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

+ CRL.M.C. 4265/2023 &CRL.M.A. 16005/2023&CRL.M.A.
16006/2023&CRL.M.A. 25450/2024

VIVEK KUMAR

.....Petitioner

Through: Mr. Ravindra Narayan and Mr.
Ranjan Kumar, Advocates

versus

STATE OF NCT OF DELHI & ANR.

.....Respondents

Through: Mr. Satish Kumar, APP for State
Ms. Aishwarya Rao and Ms. Mansi
Rao, Advocates for R-2

CORAM:

HON'BLE MR. JUSTICE CHANDRA DHARI SINGH

ORDER
08.10.2024

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1. The instant petition under Section 482 of the Code of Civil Procedure, 1973 (now under Section 528 of the Bhartiya Nagarik Suraksha Sanhita, 2023) has been filed on behalf of the petitioner seeking setting aside of the order of summoning dated 6th November, 2020 passed by learned Metropolitan Magistrate, South East, Saket Court, New Delhi (hereinafter as the “MM”) and the order dated 12th May, 2023 in revision petition passed by learned Additional Sessions Judge, South East, Saket Court, New Delhi (hereinafter as the “ASJ”), in FIR No. 262/2018 registered at Police Station Sunlight Colony, Delhi under Sections 420/120B/174-A of the Indian Penal Code, 1860 (hereinafter as the “IPC”).



2. Learned counsel appearing on behalf of the petitioner submitted that the impugned orders passed by the learned MM as well as the learned ASJ are untenable as no judicial mind was applied by the respective Courts while passing the impugned orders.

3. It is submitted that the learned MM was wrong in summoning the petitioner without appreciating the fact that the petitioner was not made an accused in the investigation report of the police under Section 173 of the Code of Criminal Procedure, 1973 (hereinafter as the “Code”).

4. It is submitted that the impugned order passed by the learned MM failed to consider the fact that the petitioner was exonerated by the police and was not included either as an accused or witness in the investigation report under Section 173 of the Code as the petitioner himself is a victim of the main accused in the instant case i.e., Mr. Shekhar Puri. Without considering the afore-stated fact, the learned MM erroneously disagreed with the said report and issued summons to the petitioner, thereby, making the petitioner an accused in the instant case.

5. It is submitted that the learned MM passed the impugned order by wrongfully summoning the petitioner without assigning any reasons and perusing the material on record.

6. It is submitted that aggrieved by the summoning order passed by the learned MM, the petitioner filed a criminal revision petition bearing no. 304/2020 before the learned ASJ challenging the summoning order passed by the learned MM. It is submitted that learned ASJ erroneously dismissed the said revision petition vide order dated 12th May, 2023 without proper consideration of grounds and submissions advanced by the petitioner therein.



7. It is further submitted that the petitioner filed a complaint under Section 156(3) of the Code against the main accused i.e., Mr. Shekhar Puri, however, the same is still pending before the Court concerned.

8. Therefore, in view of the foregoing submissions, it is prayed that the impugned orders passed by the learned MM and learned ASJ, respectively, may be set aside and the instant petition may be allowed.

9. *Per contra*, learned APP appearing on behalf of the State and the learned counsel appearing on behalf of the complainant vehemently opposed the instant petition and submitted that the instant petition is bereft of any merits and is nothing but a gross misuse of process of law.

10. It is submitted that the learned MM has the discretionary power to disagree with the investigation report filed by the police under Section 173 of the Code and take cognizance of the offence if it is satisfied that there exists a *prima facie* case based on the evidence on record. Therefore, once the Magistrate is of the view that a *prima facie* case is made out, it may issue summons to the accused persons after disagreeing with the report under Section 173 of the Code.

11. It is submitted that the learned MM passed a detailed and reasoned order by considering the facts and material on record in its entirety, wherein it took cognizance of the offence and issued summons against the petitioner.

12. It is further submitted that in its revisional power, the learned ASJ has duly perused the material on record and contents made in the summoning order passed by the learned MM and rightfully, passed a detailed order dismissing the said revision petition on the ground that no error or illegality is made out in the said summoning order. Hence, this Court cannot interfere in the impugned orders passed by the learned MM and learned ASJ,



respectively, under Section 482 of the Code.

13. Therefore, in light of the foregoing submissions, it is prayed that the instant petition may be dismissed.

14. Heard learned counsel for the parties and perused the material on record.

15. It is the case of the petitioner that the learned MM failed to consider the report under Section 173 of the Code and wrongfully took cognizance by issuing summons against the petitioner and that the said illegality of the summoning order was not considered by the learned ASJ while dismissing the said revision petition.

16. In rebuttal, it is contended that the learned MM was right in disagreeing with report filed by the police under Section 173 of the Code and issuing summons to the petitioner by taking cognizance of the offence and the learned ASJ was right in dismissing the revision petition as there exists no error or illegality of the summoning order passed by the learned MM.

17. Therefore, the question for adjudication before this Court is whether the learned MM erred in issuing summons against the petitioner and whether the learned ASJ erred in dismissing the revision petition filed by the petitioner.

18. Upon perusal of the impugned order passed by the learned MM, it is observed that the learned MM disagreed with the investigation report filed by the police under Section 173 of the Code and by taking cognizance of the offence, the learned MM issued summons against the petitioner in the case arising out of FIR No. 262/2018 under Sections 420/406/120B/34, which is registered with Police Station Sunlight Colony, Delhi.



19. It is further observed that in its impugned order, the learned ASJ dismissed the revision petition on the grounds that there ensues no error or illegality in the summoning order as the same was issued after due consideration of the facts and circumstances of the case, wherein a *prima facie* case was established against the petitioner.

20. At this stage, it is apposite to look at whether the Magistrate is well within its power to take cognizance of the offence by summoning the petitioner by disagreeing with the report prepared by the police under Section 173 of the Code.

21. Therefore, it is pertinent to understand that after the completion of investigation, the police are necessitated to prepare a report under Section 173 of the Code, which is thereafter filed before the concerned Magistrate. Upon consideration of the said report, the concerned Magistrate can proceed with the proceedings in three ways – *firstly*, by accepting the report *in toto*; *secondly*, by disagreeing with the report and taking cognizance of the offence, and further issuing process; and *thirdly*, by directing further investigation.

22. A similar observation has been taken by the Hon'ble Supreme Court in the case of ***State through Central Bureau of Investigation vs. Hemendhra Reddy & Another***, 2023 SCC OnLine SC 515, wherein, it was observed as follows –

“49. Wherever a final report forwarded by the Investigating Officer to a Magistrate under Section 173(2)(i) of the CrPC is placed before him, several situations may arise. The report may conclude that an offence appears to have been committed by a particular person and persons, and in such a case the Magistrate may either:

(1) accept the report and take cognizance of offence and issue



process,

(2) may disagree with the report and drop the proceeding or may take cognizance on the basis of report/material submitted by the investigation officer,

(3) may direct further investigation under Section 156(3) and require police to make a report as per Section 173(8) of the CrPC.

(4) may treat the protest complaint as a complaint, and proceed under Sections 200 and 202 of the CrPC.”

23. Moreover, it is an established principle of law that at the stage of summoning the accused, Magistrate is only required to record his satisfaction and conclusion upon a *prima facie* consideration of material on record. The said principle has been reiterated in the recent judgment of the Hon’ble Supreme Court in the case of **Aniruddha Khanwalkar Vs. Sharmila Das and Ors., 2024 INSC 342** as well.

24. At this juncture, it is apposite to mention that in the case of **Nahar Singh vs. The State of Uttar Pradesh, (2022) 5 SCC 295**, the Hon’ble Supreme Court held that the Magistrate can still issue summons against the person against whom the material is placed on record, however, whose name is not included as an accused in the chargesheet.

25. Adverting to the instant case, it is observed that the learned MM as well as the learned ASJ has extensively perused the material on record and upon being satisfied that there exists a *prima facie* case against the petitioner, the former Court opted to disagree with the investigation report of the police under Section 173 of the Code, thereby taking cognizance of the offence and issuing summons against the petitioner.

26. Therefore, in light of the settled principles of law, as stated above, the learned MM is well within its discretionary power to disagree with the



investigation report under Section 173 of the Code based on the evidence placed on record and accordingly, having been satisfied that there exists a *prima facie* case against the petitioner, the learned MM has rightly chose to disagree with the said report and took cognizance of the offence, by issuing summons against the petitioner.

27. This Court is of the view that the instant matter is not a fit case to exercise powers under Section 482 of the Code. In view of the same, this Court does not find any illegality or error in the order dated 6th November, 2020 passed by the learned MM as well as the order dated 12th May, 2023 passed by the learned ASJ in FIR No. 262/2018 registered at Police Station Sunlight Colony, Delhi and the same are, hereby, upheld.

28. Accordingly, the instant petition, being devoid of any merits, is dismissed along with the pending applications, if any.

CHANDRA DHARI SINGH, J

OCTOBER 8, 2024
gs/mk

[Click here to check corrigendum, if any](#)