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IN THE HIGH COURT OF DELHI AT NEW DELHI

Decided on:- 9th July, 2018

+ CRL.M.C. 1877/2016 and Crl.M.A.7978/2016

RASHMI JAIN

..... Petitioner

Through: Mr. P.P. Khurana, Senior Advocate
with Mr. Sachin Sood, Advocate

versus

STATE & ANR

..... Respondents

Through: Mr. Ravi Nayak, APP for the State
with SI Gopal, PS Shakarpur.
Mr. Pramod Kumar Dubey, Adv. For
R-2 along with R-2 in person.

CORAM:

HON'BLE MR. JUSTICE R.K.GAUBA

ORDER (ORAL)

1. The petitioner is aggrieved by the order dated 10.07.2015 of the court of Metropolitan Magistrate passed on the file of the criminal case arising out of report under Section 173 of the Code of Criminal Procedure, 1973 (Cr.P.C.) submitted on conclusion of investigation into FIR No.928/2005 of Police Station Shakarpur, Delhi whereby she has been summoned as an additional accused in exercise of the power vested in the said criminal court by Section 319 Cr.P.C.
2. The FIR of the case was registered on the basis of a complaint made on 11.09.2005 by Madhvi Jain. Copy of the FIR which has been shown reveals that the said first informant had alleged that at about 9:30 a.m. she had been accosted at her home by four persons, viz.

Archana Jain, Nirmal Jain, Kranti Kumar Jain and Rashmi Jain (the petitioner) who had forcibly entered into her room and had assaulted her wherein the petitioner had caught hold of her hair after she had been forced to fall on the ground by Kranti Kumar Jain, to hit her with legs and fists, other two women having also joined in the process.

3. The charge-sheet indicated that the evidence had come up confirming the said assault and consequently Madhvi Jain, the complainant, having suffered grievous hurt. Thus, the charge-sheet which was submitted on 13.11.2005 prayed for cognizance to be taken and criminal case initiated for trial of the perpetrators of the crime for offence punishable under Sections 325/34 IPC. It may be mentioned here that the offence punishable under Section 325 IPC (voluntarily causing grievous hurt) attracts punishments which may extend to seven years with fine. It may also be added here that having regard to the maximum punishment that can be meted out for the said offence, there is no period of limitation prescribed by Section 468 Cr.P.C.

4. Curiously, in the charge-sheet submitted on 13.11.2005, the investigating agency, *inter alia*, stated that no evidence had come-forth to put the petitioner (Rashmi Jain) under arrest. The other three persons were, however, named in the charge-sheet and their prosecution prayed for. It appears that the court of cognizance did not apply its mind as to the role and complicity, if any, of the petitioner at the initial stage. The trial, thus, commenced against the other accused on the charge for offence punishable under Section 325/34 IPC framed on 04.03.2008. The prosecution led evidence by examining its witnesses including Madhvi Jain (PW-1), she having been examined

on 02.08.2011 and cross-examined on 10.08.2011. The other witnesses including Rajender Kumar Jain (PW-4), husband of Madhvi Jain, were examined later.

5. On 22.01.2014 an application was moved by the complainant praying for the petitioner to be summoned as additional accused under Section 319 Cr.P.C. This application was considered by the Metropolitan Magistrate and, in view of the testimony of the witnesses who had been examined, the impugned order was passed on 10.07.2015.

6. The learned senior counsel for the petitioner argued on the strength of *Hardeep Singh vs. State of Punjab & Ors.*, (2014) 3 SCC 92 that the power and jurisdiction of the criminal court under Section 319 Cr.P.C. ought not to be exercised in a casual or cavalier manner and there must be strong and cogent evidence available on which a person not sent up for trial may be summoned as an additional accused.

7. Following observations in decision in *Hardeep Singh (supra)* need to be noted:-

“95. At the time of taking cognizance, the court has to see whether a *prima facie* case is made out to proceed against the accused. Under Section 319 Cr.P.C. though the test of *prima facie* case is the same, the degree of satisfaction that is required is much stricter. A two-Judge Bench of this court in *Vikas v. State of Rajasthan* (2014) 3 SCC 321, held that on the objective satisfaction of the court a person may be “arrested” or “summoned”, as the circumstances of the case may require, if it appears from the evidence that any such person not being the accused has committed an offence for which

such person could be tried together with the already arraigned accused persons.”

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106. Thus, we hold that though only a prima facie case is to be established from the evidence led before the court, not necessarily tested on the anvil of cross-examination, it requires much stronger evidence than mere probability of his complicity. The test that has to be applied is one which is more than prima facie case as exercised at the time of framing of charge, but short of satisfaction to an extent that the evidence, if goes un rebutted, would lead to conviction. In the absence of such satisfaction, the court should lead to conviction. In the absence of such satisfaction, the court should refrain from exercising power under Section 319 Cr.P.C. In Section 319 Cr.P.C. the purpose of providing if “it appears from the evidence that any person not being the accused has committed any offence” is clear from the words “for which such person could be tried together with the accused”. The words used are not “for which such person could be convicted”. There is, therefore, no scope for the court acting under Section 319 Cr.P.C. to form any opinion as to the guilt of the accused.”

8. Undoubtedly, the application under Section 319 Cr.P.C. could have been moved much earlier. But then, as observed above, there is no bar of limitation applicable to the case at hand.

9. In the facts and circumstances, it cannot be said that there is no evidence against the petitioner. In fact, there is a strong evidence available on record against the petitioner since she was named in the FIR as one of the assailants. The observations of the investigating agency in the charge-sheet that no evidence had come forth to put her under arrest is not based on any specific reasons. The submission that the order under Section 319 Cr. PC was passed in a casual or cavalier

manner cannot be accepted as the trial court was not expected at that stage of the process, where the trial against the other accused who was summoned was still pending, to return findings as to the falsity of the case – charge having been framed – or on the question of motive.

10. This court finds no illegality or irregularity in the impugned order.

11. For the foregoing reasons, the petition and the application filed therewith are dismissed.

R.K.GAUBA, J.

JULY 09, 2018

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