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IN THE HIGH COURT OF DELHI AT NEW DELHI

Decided on:- 13th February, 2019

+ CRL.M.C. 362/2018

MANISHA

..... Petitioner

Through: Mr. Arjun Malik, Advocate

versus

STATE & ANR.

..... Respondents

Through: Mr. Kewal Singh Ahuja, APP
for the State
Mr. Tarun Goomber, Advocate
with Mr. S.S. Ahluwalia, Adv.
for R-2.

CORAM:

HON'BLE MR. JUSTICE R.K.GAUBA

ORDER (ORAL)

1. The first information report (FIR) No.407/2015 was registered on 25.04.2015 by Police Station Safdurjung Enclave on the complaint of the petitioner, allegations having been made and the investigation taken up for offences allegedly committed under Sections 354/506/509 of the Indian Penal Code, 1860 (IPC). The police, having concluded the investigation, submitted report (charge sheet) under Section 173 of the Code of Criminal Procedure, 1973 (Cr.P.C.) seeking trial of one Dr. Naval Bhatia on the accusations for offences punishable under Sections 354/354-A/506/509 IPC. Allegations had also been made by the petitioner against the second respondent and one another (Mamta Jha) but, in the charge sheet, the police reported to the Metropolitan

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the physical file and no page is missing.

Magistrate that sufficient evidence had not come up to show their complicity in the alleged crimes, they having been kept in column No.12, (*i.e.* persons not sent up for prosecution).

2. The Metropolitan Magistrate considered the charge sheet to above effect and passed the order on 30.03.2016 taking cognizance of offences under Sections 342/354/354-A/506/509/34 IPC and issued summons against all the three above mentioned persons including the second respondent herein. The said order, it may be observed here, was cryptic and would not indicate the reasons as to why the Metropolitan Magistrate was not accepting the charge sheet to the extent the case was directed against the second respondent or against the other individual, *i.e.*, Mamta Jha.

3. The second respondent and the said Mamta Jha assailed the order of summoning passed on 30.03.2016 in the court of sessions invoking its revisional jurisdiction by Cr.Revision Petition No.25/2016. The Additional Sessions Judge (ASJ) accepted the challenge finding the order of the summoning to be perverse in so far as thereby the said two persons had been summoned and, thus, set it aside to that extent and remanded the matter back to the Metropolitan Magistrate for passing a speaking order on the subject.

4. After such remit, the Metropolitan Magistrate re-considered the material placed before the court and, by order dated 31.07.2017, observed that no sufficient material had come up to proceed against Mamta Jha and, thus, declining to issue any process against her, but finding grounds to proceed against the second respondent and thereby

directing summons to be issued to him holding, *inter alia*, that the magisterial court was not a post office and was entitled in law to reach its own conclusion, even in departure of the submissions of the police in the report, mentioning that there was *prima facie* sufficient material to take the course she was taking.

5. The second respondent challenged the fresh summoning order dated 31.07.2017 in the court of sessions, by criminal revision petition (CA No.370/2017). The ASJ upheld the petition, by her decision dated 28.11.2017, holding that the order summoning the second respondent was erroneous inasmuch as the requisite ingredients for constituting the commission of offences under Sections 342/506 IPC, as are being pressed are amiss.

6. Feeling aggrieved, the first informant has come up with the petition at hand invoking the inherent power and jurisdiction of this court under Section 482 Cr.P.C., submitting that the order declining summoning of the second respondent is improper and incorrect, it being in the nature of abuse of the process of law.

7. At the hearing, the counsel for the petitioner submitted that he fairly concedes that, on the given material, no case for summoning the second respondent on charge for the offence under section 506 IPC is made out, the petitioner restricting her prayer for summoning of said party (the second respondent) only on the accusations under section 342 IPC, rest of the case concerning the offences of molestation, etc. being in relation to other accused (Dr. Naval Bhatia), it pertaining to an incident that had occurred on 07.04.2015.

8. The petition is resisted by the respondent on the basis of available record which has been gone through with the assistance of both sides at the hearing.

9. The petitioner was working at the relevant point of time as Data Entry Operator (DEO) in an establishment by the name of Sports Injury Centre, Safdarjung Hospital, New Delhi. It is stated that she was working under Dr. Naval Bhatia in the second unit. Mamta Jha (the person who has not been summoned) and the second respondent were also working as DEOs at the same point of time. It is alleged by the petitioner that Dr. Naval Bhatia had subjected her to assault with the intent to outrage her modesty, this being the subject matter of her allegations vis-à-vis the incident that had occurred on 07.04.2015. In the FIR, the petitioner alleged that against the backdrop of complaint that had been lodged about the incident on 07.04.2015, effort was made by Dr. Naval Bhatia, and the second respondent, as indeed by the other persons, to bear pressure upon her to withdraw the same and to give in writing attributing certain motive to someone else in the hierarchy. The allegations against the second respondent pertain to what had statedly occurred in the office of the above mentioned establishment on 20.04.2015.

10. As per the allegations in the FIR, the second respondent had approached the petitioner at 3:45 p.m. on 20.04.2015, she taking her to a room on the fourth floor where Dr. Naval Bhatia was called, she statedly having remained in the said room for twenty minutes, the second respondent having "*stood at the door holding on to it*". It is

stated that the petitioner was accompanied, at that point of time, by Bimla, another complainant (about the pressure being exerted), both feeling fearful that they might lose their jobs, they being asked to give in writing about the pressure from some other quarter. The petitioner stated in the FIR that she and Bimla had declined to accede to such persuasions and somehow left the room running, the second respondent not ready to give up hold on the door.

11. The police had recorded the statement of the petitioner during the course of investigation, reference being made to what is described as supplementary statement under Section 161 Cr.P.C. recorded on 10.03.2015. As per the said supplementary statement of the petitioner, the second respondent and Dr. Naval Bhatia had extended threats on 20.04.2015 between 3:45 to 3:50 by "*locking*" her in a room.

12. The police had taken both the petitioner and the other person named Bimla before the Metropolitan Magistrate during the course of investigation and at its instance their statements under Section 164 Cr.P.C. were recorded. In the statement under Section 164 Cr.P.C. of the petitioner, she referred to the incident of 20.04.2015, wherein she along with Bimla had been taken to the fourth floor room where Dr. Naval Bhatia had been "*called*" and the door was "*closed*", both being forced to give in writing against one Dr. Choudhary. The petitioner stated that the second respondent had "*held on to the door*" and would not allow them to leave, they (the petitioner and Bimla) somehow leaving the room after about twenty minutes. In the statement under Section 164 Cr.P.C. of Bimla, recorded on 16.05.2015, it is stated that

it was the second respondent who had taken both the said individuals to the fourth floor room where Dr. Bhatia had also come after sometime, the second respondent "*standing at the door*" not allowing the two individuals to leave, Dr. Naval Bhatia instead tendering apology requesting for the complaint to be withdrawn. She also spoke about both (she and the petitioner) leaving the room forcefully.

13. The petitioner relies on a decision of a co-ordinate bench in *Satish Kumar & Anr. Vs. State & Anr.*, (2012) SCC Online Del 1171 to contend that at the time of consideration of a case for charge, both the statements under Section 161 and 164 Cr.P.C. are to be considered. The principle of law in this regard is settled and there can be no quarrel with it. It is the material on record in entirety which must be factored in while a case is considered to find out as to whether accusations are well founded so as to make out a case for summoning or putting the accused person on trial.

14. The petitioner relies on decisions of the Supreme Court in *Elavarasan vs. State*, (2011) 7 SCC 110; *Raju Pandurang Mahale vs. State of Maharashtra & Anr.*, (2004) 4 SCC 371; and a decision of learned Single Judge of Punjab High Court reported as *Om Parkash Tilak Chand vs. The State*, 1958 SCC Online P&H 104. The submission is that it is not necessary that there should be actual physical obstruction for the accusation of wrongful restraint or wrongful confinement to be established. It is rather the apprehension in the mind of the person confined that he was not free to depart which

constitutes an offence under Section 342 IPC, the prosecution for which is being pressed against the second respondent.

15. It must be noted that in *Elavarasan* (supra) the objective of wrongful confinement which was alleged was to commit offence under Section 307 IPC, there being sufficient evidence found for complicity of the accused in the same. Similarly, in *Raju Pandurang Mahale* (supra), the evidence clearly showed that the objective of confining the victim to a room from where she was able to leave only on the next day was to subject her to assault with the intent to outrage her modesty.

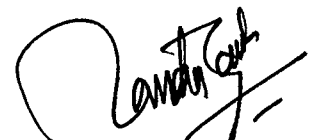
16. In the facts and circumstances of the case, the allegations made by the petitioner in the original FIR followed by her supplementary statement under Section 161 Cr.P.C. and then the account given in the statement under Section 164 Cr.P.C. do not gel with each other. Neither in the FIR nor in the statement under Section 164 Cr.P.C. she had spoken of the room being "locked" at any point of time, which is the impression she wanted to create in the supplementary statement under Section 161 Cr.P.C.

17. The statements under Section 164 Cr.P.C., both of the petitioner and of Bimla, clearly and consistently show that the objective of the second respondent in taking them to the room on the upper floor was to persuade them to withdraw the complaint against Dr. Naval Bhatia as to indecent assault that had allegedly occurred on 07.04.2015. It does appear that they were taken to the room and the second respondent may have stood at the door, or held on to it, for some time.

But then, from this it cannot be deduced that the intention was to wrongfully restrain, the objective clearly discernible from this conduct being that she wanted to be persuasive towards the petitioner, and her other colleague, to dissuade them from following up on the complaint of indecent assault. The intention, thus, was not to wrongfully confine or to subject the petitioner to any other offence. There is nothing in the allegations in the FIR or in the statements of the petitioner from which it can be inferred that she had reasons to apprehend that she was not free to depart. Rather, both she and Bimla are on oath to say that they did not agree to the pressure vis-à-vis the complaint against Dr. Naval Bhatia and had left the room *albeit* assertively.

18. In the above facts and circumstances, the view taken by the revisional court cannot be faulted. :

19. The petition is dismissed.



R.K.GAUBA, J.

FEBRUARY 13, 2019

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