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IN THE HIGH COURT OF DELHI AT NEW DELHI

Decided on:- 1st October, 2018

+ CRL. M.C. 4754/2015 & CrI.M.A. 17109/205, 14922/2017

H.S. GOINDI

..... Petitioner

Through: Mr. Jugal Wadhwa, Mr. Naresh
Charnal & Mr. Rishabh
Wadhwa, Advs.

Versus

STATE & ANR.

..... Respondents

Through: Mr. Mukesh Kumar, APP for
the State.

CORAM:

HON'BLE MR. JUSTICE R.K.GAUBA

ORDER (ORAL)

1. Having held preliminary inquiry into the criminal complaint case (CC no. 67/1/2014), the Metropolitan Magistrate by order dated 01.10.2014 issued process under Section 204 of the Code of Criminal Procedure, 1973 (Cr.P.C.) against the petitioner and one another, for the offence under Section 379 read with Section 34 of Indian Penal Code, 1860 (IPC). The petition at hand was preferred to assail the said order invoking the inherent power and jurisdiction of this Court under Section 482 Cr.P.C. The submissions of the petitioner are that the proceedings before the Metropolitan Magistrate are an abuse of process of law, the requisite law for the purposes of such action not

having been followed, the allegations made against him being false and motivated. The petition has been resisted by the second respondent at whose instance the criminal action was initiated, he hereinafter being referred to as “the complainant”.

2. The trial court record has been called for and perused. It reveals that on 19.06.2014, the complainant had approached the Metropolitan Magistrate with an application under Section 156 (3) Cr.P.C., he having earlier filed an application on 19.05.2014 with the station house officer of Safdarjung Enclave, where the property in respect of which the offence allegedly took place is situate. The complainant would allege offences punishable under Sections 382/392/395/448/452/34 IPC having been committed on 17.05.2014 by the petitioner, and certain others including his driver Devender, who too has been summoned, by the impugned order. It appears the complainant had taken the said premises to set up the office for his professional work. It is his case that the premises was in a dilapidated condition and he had arranged for some renovation work through one person named Sanjeev Mukhiya. It is alleged that the petitioner, assisted by the co-accused (Devender) and certain others, had come to the scene and had removed the fixed window frames with dishonest intention had left behind two holes in the masonry wall.

3. The trial court record would show that the prayer of the complainant for direction to the police for investigation under Section 156 (3) Cr.P.C. was declined by order dated 04.08.2014. By the same order, the Metropolitan Magistrate, however, proceeded to further record that she was taking cognizance under Section 190 Cr.P.C. She

adjourned the matter for pre-summoning inquiry under Section 200 Cr.P.C. The record further shows that during the preliminary inquiry, the complainant examined himself (as CW-1) and also the aforementioned Sanjeev Mukhiya (as CW-2). It is the statements of the said witnesses on basis of which the impugned order of summoning was passed.

4. The submission of the counsel for the petitioner is that after having declined the prayer under Section 156 (3) Cr.P.C., the Magistrate had no role to play thereafter on the application which had been presented before her, there being no petition labelled as a complaint. It is his submission that the pre-summoning inquiry wherein complainant and Sanjeev Mukhiya were examined as CW-1 and CW-2 was therefore, impermissible in law. It is also his submission that the process could not have been issued without a formal list of witnesses being submitted. Reliance is placed on judgments reported as *CBI through S.P. Jaipur vs. State of Rajasthan & Anr. AIR 2001 SC 668*; *Suresh Chand vs. State of Rajasthan 2013 Cr.L.J. 3386*; *Babu Lal vs. State of Rajasthan 2009 Cr.L.J. 4362*; *Bhiku Yeshwant Dhangat & Ors. vs. Baban Maruti Barate 2001 Cr. L.J. 295*; *Santosh Kumari vs. State of UP 2007 Cr.L.J. 3869*; *Chhedi & Ors. vs. State of Uttar Pradesh 1991 (89) ALJ 999* and *Bhagwan Singh & Ors. vs. State of UP 2002 SCC Online All 409*. It is also his submission that the allegations in the complaint are false.

5. This court finds no merit in the petition. There is no case made out for interference by this Court under Section 482 Cr.P.C. at this stage of the process.

6. The provisions of Code of Criminal Procedure do not require that a petition expected to be treated as a complaint on which action by the Magistrate is expected must be in writing. Going by the definition of the expression “*complaint*” as appearing in Section 2(d) Cr.P.C. the arguments to the above effect are not correct. The court of judicial magistrate is within its competence to take note even of an oral complaint brought before it, the only requirement of law being that such complaint must reveal an offence to have been committed for which action under the law at the end of the Magistrate is called for.

7. The Metropolitan Magistrate in the present case was within her jurisdiction in treating the application under Section 156 (3) Cr.P.C. as a private complaint. It was a petition which set out all the necessary facts as were in the immediate knowledge of the complainant. The prayer under Section 156 (3) Cr.P.C. having been declined, there was no inhibition on the part of the Metropolitan Magistrate in taking cognizance and holding an inquiry under Sections 200/202 Cr.P.C. In the given fact-situation, where the complainant and Sanjeev Mukhiya as witnesses, were the only persons as were privy to the facts which had been mentioned in the complaint, the non-submission of a formal list of witnesses would at the most, be an irregularity, which cannot vitiate the process that was initiated by the order issuing process under Section 204 Cr.P.C.

8. The submissions that the allegations are unfounded, false or motivated, give rise to questions of fact which, ideally, should be subject matter of trial before the Metropolitan Magistrate. The same

cannot be addressed in extraordinary jurisdiction of Section 482 Cr.P.C. [*Rajiv Thapar and Ors. Vs. Madan Lal Kapoor*, (2013) 3 SCC 330].

9. The petition and the pending applications are dismissed.

R.K.GAUBA, J.

OCTOBER 01, 2018

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