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IN THE HIGH COURT OF DELHI AT NEW DELHI

Decided on:- 11th April, 2019

+ CRL.M.C. 2479/2016 & Crl.M.A. 10654/2016

MANISHA

..... Petitioner

Through: Mr.K.P.Mavi & Mr. Sidharth
Sadana, Advs.

versus

GOVT. OF NCT OF DELHI & ANR. Respondents

Through: Mr. Amit Ahlawat, APP for the
State with SI Sandeep, PS Janak
Puri.
Mr. Shekhar Nanavaty & Mr.
Rishabh Banga, Advs. for
complainant.

CORAM:

HON'BLE MR. JUSTICE R.K.GAUBA

ORDER (ORAL)

1. Three year old son of the complainant of first information report (FIR) no. 881/2014 of police station Janak Puri was then a student of *Natkhat Play School* run by Anish Kumar (accused) in which the petitioner herein was employed she being described as the class teacher. On 07.08.2014, the child was taken to hospital with a history of ingestion of paint thinner. It is alleged that a bottle containing the said substance was lying unattended, unnecessarily and with no accountability, in the class room, it having come in the hand of the child allegedly due to rash or negligent acts of commission or omission on the part of those concerned with the school, the child

allegedly having consumed some part of the substance in the said bottle leading to vomits etc. The police had registered the case for offences under Sections 284 and 337 of Indian Penal Code, 1860 (IPC).

2. Upon conclusion of investigation, report (charge-sheet) under Section 173 of the Code of Criminal Procedure, 1973 (Cr.P.C.) was submitted seeking trial of Anish Kumar, *inter alia*, on the basis of evidence showing that he, against medical advice, had called the child back from the hospital, thereby coming in the way of immediate appropriate medical treatment, the effect of the injury suffered by the child, thus, having persisted. The police proposed the trial of Anish Kumar for offences under Sections 284/337 IPC, seeking he to be summoned as accused.

3. Accusations had also been levelled against the petitioner, particularly on the basis of statement of co-teacher Vidhi, indicating the presence of the petitioner in the class room, injured child having been noticed in their presence to be holding the bottle containing the unwholesome substance immediately whereafter he had started vomiting. The police, however, reported to the Magistrate in the charge-sheet that case of negligence on the part of the petitioner could not be established and, therefore, she was kept in column no. 12 (persons not sent up for prosecution).

4. The Metropolitan Magistrate took cognizance on the charge-sheet and issued summons against Anish Kumar, by order dated 07.05.2015. Thereafter, she proceeded to embark upon some inquiry followed by series of orders requiring further investigation qua the

role of the petitioner, the reports received in such wake having resulted in the petitioner also being summoned as an accused, by order dated 23.12.2015, which has been impugned by the present petition.

5. Having heard both sides and having perused the record, this Court finds that the procedure adopted by the Metropolitan Magistrate respecting the case from the perspective of the role attributed to the petitioner suffers from fundamental errors.

6. It is trite law that when the police concludes its investigation into a crime and presents the final report of investigation under Section 173 Cr.P.C., the Metropolitan Magistrate has the jurisdiction and power to consider the same and if there is any deficiency or error in the investigative process he can disagree with the conclusions in the report and pass necessary directions including by returning the case for further investigation. But, if the Magistrate accepts the conclusions and the proposal in the report, takes cognizance of the offence(s) and issues process against the accused sent up for trial in terms of power vested in him, sections 190 and 204 Cr.P.C., summoning of an additional accused by subsequent order is permissible in law only in terms of Section 319 Cr.P.C. That stage had not come in this case when the additional order summoning the petitioner as another accused was passed. The case against Anish Kumar is still at the threshold and prosecution is yet to adduce evidence.

7. Accepting the above position in law, the counsel for the complainant (who has also been participating in these proceedings) and the additional public prosecutor for the State, fairly agree that the impugned order will have to be set aside. At the same time, the

learned counsel for the petitioner submitted that since the impugned order is likely to be vacated, the petitioner reserves her rights to raise her contentions as to her innocence in case in the subsequent proceedings, should the Metropolitan Magistrate pass any order on evidence adduced during the trial against Anish Kumar, summoning her as additional accused in exercise of the power under Section 319 Cr.P.C.

8. The petition is, thus, allowed. The impugned order dated 23.12.2015 summoning the petitioner as additional accused is set aside. The issue as to whether there are grounds to proceed against her under Section 319 Cr.P.C. is kept open.

9. Trial court record be returned forthwith.

R.K.GAUBA, J.

APRIL 11, 2019

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