

(2018) 08 DEL CK 0251

In the Delhi High Court

Case No : Criminal Miscellaneous Case No.3780 OF 2015 and CrI.M.A.13378 OF 2015

Avinash & Ors

APPELLANT

Vs

State & Anr

RESPONDENT

Date of Decision : 03-08-2018

Acts Referred:

Indian Penal Code, 1860 — Section 34, 406, 498A
Code of Criminal Procedure 1973 — Section 82, 173, 482
Constitution of India, 1950 — Article 227

Citation : (2018) 08 DEL CK 0251

Hon'ble Judges : R.K.GAUBA, J

Bench : Single Bench

Final Decision : Diposed Off

Judgement

R.K.GAUBA, J

1. Allegations have been made against the petitioners in the case arising out of First Information Report (FIR) No.554/2013 of Police Station New

Ashok Nagar involving offences punishable under Sections 498-A/406/34 of Indian Penal Code, 1860 (IPC). On conclusion of the investigation into

the said FIR, a report under Section 173 of the Code of Criminal Procedure, 1973 (Cr.P.C.) was submitted on perusal of which the Metropolitan

Magistrate (MM) took cognizance and issued processes against the petitioners by her order dated 21.03.2015.

2. The petition at hand invoking inherent jurisdiction of this court under Section 482 Cr.P.C. read with Article 227 of the Constitution of India was filed

seeking quashing of the said summoning order raising issues regarding the merits of the allegations in the FIR and that of territorial jurisdiction, the

prime argument being that all the allegations made particularly concerning the

offence under Section 498-A IPC pertain to area beyond the territorial jurisdiction of Delhi, the petitioners being residents of the District Gautam Budh Nagar in U.P. where the second respondent (the complainant of the case) was residing, it being her matrimonial home, during the relevant period.

3. At the hearing, the learned Additional Public Prosecutor pointed out that the criminal case in which the impugned order of summoning was passed has reached the stage of consideration of charge on 01.03.2017. But the petitioners, instead of availing the opportunity have failed to assist the said court in the matter, adjournments having been taken, and granted, under the pretext of this matter seeking quashing of the summoning order being pending before this court.

4. The case status and details as downloaded from the website of the District Courts, as submitted at the hearing, would confirm the fact that the case had reached the stage of consideration of charge for which the matter was listed before the Metropolitan Magistrate on 25.04.2017 but it was deferred from time to time, last date for such purposes being 15.11.2017.

5. Even though the matter at hand has been pending before this court at the instance of the first petitioner (Avinash), he appears to have jumped bail and evading the court process before the Metropolitan Magistrate. This is shown by copy of the proceedings recorded by the trial court on 23.04.2018

indicating process under Section 82 Cr.PC having been issued against him on an earlier date. The copy of the said proceedings would further reflect

that even the second to fourth petitioners have made endeavour to stall the proceedings before the trial court by remaining absent, this having resulted

inailable warrants followed by non-ailable warrants being issued against them with notices to their sureties to secure their presence. Though the

learned counsel for the petitioners submitted that on subsequent date (11.05.2018) on an application moved by the second to fourth petitioners, the

non-ailable warrants against them were recalled thereby restoring the bail bond, the fact remains that the first petitioner continues to evade.

6. The case having reached the stage of consideration of charge, this court is of the opinion that the second to fourth petitioners must present their

submissions on the issue of jurisdiction as also on the question of charge against them before the trial court and thereafter, if need be, they would have

the liberty to pursue the remedies available in law. They cannot be allowed to

speak on behalf of the first petitioner with whom they had joined to file this petition and who has been evading the court processes all along.

7. Ordered accordingly. For removal of doubts, it is added that the contentions of both sides on the question of charge and the territorial jurisdiction are reserved to be considered first by the trial court.

8. The petition with application filed therewith are disposed of in above terms.