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IN THE HIGH COURT OF DELHI AT NEW DELHI

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CRL.M.C. 2142/2015 and Crl. M.A. 7599/2015

SUNIL KUMAR RAJPUT

..... Petitioner

Through: Mr. Maninder Singh, Mr. Sanjay
Chaubey, Mr. Aahil Arora, Ms. Aekta Vats, Mr.
Dinhar Takiar, Ms. Smriti and Mr. Sankalp Kohli,
Advocates

versus

STATE (GOVT OF NCT OF DELHI) & ANR Respondents

Through: Mr. Akshai Malik, APP for the State
with SI Dheer Singh

Ms. Pushti Gupta, Advocate for R-2/complainant

CORAM:

HON'BLE MR. JUSTICE R.K.GAUBA

ORDER

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13.09.2018

In the first information report (no.312/2012) registered by police station Farsh Bazar on 20.08.2012 at the instance of the second respondent (complainant) allegations of offence punishable under Section 3(1)(x) of the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989 (for short, "SC/ST Act") were levelled against the petitioner. The petitioner had earlier approached this court with the prayer for quashing by invoking the inherent power under Section 226 of the Constitution of India vide WP (Crl.) 1234/12 on 25.02.2013. The Additional Standing Counsel for the respondent / State in the said matter had informed that a final report seeking

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cancellation of the case had been filed with the trial court. The court took the view that in view of the said development, the said writ petition would not survive. The petition was dismissed though liberty having been granted to the petitioner to pursue remedies available in law in case summoning order was passed against him.

A copy of the final report – report under Section 173 Cr. PC – registered as a criminal case – has been submitted with the petition. The conclusion reached by the investigating officer in the said report states that the allegations against the petitioner could not be substantiated beyond reasonable doubt. Though the said report would not make any specific prayer as to whether prosecution was sought or the case was requested to be cancelled or closed, given the submissions which had been made in the writ court as afore-noted, it is clear that the intention was that the case be cancelled.

The learned Metropolitan Magistrate passed the following order on the said report on 03.11.2012 :-

“03.11.2012

Present: Ld. APP for the State

I have perused the challan and documents annexed with. I take cognizance of the alleged offence.

Issue summon to the accused through IO for 19.11.2012.

Sd/-”

Aggrieved by the summoning order on such report as aforesaid, the petitioner has come back to this court now invoking the inherent power under Section 482 Cr. PC to assail the view taken by the Metropolitan Magistrate.

The submission of all sides have been heard. The learned Additional Public Prosecutor for the respondent / State and the learned counsel for the second respondent (complainant) fairly conceded that the afore-quoted order dated 03.11.2012 of the Metropolitan Magistrate cannot pass the muster of a judicial order, it being totally bereft of any reasoning leave alone taking note of the background facts or the nature of report on the basis of which such view was taken.

Undoubtedly when the investigating police submits a report under Section 173 Cr. PC, the prerogative to take an appropriate view in accordance with law rests with the court of cognizance i.e. Metropolitan Magistrate. Again undoubtedly, at such stage, the Metropolitan Magistrate is not bound by the view expressed in the report of investigation submitted by the police. For clarity, it may be added that the Magistrate has a judicial discretion, power and jurisdiction to take a view contrary to the one reached by the investigating police – that is to say even in a case where the investigating police has submitted a report for cancellation or closure (not sending any person for prosecution), the Magistrate can reject the said view and on the basis of available material proceed to take cognizance under Section 190 Cr. PC and to issue process under Section 204 Cr. PC. It is also true that the order taking cognizance, or issuing process, need not be a very detailed or elaborate one. But, it is always desirable that such an order must pass the muster of a judicial order which means the order must show application of mind

and, for such tests to be passed, the order must take note atleast of the background facts, *albeit* briefly, and the reasons why the Magistrate is taking a particular view, specially when it is contrary to what has been recommended to him by the investigating agency.

The order quoted above fails the test on all the above parameters and, therefore, cannot be sustained. It is set aside. The matter is remitted to the Metropolitan Magistrate for fresh consideration of the report under Section 173 Cr. PC and a fresh order to be passed in accordance with law.

The petition and the applications filed therewith stand disposed of in above terms.

R.K.GAUBA, J.

SEPTEMBER 13, 2018

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