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

+ CRL.M.C. 4438/2016 & CRL.M.A. 18531/2016

SANJAY KUMAR Petitioner

Through: Mr. Sumit Choudhary, Adv.

versus

STATE Respondent

Through: Mr. Panna Lal Sharma, APP for State
with SI Sukhbir Singh, PS Adarsh
Nagar.

CORAM:

HON'BLE MS. JUSTICE ANU MALHOTRA

ORDER

% **02.04.2018**

Vide the present petition, the petitioner seeks quashing/making of necessary modification in the order dated 09.09.2016 of the ASJ-04 (North), Rohini Court, Delhi in relation to the proceedings in FIR No. 319/2012, PS Adarsh Nagar vide which a cost of Rs.1,000/- was imposed upon SHO concerned PS Adarsh Nagar that is the present petitioner with directions that the same be recovered from his salary with further directions that copy of the same order be sent to the DCP concerned for recovery of the said amount *inter alia*.

Vide the said order it has been observed therein that an Inspector Rakesh Kumar had appeared on behalf of the SHO PS Adarsh Nagar that is the present petitioner who had expressed his ignorance in relation to the status of the charge-sheet of cross FIR No. 318/2012 PS Adarsh Nagar and the outcome of action taken against IO SI Sanjeev and the SHO concerned was also directed through

Inspr Rakesh Kumar vide order dated 17.08.2016 to appear in person on 09.09.2016 with the Action Taken Report with regard to IO SI Sanjeev and also to apprise the said Court about the status of the said cross FIR. As per the said proceedings dated 09.09.2016 vide the impugned order it has been observed that the SHO PS Adarsh Nagar that is the present petitioner did not appear nor any report had been received qua the aspects defined in the order dated 17.08.2016 and it had been informed to the Court that no charge-sheet arising out of cross FIR No. 318/2012, PS Adarsh Nagar had been received by the said trial Court till the said date. It was observed that the conduct of the SHO concerned PS Adarsh Nagar that is the present petitioner was totally negligent and careless inasmuch as he had not appeared before the learned ASJ-04 on 17.08.2016 nor on 09.09.2016.

Through the petition it has been submitted by the petitioner that on the date 17.08.2016, the petitioner was on medical leave and thus Inspector Rakesh Kumar, the then ATO had appeared before the trial Court and it has been observed by the ASJ-04 that he was not able to provide any assistance and could not disclose about the status of the charge-sheet of the cross FIR No. 318/2012, PS Adarsh Nagar nor of the outcome of action if any taken against IO for delay in filing of the said charge-sheet. It has been submitted however by the petitioner that the status report filed by the petitioner on 22.04.2016 had disclosed that the charge-sheet in FIR No. 318/12 had been filed before the MM concerned on 09.02.2016 and that the Investigating Agency had no control on the proceedings with respect to the stated

charge-sheet as the same was pending judicial scrutiny. It has also been submitted through the petition that on the date 09.09.2016, the petitioner was again unwell and was on medical leave and that the trial Court has taken an adverse view qua the absence of the petitioner and imposed a fine of Rs.1,000/-. The petitioner has further submitted that vide an application filed on 19.10.2016, the petitioner had sought the waiver of the cost of Rs.1,000/- before the trial Court, which was declined taking into account the factum that no request has been filed before the trial Court informing that he was on medical rest from 06.09.2016 to 09.09.2016 and no document had been annexed along with the application in support of the said submissions by the SHO concerned that is the present petitioner that he was actually on medical rest upto 09.09.2016 and no reason had been furnished for non-compliance of the directions and also in view of the submissions that have been made in the petition. Vide proceedings dated 14.11.2017 the documents were directed to be submitted by the petitioner in relation to the medical ailment and a verification report was also directed to be submitted by the State. The status report has been submitted by the State under the signatures of SHO, PS Adarsh Nagar which indicates that the petitioner had visited the Shanti Kumud Hospital on 16.08.2016 vide OPD No. 2131 for consultation and vide DD entry no. 14A dated 17.08.2016, PS Adarsh Nagar, the petitioner herein submitted to the effect that he had come to the Police Station from the Rohini Courts and was not feeling well and proceeded for hospital to get the treatment and medical opinion, copy

of the same DD entry is also placed on record.

On behalf of the petitioner has been placed on record the copy of the Emergency Registration Card indicating that the petitioner had been advised rest w.e.f. 06.09.2016 to 09.09.2016 by the Babu Jagjivan Ram Memorial Hospital, Jahangirpuri which also indicates that on 09.09.2016 it had also been mentioned that the petitioner was fit to join duty from that date i.e. 09.09.2016. Qua the absence of the petitioner on 09.09.2016 before the trial Court, it has been submitted on behalf of the petitioner that the petitioner had no knowledge that he had to appear before the trial Court inasmuch as there was no process issued to him and there was direction through Insp Rakesh Kumar, the then ATO directing him to appear before the trial Court and that Insp. Rakesh Kumar , the then ATO had not provided any assistance to the trial Court and it has then been prayed on behalf of the petitioner that the deduction of Rs.1,000/- from his salary as directed vide order dated 09.09.2016 be set aside.

Taking into account the verification report qua the ailment of the petitioner on 17.08.2016 and that the petitioner was to appear before the trial Court on 09.09.2016 for which he had no knowledge of his having to appear before the trial Court inasmuch no process in relation thereof was issued to him, the costs of Rs.1000/- imposed

vide order dated 09.09.2016 of the Court of ASJ-04, (North), Rohini in FIR No.319/2012, P.S. Adarsh Nagar on the petitioner are set aside, and the said order dated 9.9.2016 of the ASJ-04 (North), Rohini Court, Delhi to this effect is set aside.

The petition is disposed of.

ANU MALHOTRA, J

APRIL 02, 2018
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