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* IN THE HIGH COURT OF DELHI AT NEW DELHI

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Date of Judgment: 28.02.2024

+ CRL.M.C. 2222/2021 & CRL.M.A. 14936/2021

'SD'.

..... Petitioner

Through: Ms.Mallika Parmar (DHCLSC) and
Mr.Brij R. Raghav, Advocates.

versus

STATE OF NCT OF DELHI.

..... Respondent

Through: Ms. Meenakshi Dahiya, APP for the
State with SI Kavish Rana, PS Laxmi
Nagar.

CORAM:

HON'BLE MR. JUSTICE ANOOP KUMAR MENDIRATTA

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J U D G M E N T**ANOOP KUMAR MENDIRATTA, J (ORAL)**

1. Petition under Section 482 of the Code of Criminal Procedure, 1973 ('Cr.P.C.') has been preferred on behalf of the petitioner challenging the order dated 22.11.2019 passed by learned MM, East, Karkardooma Courts, Delhi in FIR No.2202/2014, under Section 354D/506/509/34 IPC, registered at PS: Shakarpur whereby petitioner has been summoned for offence under Section 323 IPC.

2. In brief, FIR No.2202/2014 was registered on 21.10.2014 under Section 354D/506/509/34 IPC at PS: Shakarpur, on the complaint of 'Smt. GD' who alleged that while she was on her duty, 'SD' (wife of her brother 'P'), manhandled her children and slapped them. She also alleged that 'P' and his sons, 'B', 'Y' and 'SK' stalked her daughters and threatened them. After completion of investigation, since the allegations could not be



corroborated by independent evidence against petitioner ('SD'), charge-sheet was filed only against 'P', 'B', 'Y' and 'SK' under Section 354D/506/509/34 IPC. Accused 'P', 'B', 'Y' and 'SK' were accordingly summoned to face trial. The aforesaid four accused were discharged under Section 354D IPC by the concerned Mahila Court vide order dated 07.10.2016 and, thereafter, the case was transferred to the learned CMM (East) for further proceedings in accordance with law. Vide order dated 22.11.2019, learned MM (East) discharged all the four accused under remaining Section 506/509/34 IPC, observing that there is nothing on record to show that any of the accused had in any manner uttered any word or made any gesture with an intent to insult the modesty of the complainant. Further, allegations of criminal intimidation were found to be ambiguous.

3. In the meantime, after the accused were discharged of offence under Section 354D IPC vide order dated 07.10.2016, a supplementary charge-sheet under Section 323 IPC was filed by the Investigating Officer on directions of learned Trial Court against petitioner 'SD' on the basis of same evidence as contained in original charge-sheet. The petitioner accordingly stands summoned under Section 323 IPC vide impugned order dated 22.11.2019 despite discharge of all other accused under Section 354D/506/509/34 IPC.

4. Learned counsel for the petitioner submits that petitioner was never summoned while taking cognizance of the offences by learned MM at the stage of filing of the original charge-sheet, under Section 354D/506/509/34 IPC. Further, on the same material, a supplementary charge-sheet has been filed on the directions of learned MM, whereupon the petitioner has been



summoned vide order dated 21.11.2019 under Section 323 IPC, though the other accused have been discharged. The same is stated to be opposed to provisions of law and in support of contentions, reliance is placed upon *Vinay Singh & Anr. v. State of NCT of Delhi & Anr.*, CrI.M.C. 3653/2018, decided on 25.07.2018; *Anirudh Sen v. State of NCT of Delhi*, CrI. Rev. Pet. 498/2006, decided on 08.11.2006; *R.Sarala v. T.S. Velu & Ors.*, 2000 SC 1731; and *Ramakant Singh & Ors. v. State of Jharkhand & Anr.*, CrI. A. 3484/2023.

5. On the other hand, learned APP for the State opposes the petition on the ground that since petitioner 'S D' allegedly misbehaved and slapped daughters of complainant, the summoning of accused under Section 323 IPC on the basis of supplementary charge-sheet under Section 173(8) Cr.P.C., is not barred.

6. A Revision Petition preferred by the petitioner challenging order dated 21.11.2019 was dismissed by the learned Principal District & Sessions Judge vide order dated 24.12.2020 on the ground that remedy against the summoning order passed by learned MM lies under Section 482 Cr.P.C. and the same cannot be exercised in revisional power under Section 397 Cr.P.C., for examining a case on the touchstone of correctness, legality or propriety of any finding, sentence or order recorded or passed by learned MM.

7. I have given considered thought to the contentions raised.

In *Vinay Singh & Anr. v. State of NCT of Delhi & Anr.* (supra), petitioners therein were kept in column no.12 and only one of the accused Khillar Singh was summoned after the cognizance was taken on the charge-sheet. However, subsequently on the prayer of learned Additional Public



Prosecutor that there were specific allegations by name against the other co-accused who had been placed in column no.12, summons were directed to be issued against the petitioners. It was argued on behalf of the petitioners that the summoning order is bad in law and abuse of the process. It was held by this Court that the Magistrate had no power to review initial summoning order and would have the occasion to exercise the jurisdiction to summon the additional accused, if evidence comes up during the course of trial in terms of Section 319 Cr.P.C. Accordingly the order was set aside.

8. In *Anirudh Sen v. State of NCT of Delhi* (supra), the charge-sheet had been filed showing the petitioner in column no.2 of the charge-sheet. As there was no material available against the petitioner, he was initially not summoned. However, later on, summons were directed to be issued by the learned MM in respect of the said petitioner and action taken by the learned MM was challenged in the Revision Petition, since the same amounted to review of the earlier order. It was observed by this Court that the order for summoning was passed after four years of taking of the cognizance against the other accused who were placed in column no.4. Further, there was no additional material before the learned MM to implicate the petitioner in the said offence, who was placed in column no.2 and could not be summoned merely at the request of the learned APP. The summoning order was accordingly set aside.

9. Reverting back to the facts of the case, it may be noticed that both the complainant 'GD' and 'P' (husband of petitioner 'SD') are related as sister and brother and a litigation was pending between them at Karkardooma Courts, in respect of disputes over property. Charge-sheet was filed after



investigation only against 'P' (husband of petitioner 'SD') and 'B', 'Y' and 'SK' (sons of 'P') who were summoned by the learned MM under Section 354D/506/509/34 IPC. Summons were not issued against the petitioner under Section 323 IPC since the incident could not be corroborated by any independent evidence as per charge-sheet. Supplementary charge-sheet has thereafter been filed, only on the directions of the learned MM, on the basis of the same evidence, after discharge of co-accused under Section 354D IPC vide order dated 07.10.2016. Further, said co-accused were also discharged under Section 506/509/34 IPC vide impugned order dated 22.11.2019.

10. It is well settled that the Magistrate takes cognizance of the offence and not the offenders and duty lies on the Magistrate to look into as to who are the offenders on the basis of the charge-sheet. Once the MM comes to a conclusion that apart from the persons sent up by the police, some other persons/accused are involved in the commission of offence, he is required to proceed against such persons. However, the MM cannot review the same order, if he did not summon any other person against whom allegations have been made, after considering the charge-sheet on merits unless some additional evidence comes in supplementary charge-sheet filed under Section 173(8) Cr.P.C. or during the course of inquiry, prior to framing of charge.

11. A person not named in the FIR or a person though named in the FIR but has not been charge-sheeted or a person who has been discharged, can be also summoned under Section 319 Cr.P.C., provided from the evidence it appears that such person can be tried along with accused already facing trial. However, wherein the Magistrate forms a considered opinion not to initially summon an accused in the charge-sheet, if his role is not established during



investigation, he cannot be summoned on the basis of supplementary charge-sheet based on the same evidence by the Magistrate, as the same would be a review of his own summoning order which may not be permissible in law.

12. It may further be observed that filing of supplementary charge-sheet under Section 173(8) Cr.P.C. contemplates that the Officer-in-Charge of the concerned Police Station obtains further evidence, oral or documentary after filing of the original charge-sheet and does not involve the process of re-evaluating or re-assessing the evidence which already was collected and considered by the Investigating Agency while filing the original charge-sheet under Section 173(2) Cr.P.C. The Judicial Magistrate, as such, is not compelled to take cognizance in case the supplementary charge-sheet does not satisfy the requisites under Section 173(8) Cr.P.C. and the same evidence is presented under Section 173(8) Cr.P.C., with a fresh prayer to take the cognizance of offence against an accused who was earlier not summoned on the basis of the same evidence, which was earlier looked into by the Court and considered by the Investigating Agency. Reliance in this regard may be placed upon *Mariam Fasihuddin and Another v. State by Aduodi Police Station and Another*, 2024 SCC OnLine SC 58.

13. Reverting back to the facts of this case, this Court is of the view that after the charge-sheet was filed on record and cognizance of the offence was taken by the learned MM, it was his conscious decision to not to summon the petitioner and summons were only directed to be issued against the other accused. This state of affairs continued till consideration of charge against the other accused who were summoned, and finally discharged under Section 354D and Section 506/509/34 IPC vide orders dated 07.10.2016 and



22.11.2019 respectively. Perhaps, the summoning order under Section 323 IPC against the petitioner on the basis of same evidence after filing of supplementary charge-sheet under Section 173(8) Cr.P.C., is virtually a review of the original order, whereby summons were issued after taking cognizance under Section 354D/506/509/34 IPC only against other co-accused. It is also pertinent to observe that though the prosecution version has been held to be unfounded against co-accused under Section 354D/506/509/34 IPC but the petitioner stands summoned under Section 323 IPC, on the same evidence. In the facts and circumstances, an erroneous approach has been adopted by the learned MM, since there was no fresh/additional evidence in the supplementary charge-sheet under Section 173(8) Cr.P.C. to summon the petitioner. The same is nothing but a review of the original order of summoning and as such abuse of the process of Court.

For the foregoing reasons, order dated 22.11.2019 passed by the learned MM thereby summoning the petitioner under Section 323 IPC as well as order dated 24.12.2020 passed by Principal District and Sessions Judge are set aside. Proceedings against the petitioner stand closed. Personal bond/surety bond, if any, furnished by the petitioner are discharged. Pending applications, if any, also stand disposed of.

A copy of this judgment be forwarded to the learned MM as well as learned Principal District and Sessions Judge (East) for information.

(ANOOP KUMAR MENDIRATTA)
JUDGE

FEBRUARY 28, 2024/v/sd