

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
Date of Order: February 13, 2019

+ CRL.REV.P. 981/2018
SHIVRAJ NAIDU @ SULLY Petitioner
Through: Mr. Robindra Tiwary, Advocate

Versus

STATE NCT OF DELHI & ORS. Respondents
Through: Ms. Neelam Sharma, Additional
Public Prosecutor for
respondent-State

CORAM:
HON'BLE MR. JUSTICE SUNIL GAUR
ORDER
(ORAL)

Impugned order of 23rd October, 2018 summons petitioner under Section 319 Cr.P.C. for the offences under Sections 302/307 r/w Section 34 IPC and the charges against petitioner for the above said offences have been ordered to be framed by the trial court. Petitioner's counsel submits that till date charges have not been framed and without giving an opportunity to petitioner to cross-examine *Santa Kumar (PW-1)*, *Vijay Kumar (PW-2)* and *Shiv Balan (PW-3)*, petitioner has been erroneously summoned by the trial court.

It is pointed out by petitioner's counsel that these witnesses have not supported the prosecution case and so, they have been cross-examined by the prosecution but no opportunity has been granted to petitioner to cross-examine these witnesses, which renders the impugned order illegal.

Learned Additional Public Prosecutor for respondent-State supports the impugned order and submits that evidence recorded is not required to be appreciated at this stage.

Upon hearing and on perusal of impugned order, I find that without permitting petitioner to cross-examine the aforesaid witnesses i.e. PW1, PW2 and PW3, summoning of petitioner for serious offences under Section 302/307/34 IPC cannot be justified. Trial court has erred in doing so.

Accordingly, the impugned order is set aside while permitting petitioner to cross-examine PW-1, PW-2 and PW-3. It is made clear that after the cross-examination of eye witnesses PW-1, PW-2 and PW-3, trial court is at liberty to consider the summoning of petitioner for offences under Section 302/307 r/w Section 34 IPC.

With aforesaid directions, this petition is accordingly disposed of, while not commenting upon the merits of the case.

Dasti.

(SUNIL GAUR)
JUDGE

FEBRUARY 13, 2019

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