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

+ **CRL.M.C. 335/2024 & CRL.M.A. 1323/2024 (Stay)**

SUNIL R MASIH

..... Petitioner

Through: Mr. Baldev Raj, Mr. S.S. Tyagi &
Ms. Shikha Tyagi, Advocates.

versus

STATE AND ANR.

..... Respondents

Through: Mr. Sunil Kumar Gautam, APP for
the State with SI Deepak Kumar, P.S.
Anand Vihar.
Mr. Vaibhav Shama, Advocate for R-
2 (through VC).

CORAM:

HON'BLE MR. JUSTICE AMIT SHARMA

ORDER

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09.02.2024

CRL.M.A. 1322/2024 (Exemption)

1. Exemption allowed, subject to just exceptions.
2. The application is accordingly disposed of.

CRL.M.C. 335/2024 & CRL.M.A. 1323/2024 (Stay)

3. The present petition under Section 482 of the Cr.P.C. seeks the following prayers:

- a. accept the petition of the petitioner; and
- b. set aside the summoning order dated 30/01/2019 passed by Shri Vijay Kumar Jha, then ACMM, Shahdara, Karkardooma Courts, Delhi in Criminal Complaint Case no. 4064/2016: and
- c. also set aside order dated 18.07.2023 passed by the Court of Ms. Kiran Bansal, Ld. A.SJ. (Shahdara), Karkardooma Courts, Delhi in Criminal Revision no. 142/2019; or



d. pass such further order(s) as may do complete justice in the facts and circumstances of the case.”

4. Learned counsel appearing on behalf of the petitioner submits that the present complaint has been filed by respondent no. 2 who is the father of late Mr. Himanshu Sharma. It is submitted that respondent no. 2's son was shot dead by a gunman, namely, Chandgi Ram, employed by the present petitioner at his petrol pump. It is pointed out that the said gunman was prosecuted for offence of murder in case FIR No. 433/2009 registered at P.S. Anand Vihar. It is pointed out that the said gunman, namely, Chandgi Ram was convicted in the said FIR for the offence of murder as well for offences punishable under Section 27 and 30 of the Arms Act. It is further stated that the said gunman was also prosecuted in another case FIR bearing No. 543/2009, under Sections 420/466/467/468/471 of the IPC with respect to an alleged document stated to be a permission letter from the concerned Licensing Authority to carry the arm in the jurisdiction of Delhi. It is pointed out that the said gunman was acquitted in the aforesaid FIR *vide* judgment of acquittal dated 29.01.2013 passed by learned Additional Chief Metropolitan Magistrate, East, Karkardooma Courts, Delhi.

5. The case of respondent no. 2, as submitted by learned counsel for the petitioner, is that the latter was the employer of the aforesaid gunman namely, Changdi Ram and therefore should be held liable for the offences punishable under Section 27 read with Section 33/35 of the Arms Act. The present complaint has been filed for the offence punishable under Section 33/35 of the Arms Act. Learned counsel for the petitioner further submits that the offence in question relates to 2009 and the present complaint has been filed in 2012, which is beyond the period of limitation. It is further



submitted that the complaint filed before the learned Additional Chief Metropolitan Magistrate also does not have any application seeking condonation of delay.

6. Learned counsel appearing on behalf of respondent no. 2, on advance notice, submits that the present petitioner is responsible for the acts committed by his gunman, namely, Chandgi Ram, during the course of employment while carrying arms in the premises owned by him. It is further submitted that the limitation would not be applicable to the present case since Sections 33 and 35 of the Arms Act stipulate that the liability of the offence committed by person in the employment of the company or the person in-charge would be same as that of the offence committed, which in this case is, under Section 27 of the Arms Act.

7. Heard learned counsel for the parties and perused the record.

8. It is an admitted case that the present petitioner was not cited as an accused in the previous two FIRs. In fact the submission of learned counsel for the petitioner is that he was cited as a witness. It is also pertinent to note that the gunman employed by the present petitioner was acquitted in the FIR No. 543/2009 for offence punishable under Sections 420/466/468/467/471 of the IPC registered at P.S. Anand Vihar, which was in relation to a document alleged to have been issued by the concerned Licensing Authority permitting the said employee to carry arms in the jurisdiction of Delhi. It was not the case of the prosecution in the trial in aforesaid cases that the present petitioner was aware of the fact that the said document was forged and therefore allowed the aforesaid gunman, namely, Chandgi Ram, to carry weapons in his premises.

9. Issue notice.



10. Learned APP for the State accepts notice and seeks time to file a status report. Let the same be filed before the next date of hearing, with an advance copy to learned counsel for the petitioner.
11. Learned counsel for respondent no. 2 also accepts notice and seeks time to file a response to the present petition. Let the same be filed before the next date of hearing, with an advance copy to learned counsel for the petitioner.
12. List on 30.04.2024.
13. In the meantime, the impugned order dated 30.01.2019 shall remain stayed till the next date of hearing.
14. Order be uploaded on the website of this Court *forthwith*.
15. Order be communicated to concerned learned Trial Court for necessary information and compliance.

AMIT SHARMA, J

FEBRUARY 9, 2024/bsr