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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ CRL.M.C. 2957/2018 & CRL.M.A. 10452/18-10453/18
S.R. VAISH Petitioner
Through: Mr. Aditya Raina, Adv.

versus

THE STATE GOVT OF DELHI & ORS. Respondent
Through: Mr. Izhar Ahmad, APP for State

CORAM:
HON'BLE MS. JUSTICE ANU MALHOTRA

ORDER
% **28.05.2018**

Notice of the petition is issued to the State and accepted on behalf of the State.

Vide the present petition, the petitioner seeks quashing of the summoning order dated 08.01.2018 of the Court of MM, Saket Courts in relation to FIR No.421/2015, PS Amar Colony, under Sections 34/448 Indian Penal Code, 1860 submitting to the effect that in relation to a co-accused named Salman Khurshid of Crl.M.C.1589/2018, the very summoning order had been set aside with the matter having been remitted to the learned trial Court to reconsider the charge-sheet as well as the supplementary charge-sheet along with the documents and to pass a fresh order in view of the factum that the entire case file was not before the trial Court at the time when the trial Court had taken on record the supplementary charge-sheet and issued the summoning order inasmuch as the order

dated 08.01.2018 had been passed by the trial Court in two parts, one is prior to 12.00 noon and the other is post 12.00 noon and that in the order recorded prior to 12 noon, it has been recorded that the supplementary charge-sheet had been filed and considered and that thereafter the matter was kept post-noon for orders and that thereafter the impugned order was passed. The proceedings dated 09.05.2018 in CrI.M.C.1589/2018 qua the co-accused in the matter indicate that it has been observed thereof vide para 5 & 6 to the effect that:

“5. In the first part of the order dated 08.01.2018, the trial court has specifically recorded that file is pending before the Court of learned Addl. Sessions Judge and be awaited. Thereafter it is recorded in the order that Supplementary Charge Sheet has been file, which was perused and arguments heard and thereafter post noon the impugned summoning order issued.

6. Both the Charge Sheet and Supplementary Charge Sheet have been placed on record. Perusal of the Charge Sheet shows that substantial documents formed part of the Charge Sheet. The Charge Sheet also adverts to the role of the petitioner and does not implicate him. Admittedly, this Charge Sheet and its annexures were not available before the Trial Court, when the impugned order was passed”.

Apparently as brought forth through the proceedings dated 09.05.2018 in CrI.M.C.1589/2018, the charge sheet and its annexures were not available before the learned trial Court and the impugned order was passed only on the basis of the supplementary charge sheet inasmuch as initially the charge sheet was before the Court of Addl. Sessions Judge. On behalf of the State it has been submitted that the order, if any, be passed in terms of the order dated 09.05.2018 on CRL.M.C. 2957/2018

similar facts as in Crl.M.C.1589/2018.

On a consideration of the submissions and the proceedings dated 08.01.2018 pre-lunch and post lunch before the learned MM-08 (SE), Saket Courts which apparently reflect that the entire case file was not before the learned trial Court at the time when the summoning order was passed and apparently on a consideration qua the co-accused in Crl.M.C.1589/2018, in terms of order dated 09.05.2018 therein it is directed that the proceedings in relation to the impugned summoning order dated 08.01.2018 against the petitioner have set aside in relation to FIR 421/2015, PS Amar Colony with direction that the matter be remitted to the learned trial Court to reconsider the charge-sheet as well as the supplementary charge-sheet along with the document and to pass a fresh order in accordance with law as also directed vide order dated 09.05.2018 in Crl.M.C.1589/2018. This Court has neither considered nor opined on the merits of the case of either side.

The petition is disposed of accordingly.

ANU MALHOTRA, J

MAY 28, 2018

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