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IN THE HIGH COURT OF DELHI AT NEW DELHI

Decided on:- 20th August, 2018

+ CRL. M.C. 1452/2015 & CrI.M.A. 5348/2015

UMASHANKAR & ANR. Petitioners
Through: Mr. L.B. Rai, Mr. Mahi Pal
Singh, Mr. Muri Tawari & Ms.
Shama Sharma, Advs.

versus

STATE (GOVT. OF NCT OF DELHI) & ORS..... Respondents
Through: Ms. Meenakshi Dahiya, APP
for the State with SI Mahesh
Singh, PS Pandav Nagar.
Respondent No.2 in person.

**CORAM:
HON'BLE MR. JUSTICE R.K.GAUBA**

ORDER (ORAL)

1. On the criminal complaint dated 16.05.2002 (complaint case 2034/1 – later CC no. 3278/01/06 – new number 2434/09) of second respondent (hereinafter “the complainant”), directions have been given by the court of Sessions exercising revisional jurisdiction (in criminal revision 08/2014), by order dated 21.03.2015, summoning the petitioners (as accused) as a consequence of setting aside of the earlier order dated 04.06.2010 of the Metropolitan Magistrate dismissing the said complaint under Section 203 of the Code of Criminal Procedure, 1973 (Cr.P.C.). It is the said order which was challenged by the petition at hand invoking the inherent power and jurisdiction of this

Court under Section 482 Cr.P.C. read with Article 227 of the Constitution of India.

2. Lest it prejudices either side, and in view of the directions which this Court deems it proper to issue in the matter, a detailed reference to the allegations in the criminal complaint or the position taken in response thereto is being scrupulously avoided. Suffice it to note here that the complainant claims to be the owner of subject property described as house no. B-17, Acharya Niketan, Delhi – 110091. He alleged that the petitioners and certain others (described in the complaint as accused persons) had committed offences punishable under Sections 452, 354, 380, 120B, 506 and 34 of Indian Penal Code, 1860 (IPC) qua the said house, members of his family residing and moveable assets kept therein, by certain acts of commission and omission, on 15.05.2002. Reference was made in the said complaint to first information report (FIR) no. 135/2002 having been lodged by the respondent herein with police station Trilokpuri statedly involving offences punishable under Sections 447/448/506/34 IPC.

3. The Metropolitan Magistrate had called for a report from the police and thereafter held pre-summoning inquiry in the course of which, the complainant led evidence by examining six witnesses. The said witnesses, were, however, found by the Magistrate to be not credible. By order dated 08.05.2006, the complaint was dismissed with observations that no *prima facie* case had been made out for the parties shown in the array as accused to be summoned.

4. The complainant assailed the said order dated 08.05.2006 in the court of Sessions (by Crl. Rev. 30/2006). The revisional court observed, by order dated 17.07.2006, that the approach of the Magistrate was erroneous. It held that the evidence led could not have been discarded by terming the witnesses to be “*interested*” and further that there was no need for “*ownership*” of the property to be proved since the crucial question was as to who was in possession at the relevant point of time. The matter was, thus, remanded to the Metropolitan Magistrate for taking a *prima facie* view of the matter.
5. On 27.10.2007, the Metropolitan Magistrate recorded the following order:-

*“Present Complainant in person.
Case is at the stage of summoning of accused and argument has been addressed by the complainant. I have gone through the complete record as well as testimony of witnesses examined by the complainant in support of allegations in the complaint. As observed the complaint of the complainant was dismissed by the order of Ld. MM Dr. Shahabuddin vide order dt. 08.05.2006. Aggrieved by the order complainant herein preferred revision before Sessions Court which was allowed and the matter was remanded back for consideration on summoning afresh. The complainant and witnesses have already been examined under section 200 Cr.P.C. In the facts and circumstances of the case and in view of allegations made in the complaint and to ascertain the truth and for collection of further evidence if any, I deem it appropriate that the enquiry be made regarding the allegations by the complainant by the prosecuting agency. In pursuance of section 202 Cr.P.C., the SHO is accordingly directed to make an enquiry in the matter regarding the allegations made in the complaint made by the complainant and file the report at the earliest, preferably within three months.*

The enquiry is limited to the extent and regarding ascertainment of the truth or falsehood of the allegations made in the complaint for the purpose of finding out whether any prima facie ground for issuing process against the alleged accused persons. Copy of order be sent to SHO concerned and be given dasti to niab court concerned. Put up for report on 20.02.08. The copy of the complaint and documents be filed and supplied to the niab court concerned”.

6. Pursuant to the directions in the aforesaid order dated 27.10.2007, the SHO police station Pandav Nagar who had the jurisdiction over the area where the property was situate submitted an inquiry report. This referred, *inter alia*, not only to FIR No. 135/2002 but also to pleadings and proceedings of a civil suit (no. 1396/86) concerning the property in question. The report was considered by the Metropolitan Magistrate and, by order dated 07.05.2008, once again the complaint was dismissed. In taking the view for such result of the matter, the Metropolitan Magistrate referred primarily to the inquiry report of the police submitted pursuant to the directions in the order dated 27.10.2007.

7. The second dismissal of the complaint, by order dated 07.05.2008, was challenged again before the Sessions court by Crl. Rev. 123/2008. The petition was allowed by order dated 25.03.2009, the revisional court observing that the Metropolitan Magistrate had overlooked some of the evidence which was part of the record. The matter was remitted again to the Magistrate with direction for a further order to be passed on the question of issuance of process after considering the evidence along with other collateral facts.

8. The Metropolitan Magistrate reconsidered the available record, without making any further inquiry or calling for any further evidence, but reached the same conclusion by order dated 04.06.2010 holding there was no *prima facie* case made out for summons to be issued.

9. The challenge by the complainant to the said last order was successful as the court of Sessions, sitting in revision, passed the impugned order dated 21.03.2015, practically directing the petitioners to be summoned.

10. The evidence of the six witnesses who were examined by the complainant at the stage of inquiry under Sections 200/202 Cr.P.C, essentially relates to facts presented to the court of cognizance from the perspective of the complainant. The criminal complaint, as indeed the status reports submitted by the police at the time of initial inquiry and inquiry directed by order dated 27.10.2007 have brought to the fore certain additional facts including what is referred to by the petitioners as “*admissions*” in the pleadings and proceedings of the civil suit.

11. It may be added here that there is material presented to show investigation into FIR No. 135/2002 registered at the instance of the petitioners was completed in due course and charge-sheet was laid in the court of Metropolitan Magistrate on which the complainant of the case at hand along with one another (Raman) have been summoned. It further appears on 21.12.2009 the Metropolitan Magistrate took the said case, *inter alia*, against the complainant to trial by directing charge to be framed for offences punishable under sections

420/468/471 read with Section 120-B IPC and under Sections 451, 323, 356 read with Section 34 IPC.

12. If the summoning order were to be passed only on the basis of scrutiny of the testimony of six witnesses presented by the complainant it would lead to a one-sided view to be taken. That is not the object of preliminary inquiry. This is why the law confers on the court of Magistrate, the jurisdiction to “*postpone*” the question of issuance of process and undertake further probe in terms of Section 202 Cr.P.C.

13. It is necessary in this context to take note of the provision contained in Section 202 Cr.P.C. to the extent necessary:-

“202. Postponement of issue of process.—(1) Any Magistrate, on receipt of a complaint of an offence of which he is authorised to take cognizance or which has been made over to him under section 192, may, if he thinks fit, 1 and shall, in a case where the accused is residing at a place beyond the area in which he exercises his jurisdiction, postpone the issue of process against the accused, and either inquire into the case himself or direct an investigation to be made by a police officer or by such other person as he thinks fit, for the purpose of deciding whether or not there is sufficient ground for proceeding:

Provided that no such direction for investigation shall be made,— (a) where it appears to the Magistrate that the offence complained of is triable exclusively by the Court of Session; or (b) where the complaint has not been made by a Court, unless the complainant and the witnesses present (if any) have been examined on oath under section 200”.

14. The words “*inquiry*” and “*investigation*” as appearing in above clause of Section 202 carry different meanings and are not interchangeable. Having regard to their respective definitions given by clauses (g) and (h) in Section 2 Cr.P.C., they fall in different domains. While “*investigation*” is the process of “*collection of evidence conducted by a police officer*” (or by person authorized by a magistrate) the “*inquiry*” is conducted by “*the court*” (or magistrate).

15. It is clear from bare perusal of the above-mentioned clause of Section 202 Cr.P.C. that having examined the complainant and six witnesses under Section 200 or Section 202 Cr.P.C, the Metropolitan Magistrate may, if he thinks fit, hold further inquiry into the matter or he may direct an investigation to be made by the police (or even by any other person). If the Magistrate intends to hold further “*inquiry*”, it is essential that he must do it himself. He cannot outsource an inquiry to any other person or agency. He can make over the case to the police for “*investigation*”, but the only restriction is that the case in which he has embarked upon inquiry under Section 200 Cr.P.C. must not be the one which involves the offence triable exclusively by the court of Sessions. Having regard to the allegations made in the criminal complaint from which the present matter arises, the said restriction did not come into play nor inhibit entrustment of the matter for investigation by the police.

16. The proceedings, in the considered view of this Court, stood vitiated by order dated 27.10.2007 of the court of magistrate. Opting to call upon the police “*to make an enquiry*” was not permissible in law. In terms of Section 202 Cr.P.C. a direction to the police could be

given to not to “*enquire*” but “*to investigate*”. The investigation by the police would entail the procedure governed by Chapter XII of Cr.P.C. No investigation in that sense of the matter has either been ordered or secured by the Metropolitan Magistrate till date. The order dated 27.10.2007 directing an “*enquiry*” being impermissible in law, the report received in its wake could also not have been acted upon.

17. The needful correction in the course must be done now. The impugned orders are set aside. The question as to whether there is need for further “*inquiry*” by court or “*investigation by police*” under Section 202 Cr.P.C. is kept open for a call thereupon to be taken by the concerned Metropolitan Magistrate, after hearing the complainant and perusal of available material.

18. The petition is disposed of with above directions.

R.K.GAUBA, J.

AUGUST20, 2018

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