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

+ CRL.M.C. 493/2012

VIKRAM SIBAL

..... Petitioner

Through: Mr.Sanjeev K.Jha, Advocate

versus

STATE & ANR.

..... Respondent

Through: Mr. Navin Sharma, Additional Public
Prosecutor for the State
Mr.S.Tabrej, Advocate for respondent
No. 2.

+ CRL.M.C. 494/2012

VIKRAM SIBAL

..... Petitioner

Through: Mr.Sanjeev K.Jha, Advocate

versus

STATE & ANR.

..... Respondent

Through: Mr. Navin Sharma, Additional Public
Prosecutor for the State
Mr.I.A.Alvi, Advocate for respondent
No. 2.

+ CRL.M.C. 495/2012

VIKRAM SIBAL

..... Petitioner

Through: Mr.Sanjeev K.Jha, Advocate

versus

STATE & ANR.

..... Respondent

Through: Mr. Navin Sharma, Additional Public
Prosecutor for the State
Mr.Raghu Tandon, Advocate for
respondent No. 2.

CORAM:

HON'BLE MR. JUSTICE KAILASH GAMBHIR

ORDER

23.05.2013

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Signature Not Verified

Signing Date:09.09.2024 17:06:52
Certify that the digital and physical file have
been compared and the digital data is as per
the physical file and no page is missing.

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Mr. Raghu Tandon, counsel appearing on behalf of respondent No. 2 in CrI. M.C. No. 495/2012 seeks two days time to file his power of attorney on record. Let the same be filed in a time span of the days.

By the aforesaid three petitions, petitioner is seeking directions for setting aside the order dated 12.12.2011 passed by Shri Rajeev Bansal, learned Additional Sessions Judge, Saket, in FIR No. 220/10. Since the prayer made in all the aforesaid petitions is common, therefore, all these petitions are heard together and are being disposed of together.

Mr. Sanjeev K. Jha, arguing counsel for the petitioner submits that the petitioner had filed an application under Section 439(2) of the Cr.P.C. for cancellation of bail granted to respondent No. 2. Learned counsel for the petitioner also submits that petitioner filed the said application under Section 439(2) of the Cr.P.C. and the same was posted for hearing on 19th July 2011 but on that date, the learned Presiding Officer was on leave and as per the petitioner, he was informed by the court staff, that the matter was adjourned to 21st July 2011. Counsel for the petitioner also submits that petitioner had reached the court on 21st July 2011, where he was informed that the said matter was dismissed in default on 20th July 2011. Learned counsel for the petitioner also submits that petitioner moved an application to seek

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restoration of the application but the restoration application too was dismissed on 2nd November 2011. Learned counsel for the petitioner also submits that a fresh application was moved by the petitioner under Section 439(2) of the Cr.P.C. to seek cancellation of the bail of the respondent No. 2 and the said fresh application of the petitioner was taken up by Shri Rajeev Bansal, learned Additional Sessions Judge on 7th December 2011, when the learned presiding officer took a view that the said application should be listed before Ms. Raj Rani Mitra, who had earlier dismissed the application moved by the petitioner to seek restoration of his earlier application. Accordingly, it was put up before Raj Rani Mitra on 12th December 2011. On 12.12.2011, the Presiding Officer was on leave, therefore, Mr. Rajeev Bansal, learned ASJ, being a link judge to Ms. Raj Rani Mitra, without taking note of the earlier order dated 7.12.2011 passed by him, took a view that the said application filed by the petitioner is not maintainable in the eyes of law as the appropriate remedy for petitioner was to move an application before the court of concerned ACMM.

The learned counsel for the petitioner further submits that once the said presiding Judge Shri Rajeev Bansal, learned Additional Sessions Judge had taken a view that the said application of the petitioner should be

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considered by Ms. Raj Rani Mitra, who had earlier dismissed the restoration application of the petitioner, then he should have stayed his hands in deciding the said application of the petitioner.

I have heard learned counsel for the petitioner as well as counsel appearing for respondent No. 2 in the respective cases.

Without expressing any view on the merits of the contentions raised by the counsel for the petitioner in the present petition and the contentions raised by learned counsel for the respondent No.2 to oppose the present petition, this court is of the view that once Shri Rajeev Bansal, learned Additional Sessions Judge vide his order dated 7th December 2011 had taken a view that the said application moved by the petitioner under Section 439(2) of Cr.P.C. should have been considered by Ms. Raj Rani Mitra, on the premises that the said Judge had dismissed the restoration application of the petitioner, he should not have decided the same on 12th December, 2011 without taking note of his previous order dated 7th December 2011.

No doubt, Shri Rajeev Bansal, learned Additional Sessions Judge was a link Judge of Ms. Raj Rani Mitra, who was on leave on that date, and he had the power to adjudicate the said application but this court is of the opinion that judicial discipline demands that he should have sent the matter

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back to the same court of Ms.Raj Rani Mitra for a later date. In any case, there was no urgency to decide the said application moved by the petitioner as the same was only an application for seeking cancellation of bail order passed by learned Additional Sessions Judge.

In the light of the aforesaid observations and in the interest of justice, this court deems it fit to remand all these matters back to the court of Ms.Raj Rani Mitra, learned Additional Sessions Judge to decide the said application of the petitioner moved under Section 439(2) of Code of Criminal Procedure. It is ordered accordingly.

It is made clear to both the parties that all the legal grounds shall be available to the respondent to urge before the concerned court. Both the parties are directed to appear before the Court of Ms. Raj Rani Mitra, learned Additional Sessions Judge on 4th June 2013 at 2 PM for further proceedings.

With aforesaid directions, all the above captioned three petitions are disposed of.



KAILASH GAMBHIR, J

MAY 23, 2013
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