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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ CRL.M.C. 3653/2018 and Crl. M.A. 28473-28474/2018

VINAY SINGH & ANR. Petitioners

Through: Mr. Arjun Dewan, Mr. Uday Bedi and
Ms. Anupama Kumar, Advocate

versus

STATE OF NCT OF DELHI & ANR. Respondents

Through: Mr. Mukesh Kumar, APP for the State
with SI Kamal Kishore

CORAM:

HON'BLE MR. JUSTICE R.K.GAUBA

ORDER

% **25.07.2018**

During investigation into the First Information Report (no.387/2015) registered on 10.06.2015 by police station Fatehpur Beri under Sections 323, 341, 506, 34 IPC, no evidence about involvement of the petitioners came up. The copy of the charge-sheet dated 13.07.2017, which was presented seeking trial of Khilar Singh Tanwar for offences under Sections 325, 341, 506, 34 IPC clearly reveals that the names of the petitioners were kept in column 12 with clear assertion that there was no evidence as to their complicity in the crimes.

By order dated 20.07.2017, the Metropolitan Magistrate took cognizance on the said charge-sheet and passed an order to the effect

that the “accused be summoned”. This order has to be construed as an order summoning Khilar Singh Tanwar only. The Metropolitan Magistrate, however, by a subsequent order dated 26.10.2017 noted the submissions of the Additional Public Prosecutor to the effect that there were “specific allegations” by name against “other accused persons” though they had been placed in column no.12. On that basis, he directed summons to be issued to the petitioners as well.

Feeling aggrieved, the petitions have come up before this court invoking its inherent jurisdiction under Section 482 of the Code of Criminal Procedure, 1973 arguing that the second summoning order is bad in law and in the nature of abuse of the process.

Having heard the learned counsel for the petitioner and the Additional Public Prosecutor for the State, who fairly concedes that the report of investigation had unequivocally informed the court of the Magistrate that no evidence even as to the presence of the petitioners had come up at the time of incident, this court finds the impugned order dated 26.10.2017 to be bad in law. The Magistrate had no power of review. A call had been taken at the stage of Section 204 Cr. PC by order dated 20.07.2017 whereby only Khilar Singh Tanwar had been summoned as an accused. The Magistrate may have the occasion to exercise jurisdiction to summon additional accused should evidence come up during the course of trial in terms of Section 319 Cr. PC.

The impugned order dated 26.10.2017 summoning the petitioners at this stage of the process being bad in law is set aside.

The petition and the applications filed therewith are disposed of accordingly.

Dasti under the signatures of the Court Master.

R.K.GAUBA, J

JULY 25, 2018

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