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IN THE HIGH COURT OF DELHI AT NEW DELHI

Decided on:- 25th January, 2019

+ CRL. M.C. 415/2019 & CrI.M.A. 1757-58/2019

SRIHARSHA MAJETY

..... Petitioner

Through: Mr. Mohit Mathur, Sr. Adv.
with Mr. Narender Mann, Mr.
Sachin Sharma, Mr. Sumit
Misra & Mr. Satyavrat Sharma,
Advs.

versus

STATE OF NCT OF DELHI

..... Respondent

Through: Mr. Amit Ahlawat, APP for the
State with SI Pawan Kumar, PS
Kalkaji, New Delhi.
Mr. Anirudh Bakhru, Mr. Aman
Usman & Mr. Shadman
Siddiqui, Advs.

CORAM:

HON'BLE MR. JUSTICE R.K.GAUBA

ORDER (ORAL)

1. The petitioner has come up to this Court invoking the inherent jurisdiction under Section 482 of the Code of Criminal Procedure, 1973 (Cr.P.C.), feeling aggrieved by the order dated 11.01.2019 of the Metropolitan Magistrate whereby he, along with certain others, stands summoned as “*additional accused*” on the basis of supplementary

report (supplementary charge-sheet) under Section 173 Cr.P.C. submitted on the said date by the police in the wake of further investigation carried out into first information report (FIR) no. 251/2018 of police station Kalkaji.

2. The respondent/State accepts notice through Mr. Amit Ahlawat, Additional Public Prosecutor. The victim of the alleged offences namely Kanav Madnani has also appeared on his own with counsel and seeks to oppose the prayer in the petition.

3. All sides have been heard and, with the assistance of the learned counsel, the record has been perused.

4. The background facts leading to the present petition may be noted, *albeit* in brief, for present purposes. It appears that the company named and styled as Bundl Technology Pvt. Ltd., which runs its business in the popular name of “Swiggy” has its corporate Head Office in Bangalore (Karnataka), the petitioner being its Chief Executive Officer (CEO) and Director. The company, through its online platform “Swiggy”, would facilitate collection of orders for food and beverages from various customers and arrange for the delivery from the concerned restaurants or food establishments including in or around Delhi through delivery personnel described as PDP (pick-up and delivery partners). It appears that such arrangement also covered an establishment named Dilli-19, a restaurant in the area of Kalkaji, New Delhi. It is stated that on 14.07.2018 there was a rush of PDPs at the said restaurant, there being some delay in services being provided. It is also stated that the situation turned ugly on which account Mr. Amit Saini, Fleet Manager of the above-mentioned

Swiggy was constrained to go to the place and ask the PDPs to disperse and go away.

5. Against the above backdrop, it is alleged that some of the PDPs returned to the scene and ransacked the restaurant in the course of which incident violence erupted and the afore-mentioned victim Kanav Madnani suffered injuries. Eventually, the police intervened and, on the basis of statement of Mr.Rohit Kubba, proprietor of the said restaurant, FIR was registered for the offences of which note was taken, on the basis of the then available material being punishable under Sections 147, 148, 149, 452, 427, 323, 506, 34 of Indian Penal Code, 1860 (IPC).

6. The case was investigated into and eventually charge-sheet dated 26.09.2018, forwarded by the ACP on 27.09.2018 was submitted, seeking trial of the persons then arrested, for offences punishable under Sections 147, 148, 149, 452, 427, 323, 506, 307, 34 IPC. The Metropolitan Magistrate took cognizance on the said charge-sheet and, in due course, after compliance with Section 207 Cr.P.C., committed the case to sessions.

7. The court of Sessions, however, did not find any case made out against the persons so sent up for prosecution for trial for any offence exclusively triable by the sessions, there being a clear observation that charge under Section 307 IPC was not made out. In this view, the Additional Sessions Judge, by her order dated 13.12.2018, transferred the case back to the Metropolitan Magistrate.

8. It may be mentioned here that in the charge-sheet, initially submitted, the police had indicated that the matter was being subjected

to further investigation inasmuch as role of the company, its officials and other persons connected thereto was being looked into. The supplementary charge-sheet, on the basis of which the impugned order was passed was finalized on 10.01.2019 and submitted before the Metropolitan Magistrate on 11.01.2019 in the course of proceedings pending there on account of the first charge-sheet, the persons set up for trial by the said first charge-sheet, most of them then in judicial custody, being present with or without their counsel.

9. The impugned order passed on the supplementary charge-sheet on 11.01.2019 reads thus:-

“Supplementary charge sheet has been filed. Copy of the supplementary charge sheet given to all present accused. Put up on 30.01.2019 for consideration on charge. Rehnumai on 25.01.2019. The accused persons of supplementary charge sheet be summoned through the IO for 30.01.2019”.

10. It is pointed out that by the supplementary charge-sheet, additional accused, including the petitioner, are sought to be prosecuted, it being indicated against the names of most of them that their trial is sought for the offence under Section 109 read with Section 338 IPC. Focusing more on the case of the prosecution through the said supplementary charge-sheet, it is noted that in the context of the petitioner it has been indicated that he was negligent in framing, *inter alia*, the policies with respect to employment of the delivery boys and he having failed to “*take preventive steps*” and thereby accused of having intentionally aided by illegal omission, the

commission of the offence under Section 109 read with Section 338 IPC.

11. Clearly, there is a yet unexplained switch of the prosecution case from one of the injuries having been intentionally caused to the position now taken that the injuries were suffered on account of rash or negligent act (s). Be that as it may, in the given facts and circumstances, taking note of the fact that the incident had occurred in Delhi, the role and responsibilities of the petitioner being that of CEO of the company, stationed and located far away in Bangalore, the Magistrate was expected to subject the entire material presented before him for seeking the petitioner and similarly placed others to be summoned, to closer scrutiny.

12. The order of summoning, to say the least, does not pass the muster of a judicial order. It does not reflect any consideration of the background facts, leave alone consideration of the evidence presented so as to draw connection between the offences on one hand and the role and responsibilities of the petitioner and similarly placed individuals on the other – all of them being additional accused persons who were not sent up for prosecution by the first charge-sheet.

13. In the above facts and circumstances, the impugned order dated 11.01.2019, insofar as thereby summoning order was passed against the petitioner and others on the basis of supplementary charge-sheet, is set aside and vacated. The matter is remitted to the Metropolitan Magistrate for fresh consideration. The said court will be expected to pass a proper reasoned order, one that would stand the test of a judicial order.

14. The Metropolitan Magistrate will take up the matter for such fresh consideration on the date fixed after the receipt of copy of this order.
15. Needless to add, nothing in this order will be construed as final expression of opinion on merits.
16. This disposes of the petition and the application filed therewith.
17. *Dasti* under the signatures of Court Master.

R.K.GAUBA, J.

JANUARY 25, 2019

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