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

+ CRL.M.C. 7445/2023 & CRL.M.A. 27770/2023 (stay), CRL.M.A. 7669/2024 (vacation of stay)

ANUP KUMAR JUNEJA

.....Petitioner

Through: Mr. Lalit Valecha and Mr. S. Islam,
Advocates.

versus

STATE OF NCT OF DELHI & ANR.

.....Respondents

Through: Mr. Satish Kumar, APP for the State
with SI Manoj Kumar, P.S. Paschim
Vihar, West.

CORAM:

HON'BLE MR. JUSTICE AMIT SHARMA

ORDER

15.01.2025

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1. This hearing has been done through hybrid mode.
2. The present petition under Section 482 of the CrPC has been filed seeking the following prayers: -

“a) Pass necessary directions and order thereby setting aside and quashing summoning order dated 24.03.2023 (Annexure 1) orders dated 28.04.2023 & 13.07.2023 issuing BW and order dated 18.08.2023 and 20.09.2023 issuing NBW (Annexure 8 & 9) passed by the Ld. Additional Sessions Judge West District, Tis Hazari Court in case FIR No. 227/2017 PS Mianwali Nagar in SC/563/2022 titled “State Vs Charanjeet & Ors.” qua the present petitioner;
b) Pass any other or further order/s as this Hon’ble Court may deem fit and proper in the facts and circumstances of the case.”

3. In the present case, the FIR No. 227/2017, under Sections 376/34 of the IPC, was registered at PS Mianwali Nagar at the instance of respondent No. 2 against the present petitioner and other co-accused person Charanjeet Singh.



After the completion of the investigation, chargesheet was filed before the Court of competent jurisdiction. In the said chargesheet the present petitioner and Charanjeet Singh were arrayed as accused and sent for trial.

4. Learned Metropolitan Magistrate before whom the chargesheet was filed, however, on 10.10.2019 passed the following order: -

“Summons sent to the accused persons received back unexecuted.

Reports perused.

Status report with regard to FSL result is filed that the same is not ready and supplementary chargesheet be filed after obtaining the FSL result.

As per the chargehseet, there is no evidence against accused Anoop Juneja. Accordingly, accused Anoop Juneja be not summoned.

Summons sent to accused Charan Jeet received back unexecuted. Let fresh summons be issued only against accused Charan Jeet for 09.12.2019 through IO.”

5. Thereafter, the matter was sent up for trial before the learned ASJ after committal and during the course of the proceedings the following impugned order was passed on 24.03.2023: -

“At this stage, Ld. Addl. PP for the State has submitted that as per the charge-sheet, there were two accused who were named in column 11 in the charge-sheet namely the accused Charanjeet, who is present before the Court, and another accused Anup Juneja. It is submitted that vide order dated 10.10.2019 of then concerned Ld. MM, the said accused Anup Juneja was not summoned by the said MM. It is submitted that from the perusal of the complaint, there is sufficient inculpatory allegations against the said accused Anup Juneja as well. Accordingly, it is prayed that the said accused Anup Juneja be also summoned before this Court.



Heard. Record perused.

In view of the submissions on behalf of Ld . Addl. PP for the State and further as per the observations recorded in judgment titled *Dharampal and ors. v. State of Haryana and ors.*, AIR 2013 SC 3018, this Court is of the view that accused Anup Juneja be summoned in the present FIR.

Accordingly, let summons be issued to accused Anup Juneja through DCP concerned for the NDOH.

Let IO be also summoned to appear in person on the NDOH.

Put up for appearance of co-accused Anup Juneja and further proceedings on **28.04.2023.**”

6. Being aggrieved by the aforesaid order, the present petitioner has filed the present petition.

7. Learned counsel appearing on behalf of petitioner submits that in the charge-sheet it is recorded by the investigating officer that no evidence could be gathered against the present petitioner. Reliance has also been placed on the following portion of the charge-sheet: -

“During the investigation, the case file in the above case was handed over to SI Ravi for further investigation on 21-06-2018, which was followed by further proceedings in the above case in which Anoop Juneja was grant bail from the Ms. Shail Jain ASJ, Tis Hazzari on 07-07-2017. Anticipatory bail was approved on the surety of Rs 50000/-, the accused in the above case came to the present police station and joined the investigation, SI Ravi discussed the entire situation about the accused Anup Juneja in the above case with SHO Sir, where no evidence of any kind was found against the accused and anticipatory bail was granted in the court of Ms Shail Jain ASJ, Tis Hazzari on a surety of Rs 50,000/- and after completing the same, the investigation team was placed in Column 11 (No Arrest).”



8. Relying on the aforesaid portion, learned counsel for the petitioner has urged that the learned Metropolitan Magistrate did not summon the present petitioner as there was no evidence, as stated by the investigating officer himself, in the chargesheet against the present petitioner. It is submitted that the impugned order passed by the learned ASJ is without any application of mind and that the learned ASJ ought to have examined the records of the case before summoning the present petitioner.

9. *Per contra*, learned counsel appearing on behalf of the respondent No. 2 submitted that the learned Metropolitan Magistrate had erred in not summoning the present petitioner inasmuch as the subsequent part of the chargesheet clearly stated that the present petitioner was forwarded as an accused person to face trial which is recorded in the portion just below the portion cited by the learned counsel for the petitioner. The said relevant portion is reproduced hereinbelow: -

“After this, on 31-11-2018, the case file was handed over to me SI for further proceedings, the case file was discussed with SHO Sir, which was added under Section 328 in the above case, that the investigation in the above case has been completed. From the investigation so far, accused number 1. Charanjeet S/ o Amrik Singh R/ o H.No. 156,157, Baba Deep Singh Colony, Amritsar Punjab, aged 75 (on bail), lot of evidence has been found against him (Column No. 11) in under section 376/328/34 IPC. 2. Anoop Juneja S/o Rajesh Kumar Juneja R/o 21, Kapil Vihar, Jewellers, Pitam Pura, Delhi (Not arrested) lot of evidence has been found against him (Column No. 11) in under section 376/328/34 IPC. Therefore, the original challan has been made and presented. The accused should be summoned through notice and witnesses should be summoned through summons and in the above case the victim's mobile phone has been sent to FSL. After the declaration of



FSL result, further action will be taken through supplementary challan. Action against alleged persons, Shashi Kant or Sardar Sunty will be present by the supplementary Chalan.”

10. Heard the learned counsel for the parties and perused the records.
11. In the opinion of this Court, the learned Metropolitan Magistrate while passing the aforesaid order dated 10.10.2019 did not appreciate the fact that the present petitioner had been chargesheeted in the aforesaid FIR. Learned Metropolitan Magistrate could not have passed the order of not summoning the petitioner on the ground that there was no evidence against him.
12. The Hon’ble Supreme Court in **Balveer Singh v. State of Rajasthan, (2016) 6 SCC 680**, has observed and held as under: -

“23. This view further gets strengthened from another judgment of this Court in *Ajay Kumar Parmar v. State of Rajasthan* [*Ajay Kumar Parmar v. State of Rajasthan*, (2012) 12 SCC 406 : (2013) 2 SCC (Civ) 405 : (2013) 4 SCC (Cri) 672] . In that case, the Court held that when the offence is exclusively triable by the Sessions Court, the Magistrate must commit the case to the Sessions Court and cannot refuse to take cognizance of the offence and acquit the accused on the basis of material produced before it. It would be useful to reproduce the following discussion in the said judgment : (SCC pp. 413-15, paras 14-15 & 17-19)

“14. In *Sanjay Gandhi v. Union of India* [*Sanjay Gandhi v. Union of India*, (1978) 2 SCC 39 : 1978 SCC (Cri) 172] , this Court while dealing with the competence of the Magistrate to discharge an accused, in a case like the instant one at hand, held : (SCC pp. 40-41, para 3)

‘3. ... it is not open to the committal court to launch on a process of satisfying itself that a prima facie case has been made out on the merits. *The jurisdiction once vested in him under the earlier Code but has been eliminated now under the present Code.* Therefore, to hold that he can go into the merits even for a prima facie satisfaction is to frustrate Parliament's purpose in remoulding Section 207-A (old Code) into its present non-discretionary shape. Expedition was intended by this change and this will be defeated successfully if interpretatively we hold that a dress rehearsal of a trial before



the Magistrate is in order. In our view, the narrow inspection hole through which the committing Magistrate has to look at the case limits him merely to ascertain whether the case, as disclosed by the police report, appears to the Magistrate to show an offence triable solely by the Court of Session. Assuming the facts to be correct as stated in the police report ... *the Magistrate has simply to commit for trial before the Court of Session.* If, by error, a wrong section of the Penal Code is quoted, he may look into that aspect. ... If made-up facts unsupported by any material are reported by the police and a sessions offence is made to appear, it is perfectly open to the Sessions Court under Section 227 CrPC to discharge the accused. This provision takes care of the alleged grievance of the accused.'

Thus, it is evident from the aforesaid judgment that when an offence is cognizable by the Sessions Court, the Magistrate cannot probe into the matter and discharge the accused. It is not permissible for him to do so, even after considering the evidence on record, as he has no jurisdiction to probe or look into the matter at all. His concern should be to see what provisions of the penal statute have been mentioned and in case an offence triable by the Sessions Court has been mentioned, he must commit the case to the Sessions Court and do nothing else.

15. Thus, we are of the considered opinion that the Magistrate had no business to discharge the appellant. In fact, Section 207-A in the old CrPC, empowered the Magistrate to exercise such a power. However, in CrPC, 1973, there is no provision analogous to the said Section 207-A. He was bound under law, to commit the case to the Sessions Court, where such application for discharge would be considered. The order of discharge is therefore, a nullity, being without jurisdiction.

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Thus, in view of the aforesaid, the learned Metropolitan Magistrate had no power to discharge the present petitioner despite the fact that he was chargesheeted by the police as he was performing his duties as a committal Court.



13. It is further relevant to note that in the order dated 10.10.2019 passed by the learned Metropolitan Magistrate, it is recorded that, “*Summons sent to accused persons received back unexecuted*”. This reflects that the summons had been issued for the petitioner, and in such circumstances, the learned Metropolitan Magistrate had no power to review the same.

14. Be that as it may, with consent of learned counsel for the petitioner and respondent No. 2, the matter is being remanded back to the learned ASJ for a fresh examination of the chargesheet and the materials placed on record along with the same with regard to summoning of the present petitioner.

15. In view of the same, the present petition is disposed of with the following directions: -

- a) The order dated 24.03.2023 is set aside and the learned ASJ shall examine the chargesheet alongwith the material placed along with the same for the purpose of summoning the present petitioner.
- b) The orders passed by the learned ASJ issuing bailable and non-bailable warrants *qua* the present petitioner are also set side.
- c) Learned ASJ will pass appropriate orders in accordance with law within a period of 2 months from date of passing of the present order.

16. Needless to state that, nothing mentioned hereinabove, is an opinion on the merits of the case of the contentions raised on behalf of the petitioner as well as respondent No. 2 and any observations made herein are only for the purpose of the present petition.

17. In view of the aforesaid directions, the petition stands disposed of.

18. Pending application(s), if any, also stands disposed of.

19. Copy of the order be communicated to the concerned learned Trial Court for necessary information and compliance.



20. Order be uploaded on the website of this Court *forthwith*.

AMIT SHARMA, J

JANUARY 15, 2025/sn

Click here to check corrigendum, if any