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

+ **CRL.M.C. 5571/2018**

TILAK RAJ MADAN & ANR.

.....Petitioners

Through: Mr. Shiv Gupta, Mr. SM Bhaskar and
Mr. Rohan Singh Pande advocates

versus

STATE & ANR.

.....Respondents

Through: Mr.Digam Singh Dagar, APP for the
State.
Mr. Brij Kishore Ray, Advocate for
R 2
SI Sachin Dhama PS Shalimar Bagh

CORAM:

HON'BLE MR. JUSTICE DINESH KUMAR SHARMA

ORDER

07.08.2024

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The present petition has been filed for quashing of case FIR no. 457/2005 registered under Sections 498A/406/506/34 IPC at PS. Shalimar Bagh and all the other proceedings emanating therefrom.

Learned counsel for the petitioners submits that the present charge sheet is total misuse and abuse of the process of law. Learned counsel for the petitioners submits that the petitioners are the Nandoi and Nanad of the complainant. Learned counsel has invited the attention of the court to the charge-sheet filed against the petitioners by the police. Learned counsel submits that there is not even iota of word against them in the charge sheet and therefore continuation of the proceedings will be misused and abuse of



the process of law.

Learned APP submits that no evidence could be collected as the petitioners did not join the investigation. Learned counsel for the complainant also submits that petitioners who are resident of USA did not join the investigation at all.

Chapter XII of the Code of Criminal Procedure, 1973 deals with “Information to the Police and their Powers to Investigate”. Upon registration of the FIR under Section 154 the investigating agency has been conferred with power to investigate in the cognizable cases. Upon the complaint being filed it is the duty of the police to take appropriate steps in accordance with law for the purpose of investigation. Chapter V of the Code deals with the power of the police to procure the presence of the alleged persons. Section 166A of the Code deals with investigation in a country or any place outside. Upon the completion of the investigation, the report is to be submitted by the police, under Sections 170 Cr.P.C, Section 169 Cr.P.C. the Code provides that if there is no sufficient, evidence or reasonable ground of suspicion the police shall file a report before the court. The Code of criminal procedure confers power on the court to take cognisance of the offence on a police report and to try the accused or commit him for trial.

It is a settled proposition that while a police officer has the power to arrest, they are not always required to do so, especially for offenses punishable by imprisonment of seven years or less. If the officer decides not to arrest the accused, they may choose not to issue a notice under Section 41A CrPC, particularly if the accused's identity is known and the officer does not require further interrogation. In such cases, the police can collect evidence and file a final report without arresting or even examining the



accused. Thus, the police can file a report even if they are unable to procure the accused's appearance.

Thus, the entire gamut of the Code of Criminal procedure provides that upon completion of the investigation, the police has to file the report before the learned Magistrate. Therefore, the police is under a bounden duty to give its specific opinion in its report that whether there are sufficient grounds or no sufficient evidence or reasonable ground to forward the alleged person to the magistrate for trial.

In ***Sharif Ahmed & Anr. V. State of UP & Anr.*** 2024 SCC OnLine SC 726, the Supreme Court *inter alia* held that an incomplete chargesheet without a definite opinion or conclusion of the investigation should not be filed. The chargesheet under Section 173(2) of the Code of Criminal Procedure is considered complete only when it includes material and evidence sufficient to take cognizance and proceed with the trial. It must show with sufficient particularity and clarity the alleged contravention of the law. The investigating officer must clearly and completely fill out all relevant columns in the chargesheet, providing details on the crime, the accused, and the material evidence. The court, upon receiving such a chargesheet, will decide whether to take cognizance based on the evidence and statements provided. The filing of a supplementary chargesheet under Section 173(8) is meant to add to an already complete chargesheet, not to make up for deficiencies in a preliminary one. Therefore, the chargesheet must be thorough and well-supported by evidence, as the court's decision to proceed hinges on its contents.



The police simply cannot avoid its responsibility by filling the report under Section 173 saying that since the alleged persons are residents of USA their appearance could not be procured. It is the duty of the investigating officer or the State to complete the investigation. The report can be filed only after completion of investigation. However, merely because charge-sheet has not been filed, FIR cannot be quashed. The police may proceed against the petitioners as and when their appearance is procured through the legal means or the investigation is complete.

The “Cognizance” is not a mere formality. It requires due application of mind. The “Cognizance” taken without any material on record is not good in law. It goes without saying that the cognizance taken by learned MM on present report cannot sustain in the eyes of law and is liable to be set aside. Thus, present petition is disposed of with the direction that the cognizance taken against the present petitioner is bad in law. However, the investigating agency may file a fresh report if any, after the investigation is completed in accordance with law. The petitioners are also at liberty to challenge the same as and when any such report is filed by the police.

The petition along with pending applications stands disposed of.

DINESH KUMAR SHARMA, J

AUGUST 7, 2024

rb/k.