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

+ CRL.M.C. 3957/2016 and Crl. M.A. 16572/2016, 16901/2016,
16979/2016

ST. STEPHENS' HOSPITAL & ORS.

..... Petitioners

Through: Mr. Rajeev Sharma, Ms. Radhalakshmi
R., Mr. T. Rajat Krishna and Mr. Saket Chandra,
Advocates

versus

SUNITA KUMARI & ANR

..... Respondents

Through: Mr. Abhihav Prakash, Advocate

CORAM:

HON'BLE MR. JUSTICE R.K.GAUBA

ORDER

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06.12.2018

The respondents had instituted a criminal complaint case (no.513834/2016) against the petitioner alleging offences punishable under Section 269, 338, 406, 468, 471, 503 and 506 of Indian Penal Code, 1860 (IPC) having been committed by them. The Metropolitan Magistrate held summoning inquiry under Sections 200 and 202 of the Code of the Criminal Procedure, 1873 (Cr.PC) during which three witnesses were examined, they including the first and second respondents and a medical practitioner namely Dr.S.P. Singh (CW-3). On the basis of the said material, the Metropolitan Magistrate, by his order dated 08.09.2011, found grounds to proceed against the

petitioners for offences under Sections 269 and 338 IPC and directed summons to be issued to each of them requiring their personal appearance.

It must be observed here itself that aside from first to sixth petitioners who were named in the criminal complaints, the seventh petitioner was added to the fray, her identity not having been known to the complainants (respondents). The order passed by the Metropolitan Magistrate is mechanical, at least to this extent, that it summoned seven persons mentioned in the complaint including an unknown and unidentified person (i.e. the seventh respondent). On being asked, the counsel for the petitioners fairly conceded that there was no occasion for seventh respondent to be shown in the array as co-petitioner. The name of the said person is, thus, struck off from the proceedings.

The first to sixth petitioners having entered appearance, the Metropolitan Magistrate heard the parties on some of the dates. It is not clear what was the purpose and import of the said hearing but, from what followed, it can be assumed that the Metropolitan Magistrate was not very clear as to the meaning of some of the medical terminology that had been used by CW-3 in his deposition during pre-summoning inquiry. It is in that context that he passed order dated 01.07.2016 noting that he required clarification on certain aspects from CW-3 and, therefore, directing he to be summoned. CW-3 appeared and the respondents (complainants) having secured his affidavit sworn on 17.08.2016 presented it for record.

The petitioners, as the accused, took objection and sought recall of the order dated 01.07.2016, their prime contention being that further evidence could not be gathered in such proceedings at such stage. The said objection was repelled, the Magistrate observing that though the affidavit of CW-3 was being taken on record, presence of CW-3 was required and directed the complainants to take necessary measures, this by order dated 17.08.2016.

Both the orders dated 01.07.2016 and 17.08.2011 have been challenged by the petition at hand under Section 482 Cr. PC.

The respondents' counsel fairly conceded that in the post-summoning proceedings in a case of this nature, which ordinarily would be regulated by the procedure for summon cases, further gathering of evidence by summoning witness is impermissible. He also fairly conceded that the affidavit of CW-3 submitted at this stage of the process cannot be read. He, however, submitted that if Magistrate needs the assistance of CW-3 to explain the import and meaning of medical expressions used in his testimony adduced during pre-summoning inquiry, there should be no objection. The counsel for the petitioners also agreed that there would be no objection if the only purpose of requiring the presence of CW-3 is to aid and assist the petitioners in comprehending the medical terminology but submitted that, under this cover, a questionnaire of the kind indicated in order dated 01.07.2016 cannot be put particularly as the answers to such questionnaire would entail bringing on record additional material beyond the material which was adduced during pre-summoning

inquiry.

This court cannot but agree with these submissions of the Petitioners, the counsel for the respondents also agreeing to this proposition of law.

During the course of hearing, the counsel for the petitioners also indicated that the petitioners wish to bring a challenge to the summoning order. The disposal of this petition will be without prejudice to such right of the petitioners.

For the above reasons and, in the facts and circumstances, with consent of both sides, it is directed that the Metropolitan Magistrate may take the oral assistance of CW-3 in comprehending the medical terms but will not record his further evidence nor permit the affidavit to be taken on record, unless he intends to proceed through a procedure other than the one governing summons trial.

The petition is disposed of with above observations. This disposes of the pending application as well.

R.K.GAUBA, J

DECEMBER 06, 2018

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