

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
Date of Order: February 14, 2019

+ CRL.M.C. 840/2019

STATE OF NCT OF DELHI

..... Petitioner

Through: Mr. Rajesh Mahajan, Additional
Standing Counsel with Inspector
Sanjay and SI Omveer Dabas

Versus

KAILASH & ANR

.....Respondents

Through: Counsel (*appearance not given*)

CORAM:
HON'BLE MR. JUSTICE SUNIL GAUR

ORDER
(ORAL)

Crl.M.A. 3376/2019 (Exemptions)

Allowed, subject to all just exceptions.

CRL.M.C. 840/2019 and CRL.M.A. 3375 (Stay)

In FIR No. 22/2019, under Section 21(C) of *Narcotic Drugs and Psychotropic Substances Act*, 1985 trial court vide order of 6th February, 2019 has found that the Investigating Officer has not adhered to the dictum of Supreme Court in *Arif Khan Vs. State of Uttarakhand*, 2018 SCC Online SC 459 and so, the Commissioner of police has been called upon to appear before the trial court to apprise him about the conduct of the Investigating Officer. Vide subsequent order of 8th February, 2019, trial court has exempted the personal appearance of Commissioner of Police, but has again fixed 18th February, 2019 for personal appearance of Commissioner of Police. Quashing of the impugned orders of 6th February, 2019 and 8th February, 2019 are sought in this petition.

Notice of this petition to opposite side is dispensed with as impugned orders have no bearing on the merits of this case.

Learned Additional Standing Counsel for petitioner places reliance upon Supreme Court's decision in '*R.S. Singh Vs. U.P. Malaria Nirikshak Sangh & Others* (2011) 4 SCC 281 to submit that in the first instance, the Court should ensure that the orders passed are complied with, without summoning any official and in the instant case, without taking any such steps, Commissioner of Police has been directly summoned by the trial court.

Upon hearing and on perusal of impugned orders and the decision cited, I find that the summoning of Commissioner of Police is uncalled for, as the lapse is on the part of the Investigating Officer which is required to be brought to the notice of the DCP (legal cell) in the first instance, and if trial court is facing any problem regarding service of process of the witnesses, then it ought be brought to the notice of the concerned DCP (legal cell).

In the light of the above, the impugned orders are hereby quashed with direction to the DCP (legal cell) to personally appear before the trial court on 18th February, 2019, so that the issues raised in the impugned order are redressed.

This petition and application are accordingly disposed of.

Dasti.

(SUNIL GAUR)
JUDGE

FEBRUARY 14, 2019

p'ma