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

*Order reserved on :13/01/2023
Order pronounced on :21/04/2023*

+ **CRL.M.C. 787/2022 & CRL. M.A. 3273/2022**

DINESH CHANDER

..... Petitioner

Through: Mr. Viraj R. Dattar, Senior
Advocate along with Mr. Abhijat
& Mr. Arpit Kumar, Advs.

versus

STATE (NCT OF DELHI)

..... Respondent

Through: Mr. Richa Dhawan, APP for the
State with Ins. Ajay Kumar, PS
Lajpat Nagar.

CORAM:

HON'BLE MS. JUSTICE POONAM A. BAMBA

ORDER
21.04.2023

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1.0. Vide this petition under Section 482 Cr.P.C, the petitioner has sought quashing/setting aside of the order of Ld. ASJ-02, South East District, Saket Courts, New Delhi, dated 03.03.2020 ('**impugned order**' in short) in the matter titled as 'State vs. Satender Kumar Shrivastav', bearing SC no. 406/2017 emanating from FIR no. 354/2017, PS Lajpat Nagar, whereby the petitioner (who was kept in column no. 12 of supplementary charge-sheet dated 27.08.2018) was summoned.

2.0. Reference to the impugned order may be made at the outset, which reads as under :-

“SC No. 406/17
FIR No. 354/17
PS: Lajpat Nagar
St. Vs. Satender Kumar Srivastava
03.03.2020

Present: Mr. L.D. Singh, Addl. Public Prosecutor for State.
Accused Statender Kumar Srivastava on bail.

Two supplementary charge sheets filed by IO have been perused.

In the FIR, **complainant Rakesh Kumar has specifically stated that on 06.08.2017, contractor Dinesh had employed complainant** and three more persons for cleaning the sewer line. Complainant has also specifically alleged that he had requested the Contractor Dinesh to provide them safety masks but same were not provided by Contractor Dinesh on the ground that they are very costly. In-fact, **in the FIR, complainant has clearly mentioned that incident happened on account of failure of Contractor Dinesh to provide safety masks.** Some of the family members/legal heirs of deceased have also hinted at the role of Dinesh. Dinesh was not charge sheeted in the main charge sheet but he was kept in column no. 12 in the second charge sheet.

The Court found sufficient material to proceed against Dinesh. Let Dinesh be summoned through IO for **11.05.2020.**

In the second charge sheet, Shiv Hari, the then AE of Delhi Jal Board and Priti pant, the then Executive Engineer of Delhi Jal Board, have also been charged sheeted on the basis of opinion of handwriting expert. There are other grounds/material to proceed against these persons also.

Accordingly, Shiv Hari and Priti be summoned through IO for **11.05.2020.**

(Sandeep Yadav)
ASJ-02/South East District
Saket Courts/ New Delhi/03.03.2020”

3.0. It is submitted by the petitioner that he is a small time contractor empanelled with the Delhi Jal Board ('**DJB**' in short). He neither bids nor has the requisite equipment to do the work, which is the basis of the incident in question. On the date of the alleged incident i.e. 06.08.2017, the petitioner was not having any work order in his favour from DJB as has come in their reply, for cleaning of sewer line opposite Sant Kabir Ram Mandir, Jal Vihar Road, where the alleged mishap took place. Nor was he executing any such contract for the DJB. Thus, no material evidence surfaced against the petitioner except for false verbal allegations levelled by the complainant Rakesh Kumar that he had received a call from the petitioner to carry out the cleaning of the sewerage line on 06.08.2017. The main charge sheet mentions that the petitioner was not found in contact with the complainant Rakesh Kumar on or before or after the incident in any manner.

3.1. The petitioner has further submitted that in both i.e. the main charge sheet filed on 20.10.2017 and the supplementary charge sheet filed on 27.08.2018, there is no material against the petitioner. Rather, the petitioner was not named in the main charge sheet ; and in the supplementary charge sheet, he has been placed in column no. 12 for want of evidence. Despite there being no material on record to even to remotely connect the petitioner to the alleged offence, Ld. ASJ has mechanically summoned the petitioner vide impugned order without application of mind and contrary to the settled law.

3.2. It was argued that the Ld. Trial Court at best, could have directed further investigation qua the petitioner under Section 173 (8)

Cr.P.C. but it could not have summoned the petitioner. In support, the petitioner relied upon the judgements in the cases of **Shambhu Singh Khetasar vs. State (NCT of Delhi) and Another**, 2021, SCC Online Del 4427 and **Sarojben Ashwin Kumar Shah and Others vs. State of Gujarat and Another**, (2011) 13 SCC 316.

4.0 On the other hand, the Ld. Prosecutor sought dismissal of this petition stating that during investigation, it was revealed that on 06.08.2017 sewer/manhole cleaning work was got carried out by Satender Kumar Srivastava (JE of Delhi Jal Board) ; and role of the present petitioner was clearly made out from the statement of the complainant Rakesh Kumar, who categorically stated that the petitioner had asked them i.e. him and the deceased persons to clean the sewer line in question on that day without providing any safety gear. Same finds support in the statements made by Smt. Rekha wife of deceased Annu and that of Smt. Preeti wife of Late Mohan and Praveen son of deceased Dharampal. Ld. Prosecutor argued that the same is sufficient material for summoning the petitioner and placed reliance upon the judgment dated 12.07.2022, Criminal Appeal No. 938 of 2022 (arising out of SLP (Crl.) no. 4982 of 2022), in case titled as '**Indresh Kumar vs. The State of Uttar Pradesh & Anr.**', 2022 LiveLaw (SC) 610.

5.0. Submissions made by both the sides and the record has been considered.

6.0. Primary challenge of the petitioner to the impugned order is that the Ld. Trial Court has mechanically summoned the petitioner without application of mind. Reference was made to the judgment

in *Shambhu Singh's case (Supra)* to espouse his argument that the order taking cognizance has to be a reasoned order. Ld. Prosecutor on the other hand argued that impugned order is a reasoned order and the petitioner has been rightly summoned in view of the statement made by the complainant and relied upon the judgment in *Indresh Kumar's case (supra)* in support.

- 7.0.** There cannot be any quarrel that order of taking cognizance of an offence against any person has to be a reasoned order. It may be mentioned that the complainant Rakesh Kumar in his statement, on which the FIR in the present case came to be registered, has stated that he has been working for the petitioner as labour for cleaning of sewers. He further categorically stated that on 06.08.2017, the petitioner asked him and the deceased Jogender, Annu and one more boy, whose name he was not aware, to clean 25 sewers from Jal Sadan to Ring Road. He also stated that in view of the death of workers in past, he requested the petitioner to provide safety gear, but the petitioner did not provide on the pretext that these were expensive. The complainant has further stated that at about 10.30 am, they started work and had cleaned 3/4 sewers and at about 12.00 noon, when they started work opposite Sant Kabir Ram Mandir, he went to fetch a hammer and by the time he returned, three of his co-workers could not come out of the sewer having fainted and later died. Smt. Rekha w/o Late Annu, Smt. Preeti w/o Late Mohan and Mr. Praveen s/o Dharampal, wives and son, respectively, of the deceased workers, also stated in their respective statements under Section 161 Cr.P.C that the petitioner used to call complainant Rakesh Kumar for cleaning of sewer work of Delhi Jal Board and the complainant Rakesh used to call their

respective husbands/father for the said task. On 06.08.2017 also, the deceased workers were called by the complainant Rakesh Kumar for the said purpose, but they died while executing the said work, due to negligence of the petitioner/contractor.

8.0. It is noted that the Ld. ASJ in the impugned order has duly noted the specific statement made by the complainant Rakesh Kumar to the effect that it was the petitioner, who had employed him and the deceased persons for cleaning of the aforesaid sewer line ; and that the said incident happened on account of failure of the petitioner to provide safety masks. Thus recording his satisfaction/reasons for taking cognizance of the offence against the petitioner and summoning him.

9.0. The judgment of *Shambhu Singh's* (supra) relied upon by the Id. Counsel for the petitioner refers to the judgment in '**Sunil Bharti Mittal vs. Central Bureau of Investigation**' (2015) 4 SCC 609, which rather noted that the court is justified in taking cognizance and summoning the accused if it feels that the evidence collected justifies the prosecution of the accused. The Hon'ble Supreme Court in para 50 of that judgment observed that :-

"50. the Court would be justified in taking cognizance of the offence and to summon the accused if it feels that the evidence and material collected during investigation justifies prosecution of the accused (see [Union of India v. Prakash P. Hinduja 38](#)). Thus, the Magistrate is empowered to issue process against some other person, who has not been charge-sheeted, but there has to be sufficient material in the police report showing his involvement. In that case, the Magistrate is empowered to ignore the conclusion arrived at by the investigating officer and apply his

mind independently on the facts emerging from the investigation and take cognizance of the case....”

9.1. Ld. ASJ in the instant case has duly recorded his satisfaction in this respect.

10.0 In Indresh Kumar’s case relied upon by the Ld. Prosecutor, the Hon’ble Supreme Court observed that the statement u/s 161 Cr.P.C may not be admissible in evidence, but is relevant in considering the prima facie case against the accused, though the said observations were made during consideration of bail application.

11.0 In view of the above, considering the complainant’s categorical statement and statements made by the other witnesses, there is hardly any infirmity or illegality in the impugned order.

12.0 As far as the contentions raised by the petitioner in the present petition are considered, he is at liberty to raise those contentions at appropriate stage during trial before the Ld. Trial Court.

13.0 Petition is accordingly dismissed.

14.0 Pending applications, if any, are closed.

POONAM A. BAMBA, J

APRIL 21, 2023

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Click here to check corrigendum, if any