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

+ CRL.M.C. 3055/2016

AJAY KUMAR

..... Petitioner

Through: Mr. Rajiv Kataria, Advocate with  
Ms. Debjani Das P., Advocate

versus

STATE OF DELHI &amp; ANR

..... Respondents

Through: Mr. Sanjeev Sabharwal, APP for the  
State  
Ms. Manika Tripathy Pandey, Adv.  
with Mr. Ashutosh Kaushik, Adv. for  
R-2.**CORAM:****HON'BLE MR. JUSTICE R.K.GAUBA****ORDER**

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**25.01.2019**

The first information report (FIR) No.44/2014 was registered on 07.03.2014 by Police Station Maurice Nagar at the instance of the second respondent (the complainant). On the basis of the averments set out in the said complaint, translated into the FIR, the police took it a case involving offences punishable under sections 354-A and 509 IPC. The FIR was investigated into and, upon conclusion, a report under Section 173 Cr.P.C. was submitted, it being forwarded by Assistant Commissioner of Police on 31.12.2015. As per the conclusions reached in the said investigation report, police informed the Magistrate that no evidence had come on record against the petitioner, as indeed against others, against whom, *inter alia*, criminal action had been sought. The Metropolitan Magistrate considered this report and passed the following order on 02.04.2016:-

*“ 2.4.2016*

*The undersigned is also looking after the work of the court of Ms. Manu Vedwan, Learned MM, (Mahila Court)-01, Central District, 1<sup>st</sup> Link MM today.*

*One of the stenographers namely Ms. Khushboo was on short leave today.*

*Fresh police report U/s 173 Cr.P.C. filed by IO today. It be checked & registered.*

*Present: Ms. J.Janani, Learned Substitute Assistant Public Prosecutor for the State. IO W/SI Gurdeep Kaur in person with case file.*

*Police report and documents perused. Submission heard. I take cognizance of the offence.*

*Accused persons are stated to have been charge sheeted without arrest. Issue summons to accused persons to be executed through SHO/IO returnable on 30.08.2016.”*

By virtue of the aforementioned order, the petitioner stood summoned as accused and feeling aggrieved, he came to this court by the petition at hand invoking the inherent jurisdiction under Section 482 Cr.P.C., submitting that the order was erroneous and based on no evidence and consequently the proceedings against him are an abuse of the process of law.

By order dated 26.08.2016, interim protection by exemption from personal appearance before the trial court was granted. The matter has been pending ever since.

When the matter is taken up for hearing, the learned counsel for the second respondent was unable to refute that order dated 02.04.2016 which is challenged, does not pass the muster of judicial order in that it neither deals with any background facts nor refers to any evidence nor sets out any reasons whatsoever – directly or indirectly. In a case where the police investigation report was of above mentioned nature, such cryptic and terse order cannot be expected.

The impugned order, therefore, is set aside. The matter arising out of police investigation report is remitted to the concerned Metropolitan Magistrate who is directed to hear the prosecution afresh and thereafter pass a fresh speaking judicial order in accordance with law.

The Metropolitan Magistrate shall take up the matter for further proceedings in accordance with law in light of above directions on 22<sup>nd</sup> February, 2019.

The petition stands disposed of in above terms.

**R.K.GAUBA, J.**

**JANUARY 25, 2019**

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