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IN THE HIGH COURT OF DELHI AT NEW DELHI

Decided on:- 6th February, 2019

+ CRL.M.C. 4721/2016 & CrI.M.A. 19666/2016

RAJENDER SINGH & ANR. Petitioners
Through: Mr. Sudershan Rajan & Md.
Qamar Ali, Advs.

versus

THE STATE OF NCT OF DELHI Respondent
Through: Mr. K.S. Ahuja, APP for the
State with SI Harbir Singh, PS
R.K. Puram.

+ CRL.M.C. 745/2018 & CrI.M.A. 2692/2018

RAJENDER SINGH & ANR Petitioners
Through: Mr. Sudershan Rajan & Md.
Qamar Ali, Advs.

versus

THE STATE OF NCT OF DELHI & ANR. Respondents
Through: Mr. K.S. Ahuja, APP for the
State with SI Harbir Singh, PS
R.K. Puram.
Mr. M.M. Aggarwal, Adv. for
R-2.

CORAM:

HON'BLE MR. JUSTICE R.K.GAUBA

ORDER (ORAL)

1. Both petitions arise out of criminal case relating to first information report (FIR) no. 246/2012 of police station R.K. Puram,

registered at the instance of the second respondent on 08.11.2012 alleging offences punishable under Sections 341/323/506/34 of Indian Penal Code, 1860 (IPC), allegations having been made about involvement and complicity in the said crimes on the part, amongst others, of the petitioners. The petitioners seek to point out that another FIR no. 247/2012 was lodged on the same date in the same police station respecting the same very incident by Jai Singh, brother of the first petitioner, it levelling counter-allegations of similar offences having been committed by the second respondent and those on her side.

2. Be that as it may, it has been the contention of the petitioners that they were not present at the scene when the alleged incident took place, the first petitioner being an employee of Central Government then posted and located far away in Guwahati (Assam), he statedly having shared with the investigating agency clear and unimpeachable evidence about his travel by air from Guwahati to Delhi after the incident.

3. The police had filed report (“charge-sheet”) under Section 173 of the Code of Criminal Procedure, 1973 (Cr.P.C.) upon conclusion of investigation into FIR no. 246/2012. Concededly in the said report, there was no proposal for the petitioners to be prosecuted, their names having been reflected in column no. 12, some other persons having been mentioned in column no. 11, their trial for the afore-mentioned offences having been sought.

4. The Metropolitan Magistrate, considered the charge-sheet in the FIR no. 246/2012 on 08.11.2013 and recorded the order as under:-

“Fresh charge-sheet filed. It be checked and registered.

Present: Learned APP for State.

In this case there are 12 accused persons.

5 accused persons are on police bail and 7 accused persons are put in column no. 12.

I take cognizance of the offences.

Issue summons to all accused persons and notice to their sureties, returnable by 08.07.2014”.

5. By virtue of the above-quoted order dated 08.11.2013, the petitioners also stood summoned as accused, along with others, whence they moved an application seeking further investigation concerning their plea of *alibi* as noted earlier. This request was declined by the Metropolitan Magistrate, by order dated 13.10.2016, on the ground that it pertained to a matter of defence which could be taken in due course at the trial, posting the matter for arguments on charge. It is conceded by all sides that the question of charge has not been considered till date in the said case, the matter having been adjourned from time to time in the concerned criminal court.

6. The first captioned petition was filed by the petitioners under Section 482 Cr.P.C. submitting that the investigation report not having indicated clearly as to why they had been put in column no. 12, there being no comment whatsoever on their plea raised even during investigation, rejection of this prayer for fair and complete investigation was improper, it having led to prosecution which would be an abuse of the process of law.

7. During the course of hearing on the first captioned petition, a coordinate bench of this Court earlier on 13.02.2017 noted as under:-

“2. In the charge-sheet it is vaguely stated by the investigating officer that no evidence has been found against the petitioners. It does not clarify whether the said opinion was formed on the basis that the petitioners were not present at the spot and they were found to be present elsewhere, or what other material weighed with the investigating officer to come to his conclusion”.

8. A status report in compliance with reference to above-quoted direction was filed on 24.04.2017, the relevant portion thereof would read thus:-

“During the course of investigation, no evidence against the remaining alleged person viz (1) Smt.Sharda W/oMange Ram (2) Smt. Hema W/o Jai Singh (3) Smt. Dhan Wati W/o Ram Pal (4) Pappi S/o Bhola Ram (5) Ram Pal S/o Shri Khachru (6) Manju (Petitioner no.2) W/o Sh. Rajender Singh & (7) Rajender Singh (Petitioner no.1) S/o Ram Pal came on record and they were not charge-sheeted in the present case and were kept in Column No.12 of the charge sheet and only (i) Harvinder S/o Bhajan Lal (ii) Jai Singh S/o Ram Pal (iii) Jai Prakash S/o Bhajan Lal (iv) Mange Ram @ Khajan Singh S/o Bhajan Lal and (v) Jai Kishan S/o Ram Pal Singh were kept in column no. 11 of the charge sheet in the present case and the present petitioners as stated above were kept in column no. 12.

It is further humbly submitted that the charge-sheet does not specify the material which weighed with the Investigating Officer for keeping the petitioners in Column No. 12 though the same ought to have been mentioned. Nevertheless, there is a reference in the case diary about the air tickets by the 1st Investigating Officer and thereafter the case file was given to 2nd IO who filed the charge-sheet by keeping the present petitioner no.1 in column no.12 without making any reference to the said Air tickets and as stated above did not specify the material which with the IO who filed the charge-sheet to

keep the present Petitioners and other 5 alleged persons in column no. 12.

Further, the Ld. MMM on filing the charge-sheet on 08.11.2013 inter-alia noted that there were 12 accused persons in the case and 05 accused were on police bail and 07 accused were kept in column no.12 and the Ld. metropolitan magistrate also took cognizance of the offences and issued summons against all the accused persons for 08.07.2014 without assigning any reason for summoning the accused kept in column no. 12 and this very summoning order of the Ld. metropolitan magistrate has not been challenged in the present petition.”

9. The second captioned petition was filed against the above backdrop taking exception to the summoning order dated 08.11.2013.

10. To say the least, as has been said before in a number of earlier similar cases, the order dated 08.11.2013 quoted above, whereby the petitioners were also summoned, does not pass the muster of a judicial order. No reasons whatsoever have been set out leave alone making any reference to the background facts.

11. No doubt, when the police files report of investigation under Section 173 Cr.P.C., the Metropolitan Magistrate is not bound by the conclusions reached therein. No doubt, on the basis of evidence which is presented along with such report of investigation, the Metropolitan Magistrate has the authority and judicial discretion to take cognizance of all such offences as appear to have been committed and also to issue process against all such persons whose complicity is shown by such evidence, notwithstanding the views of the investigating agency. The inclusion of an individual in column no. 12 or 11 will not bind the Magistrate. He may refuse to issue process

against an individual even if shown in column no. 11 (those proposed to be prosecuted) or, conversely, issue process even against those who are shown in column no.12 (those not sent up for prosecution). But to deviate and take action contrary to what has been proposed by the police which investigated the crime, some reasons have to be indicated and reference made, *albeit* briefly, to the evidence on the basis of which such view contrary to the view of the investigating agency is being taken.

12. The above quoted order dated 08.11.2013 does not indicate even the offences of which cognizance was thereby taken it being also silent what were treated as “grounds to proceed” against persons thereby summoned as accused.

13. The order dated 08.11.2013 whereby cognizance was taken and process was issued, thus, cannot be upheld. It is hereby set aside. The matter arising out of the charge-sheet submitted in case FIR no. 246/2012 of police station R.K. Puram is remitted for fresh consideration before the Metropolitan Magistrate who shall pass an appropriate order in accord with law thereupon. Since the case is coming back to the magistrate for consideration at the stage of cognizance, in case there is any grey zone or area unvisited or, to put it simply, if any aspects of the case are found to be uncovered by the investigation, nothing should inhibit the Metropolitan Magistrate from returning the case for further investigation at such stage.

14. *A fortiori*, all subsequent orders stand displaced. The matter shall be taken up by the Metropolitan Magistrate for further proceedings in light of the above directions on 6th March, 2019.

15. Both the petitions and applications filed therewith are disposed of.

R.K.GAUBA, J.

FEBRUARY 06, 2019/nk

