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IN THE HIGH COURT OF DELHI AT NEW DELHI

Decided on: 14th August, 2018

+ CRL.M.C. 2439/2015

PRAVEEN GUPTA & ANR Petitioners

Through: Mr. Vaibhav Sethi, Adv.

versus

STATE & ANR. Respondents

Through: Mr. Ravi Nayak, APP for the
State.

Mr. Sushil Kumar Gupta,
respondent no.2 in person.

CORAM:

HON'BLE MR. JUSTICE R.K.GAUBA

ORDER (ORAL)

1. On the criminal complaint of Smt. Vimla Gupta, the mother of the second respondent, presented on 28.03.2012, the petitioners were summoned as accused for offences punishable under Sections 406/420 of the Indian Penal Code, 1860 (IPC) after an inquiry under Section 200 of the Code of Criminal Procedure, 1973 (Cr.P.C.). The complainant is described as mother of the second petitioner, the first petitioner being the husband of the second petitioner and, thus, the son-in-law to her. After the petitioners had appeared, the Metropolitan Magistrate proceeded to put the case through the procedure prescribed for warrant trial cases in the course of which the complainant was tendered for cross-examination which opportunity was availed by the petitioners. Thereafter, the question of charge was considered. By

order dated 20.01.2014, the Metropolitan Magistrate found sufficient grounds to frame charge against the petitioners for offences under Sections 406/420 IPC. Charges were accordingly formally framed on 17.05.2014.

2. The petitioners, however, challenged the said order before the court of Sessions, invoking its revisional jurisdiction by filing petition (Criminal Rev. 17/2014) which was dismissed by order dated 09.12.2014.

3. The view taken by the court of Sessions in its revisional jurisdiction and the procedure adopted by the Metropolitan Magistrate for the trial have been questioned by the petition at hand invoking the inherent power of this Court under Section 482 Cr.P.C., on the ground the same is unknown to law and, thus, the order directing charge to be framed is an abuse of the criminal process.

4. The complainant statedly died on 16.08.2014. Her son Sushil Kumar Gupta was impleaded as the second respondent by directions of this Court in the previous proceedings. It is stated that he is prosecuting the criminal complaint before the trial court after the death of the original complainant.

5. Having heard both sides and having gone through the record, this Court finds the contentions raised by the petitioners to be correct, calling for interference by this Court.

6. The complainant had been examined as the solitary witness (CW-1) in the pre-summoning inquiry under Section 200 Cr.P.C. on

18.04.2012. After the petitioners who were summoned as accused had put in appearance, the matter came to be listed before the trial court for pre-charge evidence, that being the next appropriate stage in the criminal process in trial of warrant cases instituted otherwise than on a police report. In terms of the provision contained in Section 244 Cr.P.C. the complainant was to adduce evidence and upon taking such evidence as would have been produced in support of the prosecution, the Magistrate was to proceed to consider as to whether the accused persons were entitled to be discharged under Section 245 Cr.P.C. or as to whether there were grounds to presume that they had committed offences triable as warrant case before the court of Magistrate for further directions under Sections 246 Cr.P.C.. It is trite that evidence at that stage would be taken by the court in the presence of the accused who had been summoned. The law would not permit the evidence which had been adduced in the pre-summoning inquiry to be “adopted”. The decision of the Supreme Court in *Sunil Mehta & Anr. vs. State of Gujarat in Crl.Appeal 327/2013* applies squarely to the subject. It may be added that in a similarly placed case Crl.M.C. 1879/2016 *Vinay Kumar Jain & Ors. vs. The State & Ors.* decided on 24.07.2018, this court had also taken a similar view.

7. The submissions of the second respondent is that the petitioners having acceded to the procedure employed by the Metropolitan Magistrate and having availed of the opportunity for cross-examination given on the pre-summoning evidence, which was adopted, cannot be allowed to now raise this grievance. This plea,

however, cannot be accepted for the simple reason that the prescribed procedure in a criminal trial cannot be allowed to be tinkered by consent of the parties. The “adopted” testimony of CW-1 was the only testimony available before the court of Metropolitan Magistrate when the impugned order directing charge to be framed, was passed. Since that part of the record cannot be looked into, it having been created by a procedure which was not lawful, the impugned order directing charge to be framed cannot be allowed to stand. It is consequently set aside. It naturally follows that the revisional court’s view also must be vacated. Ordered accordingly.

8. The Magistrate is directed to proceed to consider the matter arising out of the criminal complaint pending before him for such further directions as are required in accordance with law.

9. The petition is disposed of in above terms.

R.K.GAUBA, J.

AUGUST 14, 2018

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