

\$~19

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

+ CRL.M.C. 1025/2016 and Crl. M.A. 4394/2016

Dr. ARVIND LAL & ORS

..... Petitioners

Through: Mr. Maninder Singh, Mr. Abhishek Swaroop, Ms. Aekta Vats and Mr. Aayush Malhotra, Advocates

versus

STATE (N.C.T OF DELHI) & ORS

..... Respondents

Through: Mr. Kewal Singh Ahuja, APP for State with Insp. Sunil Kumar and SI Jaibir

CORAM:

HON'BLE MR. JUSTICE R.K.GAUBA

ORDER

%

17.01.2019

The background facts and the issues which have been raised in this petition questioning the legality and propriety of the order dated 14.01.2016 whereby the petitioners were summoned as accused were noted in the proceedings recorded on 15.01.2019 that read thus :-

“...On 03.10.2013, Head Constable Arif Khan accompanied by Beat Constable Jitender Kumar came across a plastic board displayed on electricity pole in the area of BDO Block, Main Gali, Alipur, Delhi declaring to the public at large the opening of a unit connected to the chain of diagnostic centre of Dr. Lal Path Labs India with two telephone numbers 9582019820 and 011-27280820 and the address of the premises described as U-59, R.K. Plaza, Narela Computer Market, Lampur Road, Narela, Delhi-40 printed thereupon. As per the

CRL.M.C. 1025/2016

page 1 of 4

impression gathered from these facts, which were recorded in the wake of DD no. 65 B, note of offence punishable under Section 3 of Delhi Prevention of Defacement of Property Act, 2007, was taken by first information report (FIR) no. 449/2013 registered at police station Alipur and investigation there into taken up.

During the course of investigation, one Narender Lal Sharma (third respondent) came to be arrested and was sought to be prosecuted by submission of report (charge-sheet) under Section 173 of the Code of Criminal Procedure, 1973 presented on 09.12.2013. The Metropolitan Magistrate took cognizance on the said charge-sheet and summoned the third respondent as accused. By subsequent order dated 15.09.2014, however, the Chief Metropolitan Magistrate observing that Section 3 (2) of the said act was attracted directed "further investigation".

The police carried out further investigation and submitted supplementary charge-sheet on 05.12.2015, which came up before the Chief Metropolitan Magistrate on 14.01.2016 and on the basis of material gathered during further investigation, the petitioners stood summoned as accused in the said case on the accusations of the afore-mentioned offence having been committed by them by the display of the above-mentioned notice board at a public place.

The petitioners are directors of Dr. Lal Path Labs Ltd. Feeling aggrieved they have approached this Court by the petition at hand invoking the inherent power and jurisdiction under Section 482 Cr.P.C. to submit that they had no connection whatsoever with the display board, it being a result of certain acts of commission or omission on the part of the third respondent, the order whereby they have been summoned being an abuse of the process of law, the crucial material shared by them with the investigating agency in the course of further investigation

having been withheld from consideration, there being no mention whatsoever thereabout in the narration in the supplementary charge-sheet.

During the course of hearing, it was brought to light that the first petitioner being one of the directors of Dr. Lal Path Labs Ltd. had handed over a hand written and signed statement dated 29.04.2015 and alongside had also shared with the investigating agency copy of Patient Service Centre Agreement dated 23.02.2013 which had been executed between Dr. Lal Path Labs Pvt. Ltd. and the third respondent vis-à-vis the services to be rendered by the latter to the public at large and the conditions attached to such arrangement, the same including an indemnity clause, the third respondent being wholly responsible for such acts as have been impugned leading to the criminal action.

The learned additional public prosecutor representing the State confirms and fairly concedes that copy of the Patients Service Centre Agreement dated 23.02.2013 is part of the police file but not reflected in any manner in the case diary, or in the report under Section 173 Cr.P.C. This puts a serious question mark on the fairness of the investigation.

The learned additional public prosecutor at this stage sought time to seek further instructions to ascertain if the police would be inclined to carry out further investigation.”

Inspector Sunil Kumar Station House Officer of police station Alipur is present in court and submits through the Additional Public Prosecutor that given the issues which have been raised about the deficiency in, and fairness of, the investigative process, he would like to exercise his discretion under Section 173(8) of the Code of Criminal Procedure, 1973 (Cr. PC) to subject the case, in so far as it is

directed against the petitioners, to further investigation.

Given this response of the investigative agency in which the State is also joining, the impugned order dated 14.01.2016 summoning the petitioners as accused is vacated and set aside. The Station House Officer of police station Alipur shall have the matter investigated properly and fairly taking into account the inputs given by the petitioners and submit a further report under Section 173 Cr. PC for it to be considered and acted upon in accordance with law before the jurisdictional Magistrate.

With these directions, the petition and the applications filed therewith stand disposed of.

Dasti to all sides.

R.K.GAUBA, J

JANUARY 17, 2019

yg

CRL.M.C. 1025/2016

page 4 of 4