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

+ CRL.M.C. 18/2018 & Crl.M.A. No. 53/2018

MANOJ KUMAR

..... Petitioner

Through: Mr. Dhan Mohan with Ms.
Harkamaljeet Kaur, Ms. Tanu B.
Mishra & Mr. Ravi Mishra,
Advocates.

versus

RAJEEV KAPOOR

..... Respondent

Through: Mr. S.R. Sharma, Advocate.

CORAM:

HON'BLE MR. JUSTICE R.K.GAUBA

ORDER

% **19.07.2018**

The record of the criminal complaint case (C.C. No.3942/2016) registered at the instance of the respondent (the complainant), it being a case involving offence allegedly committed under Section 420 of Indian Penal Code, 1860 by the petitioner (the accused), presently pending in the court of Additional Chief Metropolitan Magistrate, Rohini, is very disturbing, it indicating the settled prescribed procedure in terms of the legislative command was thrown to the winds at the instance of the counsel for the respondent, the presiding magistrate also failing to bear in mind his obligation to follow the procedure.

On the basis of preliminary inquiry, by order dated 23.07.2014, the petitioner was summoned to stand trial for the offence under Section 420 IPC. Since the said offence attracts punishment which may extend to imprisonment for seven years and fine, the case had to

be proceeded with further through the warrant trial procedure. It being a case instituted on private complaint, the magistrate presiding over the trial was expected to know and bear in mind that before the question of charge could be considered, she was required to call upon the complainant to adduce evidence which is generally known as pre-charge evidence, in terms of Section 244 Cr.P.C. The Code of Criminal Procedure, unlike certain special laws like Negotiable Instruments Act does not permit the pre-summoning evidence to be adopted for such purpose. The Additional Chief Metropolitan Magistrate, however, devised her own procedure accepting the suggestion of the complainant wherein he chose to adopt the earlier evidence as pre-charge evidence, this being recorded by order dated 23.02.2015. The Additional Chief Metropolitan Magistrate forgot that even at the stage of pre-charge evidence, the accused had a right to cross-examine the witnesses. No such opportunity was even afforded. The Additional Chief Metropolitan Magistrate thereafter proceeded to hear the parties on the question of charge and by order dated 14.08.2015 held that, *prima facie*, charge under Section 420 IPC was made out. She framed charge accordingly putting the accused on trial.

Though the subsequent proceedings would show that the petitioner (the accused) used all possible tactics to cause delay in the process, given the above errors which go to the root, the subsequent proceedings in the case are vitiated. Some of the subsequent orders had earlier become subject matter of scrutiny before the court of

Sessions in criminal revision no.20/2017. Yet, these errors escaped the notice of the revisional court. The deficiencies in the procedure having come to the notice of this court, necessary amends must be directed to be made now.

All the proceedings conducted post appearance of the petitioner as accused are hereby set at naught. The concerned court of Additional Chief Metropolitan Magistrate is directed to follow the prescribed procedure as per the law and take up the case to expeditious conclusion at the earliest. Needless to add, the petitioner will be duty bound to assist and cooperate and not make any further attempt to cause delay.

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

R.K.GAUBA, J.

JULY 19, 2018

srb