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

+ CRL. MC 1187/2019 and Crl. M.A. 4636/2019 and 4637/2019

VISHWA DEEPAK Appellant

Through: Mr. Ashok Agrawal, Ms. Sridevi
Panikkar and Ms. Devyani Bhatt, Advocates

versus

STATE (NCT OF DELHI) Respondent

Through: Mr. Sanjeev Sabharwal, APP with SI
Om Prakash

CORAM:

HON'BLE MR. JUSTICE R.K.GAUBA

ORDER

% **28.02.2019**

The petitioner has come up to this court invoking the inherent jurisdiction under Section 482 of the Code of Criminal Procedure, 1973 (Cr. PC) for quashing of the order dated 17.05.2014 whereby he, besides certain others, was declared proclaimed offender in the criminal case arising out of the first information report (no.70/2006) of police station Parliament Street. The petition as filed was cryptic and not supported by the relevant proceedings anterior to the order which is sought to be challenged. On the request of the counsel for the petitioner, the matter was passed over. It has been taken up in the post-lunch session when he has presented across the bar, copy of the charge-sheet which was presented in the aforementioned criminal

case on 17.01.2009 by the Investigating agency as also the copy of the proceedings initially recorded by the Additional Chief Metropolitan Magistrate, New Delhi beginning with 17.01.2019, the last being the proceedings recorded on 01.02.2014 of the court of the Metropolitan Magistrate.

From the perusal of the material, which has now been brought on record, it is noted that the petitioner is one (fourteenth) out of 34 accused persons who were sent up for trial on the accusations of their complicity in offences punishable under Section 186, 353, 332, 147, 149, 309, 34 IPC in an incident which was subject matter of investigation of FIR no.70/2006 of police station Parliament Street. The Additional Chief Metropolitan Magistrate had taken cognizance in the said case for offences under Section 186, 332, 353, 147, 149, 309, 34 IPC, by order dated 24.09.2010.

From the copies of the orders passed on the subsequent dates, it is clear that till 22.03.2013, the petitioner had not been served. By the order passed on the said date, fresh summons were issued against him, he being amongst those, who had not been served till that date. The case thereafter came up before the Metropolitan Magistrate on 03.08.2013. The copy of the order passed on the said date clearly shows that summons had returned “unserved” and yet the Metropolitan Magistrate decided to issue non-bailable warrants with notice to the sureties for 19.10.2013. On the next date of hearing i.e. 19.10.2013, taking note of the return of non-bailable warrants without execution, proclamation under Section 82 Cr. PC was issued leading

to the impugned order being passed.

To say the least, the procedure adopted for declaring the petitioner as a proclaimed offender was erroneous. Without he being served with the summons, issuance of non-bailable warrants was unfair and unlawful. The subsequent proceedings are thus vitiated.

The impugned order to the extent thereby the petitioner was declared proclaimed offender and the earlier order issuing non-bailable warrants against him are hereby set aside. The petitioner is directed to appear before the Metropolitan Magistrate by moving an appropriate application within a week hereof and take all necessary measures including on the question of bail.

The petition and the applications filed therewith are disposed of with these observations and directions.

Dasti under the signatures of the Court Master.

R.K.GAUBA, J

FEBRUARY 28, 2019

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