by law is vacated.

The proceedings before the Metropolitan Magistrate shall stand revived from the stage of pre-charge evidence, it being the obligation of the complainant to adduce the same in accordance with law. The parties shall appear before the Metropolitan Magistrate on 16.08.2018.

With these directions, the petition and the application stand disposed of.

R.K.GAUBA, J

JULY 24, 2018
srb

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