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IN THE HIGH COURT OF DELHI AT NEW DELHI

Decided on:- 9th July, 2018

+ CRL.M.C. 2749/2018 & CRL.M.A. 9783-9784/2018

JUNSIK HAN

..... Petitioner

Through: Mr. Kapil Sibal, Senior Advocate &
Mr. Arvind Nigam, Senior Advocate
with Mr. Amit Kumar Mishra, Mr.
Mohit Singh, Mr. Gaurave Bhargav,
Ms. Samridhi Hota, Mr. Koshi John,
Mr. Raghav Tankha, Mr. Shashank
Manish, Mr. Mikhil Sharda & Mr.
Mehtaab Singh Sandhu, Advocates.

versus

STATE OF NCT OF DELHI & ANR

..... Respondents

Through: Mr. Ashish Dutta, APP for State..

CORAM:

HON'BLE MR. JUSTICE R.K.GAUBA

ORDER (ORAL)

1. The present petition has been filed invoking extraordinary criminal jurisdiction of this court under Section 482 of the Code of Criminal Procedure, 1973 (Cr.P.C.) to bring a challenge to the order dated 23.01.2018, whereby the court of additional sessions judge (ASJ) has issued notice on the revision petition (CR.No.204248/16) of the second respondent, *inter alia*, to the petitioner, he having been shown in the array as respondent No.21 in the said revision petition which was presented, in turn, against order dated 26.08.2015 of the court of Chief Metropolitan Magistrate, South-East District (CMM) on

the criminal complaint case (CC No.109/1/2013) where the petitioner herein was impleaded as prospective accused No.21.

2. It may be mentioned here that the criminal complaint was presented by the second respondent on 27.11.2013 against 25 persons (including the petitioner herein) alleging offences punishable under Sections 406/409/420/467/468/471 read with Section 120-B of the Indian Penal Code, 1860 (IPC) with a prayer, by a separate application for the case to be referred to the police for investigation by directions under Section 156(3) Cr.P.C. The Metropolitan Magistrate declined the prayer for direction to the police to investigate by order dated 29.05.2015 and instead decided to take cognizance and hold inquiry under Section 200 Cr.P.C. The second respondent led evidence in the said preliminary inquiry which was considered by the CMM by order dated 26.08.2015. She concluded that there are no sufficient grounds for proceeding further with the said complaint and deemed it fit to dismiss it under Section 203 Cr.P.C.

3. The second respondent (the complainant of the case), feeling dissatisfied, seeks to avail the remedy of revision under Section 397 Cr.P.C. and, thus, filed the aforementioned revision petition in the court of Sessions. By order dated 23.01.2018, which is sought to be impugned, the ASJ has issued notice to the parties who are impleaded as respondents, *i.e.*, including the petitioner herein requiring their appearance on 05.04.2018.

4. It was fairly admitted at the bar by the learned senior counsel for the petitioner that he has due notice of the said revision petition

pending before the court of Sessions, but feeling prejudiced by the order issuing notice, the present petition has been filed primarily with the submission that no case of any offence has been made out against him by the second respondent, the complainant being motivated. It is the argument of the learned senior counsel that this court must step-in to quash the entire process arising out of revision petition “*to secure the ends of justice*” since the criminal complaint and the revision petition are in the nature of “*abuse of the process of the court*”. It was argued that the order dated 23.01.2018 has been passed mechanically and does not disclose the reasons why the revisional court has chosen “*not to uphold the order of the Magistrate*”. Reliance was placed on ruling of a learned single judge of this court in case reported as *Uday Kotak vs. G.D. Foods MFG (I) Pvt. Ltd., (2015) 150 DRJ 594*, particularly with reference to the observations (in para 12) to the effect that the criminal proceedings may continue only if the complaint discloses a cognizable offence.

5. In the considered view of this court, the petition is misconceived and there is no occasion at this stage of the process for this court to interdict. The second respondent is the complainant of the criminal case and at his instance the Metropolitan Magistrate had held inquiry under Section 200 Cr.P.C. The complainant could not satisfy the court of cognizance about the allegations of offences having been committed, *inter alia*, by the petitioner herein. Thus, no adverse order was passed against the petitioner by the Metropolitan Magistrate. The complainant indisputably is entitled to approach the revisional court under Section 397 Cr.P.C. against such order of the Metropolitan

Magistrate. The Criminal Procedure Code vests such revisional jurisdiction not only in this court but also in the court of Sessions. Thus, the complainant had the choice of two forums available to him. He chose the court of Sessions to present his revision petition. The Sessions court while exercising such revisional jurisdiction is bound, by virtue of Section 399 Cr.P.C. with the procedural requirement of Section 401 Cr.P.C. The mandate of Section 401 (2) Cr.P.C. is that no order in the revisional jurisdiction “*shall be made to the prejudice of the accused or any other person unless he has had an opportunity of being heard either personally or by pleader in his own defence*”.

6. The impugned order dated 23.01.2018 of the court of Sessions dealing with the revision petition is an order passed only at the threshold with the intent of compliance with the requirement of Section 401(2) Cr.P.C. in letter and spirit. At this stage of the process, the additional sessions judge cannot be expected to record any observations on the merits of the contentions raised – particularly observations concerning reasons, if any, for not being in agreement with the findings of the Magistrate – inasmuch as that would be prejudicial to one side or the other.

7. A competent court vested with the power of revision is *in seisin* of the matter. That is the forum chosen by the revision petitioner. Any intervention by this court at this stage in exercise of its inherent power under Section 482 Cr.P.C. would tantamount to usurpation of the jurisdiction of the revisional court which is neither proper nor desirable. There are, as on date, no adverse orders passed against the

petitioner as to his complicity in the crimes alleged by the second respondent. Nothing inhibits the petitioner in appearing before the revisional court to render assistance in response to the notice issued by the impugned order. There is no occasion for this court to intervene under the extraordinary criminal jurisdiction at this stage.

8. The petition and the applications filed therewith are dismissed.

R.K.GAUBA, J.

JULY 09, 2018

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