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

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Reserved on:09.12.2022
Pronounced on: 19.12.2022

+ **CRL.REV.P. 111/2018**

**DELHI POLLUTION CONTROL
COMMITTEE**

..... Petitioner

Through: Mr. Narender Pal Singh,
Advocate

versus

RAJ KUMAR GUPTA

..... Respondent

Through: None.

CORAM:

HON'BLE MS. JUSTICE SWARANA KANTA SHARMA

JUDGMENT

SWARANA KANTA SHARMA, J.

1. The present revision petition under Section 397 of the Code of Criminal Procedure, 1973 read with Section 401 and 482 of the Code of Criminal Procedure, 1973 has been filed by petitioner seeking setting aside and quashing of the order dated 11.08.2017 passed by learned Special Judge CBI-1 (Central), Tis Hazari Courts, Delhi, in criminal

appeal no. 06/2017 titled as “*Raj Kumar Gupta vs. Delhi Pollution Control Committee*”.

2. *Vide* which, the learned Appellate Court has upheld the conviction of the respondent/accused, as held by the order dated 20.04.2017 passed by learned ACMM/Trial Court. However, vide impugned order dated 11.08.2017 passed by learned Appellate Court/ASJ has set aside the order on sentence dated 25.04.2017 and remanded back the case to the learned ACMM/Trial Court to re-consider the order on Sentence passed by learned ACMM (Special Acts), Tis Hazari Courts, Delhi in CC No. 519825/2016 on 25.04.2017 and to give opportunity to respondent to give evidence on the point of order of sentence.

3. The facts leading to the filling of the present petition as briefly stated are that the respondent is the sole proprietor of M/S Kanwarji Raj Kumar, which prepares and sells sweets and namkeens. The said M/S Kanwarji Raj Kumar has admittedly been in the said business prior to coming into force of the Water (Prevention and Control of Pollution) Act, 1974 and has been running a workshop for manufacturing sweets and namkeen, allegedly draining the untreated trade effluent from his unit into a drain thereby causing pollution.

4. The Hon'ble Supreme Court took Cognizance of a News item published in the daily Hindustan Times dated 18.07.1994 titled as “And quiet Flows the Maily Yamuna” and registered and heard it as Writ Petition (Civil) no. 725/94 along with I.A. No 7 and passed orders that no industrial effluent is allowed to be discharged directly or indirectly into river Yamuna with effect from November, 1999 and further vide

order dated 24.01.2000, Hon'ble Supreme Court Directed that no industry in Delhi shall discharge their untreated effluent into any drain leading to river Yamuna which has the effect of polluting the said river.

5. Pursuant to the above said order of the Hon'ble Supreme Court of India, the Petitioner and Department of Environment issued public Notices in Newspaper on various dates 15th and 16th September, 1999 and 14th, 28th & 29th October, 1999 directing all water polluting units located in industrial and non-conforming areas of Delhi to put up individual effluent treatment plant for treating their effluent prior to discharging it on or before the November, 1999 so as to meet the prescribed standards of Central Pollution Control Board, failing would attract closure of units including penal action as per law. Delhi Pollution Control Committee (hereinafter referred to as "DPCC") is an autonomous regulatory body of Central Pollution Control Board (CPCB), which delegated all its powers and functions to DPCC, under Section 4(4) of Water Act, 1974 & Section 6 of Air Act, 1981. On 03.06.2000, Vigilance squad Constituted by the Govt. of NCT of Delhi consisting of team of S.D.M (Environment) and Engineers of DPCC carried out the inspection of the industrial unit operation in the name and style of M/S Kanwarji Raj Kumar, situated at 1972-73, Chandni Chowk, Delhi-110006 and found respondents to be occupier of the said unit. After the inspection by the team, the following was made on the inspection report:-

- The unit is found in operation.
- No treatment facility is provided for the treatment of trade effluent.

- Entire trade effluent generated during the process of washing of sweets/namkeens preparation moulds/ dishes/ containers/ floor washing are being discharged by the unit without treatment into public sewer. Copy of inspection report was duly signed by the respondent at the site.

6. After due consideration of arguments advanced by both the sides and after considering the aspect of the nature of the offence and its impact on the society at large and also the fact that the respondent/accused was running his business since before 1974 when the Water (Prevention and Control of Pollution) Act, 1974 came into force and also the fact that pursuant to the orders passed by the Hon'ble Supreme Court the Petitioner had given public notices and widely advertised and given ample opportunity to all polluting units to follow the directions passed by the Hon'ble Supreme Court and also follow the law of the land the respondent/accused had failed to do so passed a well-reasoned order on sentence convicting the respondent/accused to Simple Imprisonment for three years along with a fine of Rs. 1,00,000/- for the Offence under section 24 punishable under Section 43 of Water (Prevention and Control of Pollution) Act, 1974 and further undergo simple imprisonment for three years along with a fine of Rs. 1,00,000/- for the offence under section 26 read with section 25 punishable under section 44 of the Water Act. The petitioner has impugned the order dated 11.08.2017 to the extent that it remands back the case for consideration on the point of sentence and to give opportunity to the respondent.

7. The respondent pleaded that he was not aware of any orders of Hon'ble Supreme Court and Water (Prevention and Control of Pollution) Act, 1974 till the time his premises was inspected but ignorance of law is not an excuse, is a settled principle of law. The setting up of an ETP after the inspection was carried out on 03.06.2000, and after having continually committed the offence since 1974, is of no help. The respondent should have set-up/ installed an Effluent Treatment Plant or grease/ oil trap to prevent untreated trade effluent from being discharged into the river and save the river from being polluted.

8. A complaint under the provisions of Section 24, 25, 26 and 33A read with Sections 41, 42, 43, 44 and 49 of Water (Prevention and Control of Pollution) Act, 1974 was filed by petitioner in the Court of Additional Chief Metropolitan Magistrate, Tis Hazari Courts, Delhi and upon consideration of the pre-charge evidence and the material on record the learned ACMM framed charge against respondents for violation of the provisions of Section 24,25,26 of The Water Act on 15.07.2017.

9. In the above-mentioned complaint, the learned ACMM had observed *vide* order dated 20.04.2017 as follows:

On 03.06.2000. inspection takes place and the unit was in operation and No ETP is provided for the treatment of trade effluent provided.

All the wastes are being discharged by the unit without treatment into public sewer.

Inspection report was duly signed by the respondent.

Respondent did not have any consent from DPCC to operate or run the business. The Respondent admits that he did not take or apply for any consent from DPCC.

That for the violation of section 24, 25 read with section 26 and punishable U/s 43 of Water (prevention and Control of pollution) Act 1974, has been found guilty and convicted for the Imprisonment for three years and a fine of Rs. 1.00.000/-

That the Appeal is filled by the Respondent in the Court of Hon'ble Dr. Kamini Lau, Special Judge, Tis Hazari Court, Delhi with Criminal Appeal No. 06/2017 and the final order is pronounced on 11.08.2017. And the Ld. Special Judge, Tis Hazari Court, Delhi observed that;

"In view of the above discussion, I hereby hold that the prosecution has proved the identity of the accused; the manner in which the offence has been committed, place of commission of offence, the investigation including the documents prepared etc. there is nothing which could shatter the veracity of the witnesses of the complainant or falsify the claim of the complainant DPCC. All the witnesses have materially supported the prosecution case and the testimonies of the prosecution witnesses do not suffer from any infirmity, inconsistency or contradiction and are consistent and corroborative.

Therefore, I find no infirmity in the impugned judgement of Ld. Trial Court dated 20.04.2017 holding the appellant/accused Raj Kumar Gupta guilty for the offence under Section 24/25 read with Section 26 of the Water (Prevention & Control of Pollution) Act, 1974. The Impugned judgement dated 20.04.2017 is hereby upheld.... "

Further while setting aside the sentence, it has observed that

".....I, in the interest of justice hereby set-aside the impugned order on sentence dated 25.04.2017 and remand the case back to the Ld. Trial Court to afford an opportunity to the appellant/ accused who claims theta he had already complied with the directions of the Govt.

and the Respondent who claims that there had been subsequent violations by the appellant to place such material on record of the Trial Court and thereafter give opportunity to lead their evidence on the aspect of sentence (if found necessary)....."

10. Learned counsel for petitioner impugns the judgment dated 11.08.2017 only to the extent of setting aside the order on sentence passed by the learned Appellate Court. It is argued on behalf of petitioner that the learned Appellate Court had upheld the conviction of the respondent and had also held that acts of the respondent were offence against the society at large but has committed a grave error by remanding back the case for leading evidence on sentence. It is also argued that the learned Appellate Court had failed to appreciate that the respondent had not taken any consent from DPCC for establishing operating or maintaining the kitchen workshop since its inception. It had also failed to appreciate that the compliance by accused of installation of Oil and Grease Trap after the commission of offence cannot be taken into consideration for relaxing the sentence and it cannot be a ground to remand the case back to the learned Trial Court to lead fresh evidence for the purpose of review of sentence. It is also argued that learned Appellate Court failed to appreciate that the respondent is not only causing water pollution but also air pollution. It is also argued that learned Appellate Court should have decided regular criminal appeal filed by respondent itself instead of remanding the matter back to learned ACMM/Trial Court.

11. Reply was filed on behalf of respondent wherein it was stated that the present petition has been filed to harass the respondent and is

sheer misuse of process of law. It is stated that learned Appellate Court has exercised its judicial discretionary justly and fairly in remanding back the case and directing that fresh evidence be lead for passing fresh order on sentence. It is stated that the petition is devoid of any merit and be dismissed.

12. I have heard arguments and gone through the case file.

13. Provisions of Section 386 of the Cr.P.C. deal with the power of Appellate Court, which are read as under:-

“386. Power of the Appellate Court. After perusing such record and hearing the appellant or his pleader, if he appears, and the Public Prosecutor if he appears, and in case of an appeal under section 377 or section 378, the accused, if he appears, the Appellate Court may, if it considers that there is no sufficient ground for interfering, dismiss the appeal, or may-

(a) in an appeal from an order or acquittal, reverse such order and direct that further inquiry be made, or that the accused be re- tried or committed for trial, as the case may be, or find him guilty and pass sentence on him according to law;

(b) in an appeal from a conviction-

(i) reverse the finding and sentence and acquit or discharge the accused, or order him to be re- tried by a Court of competent jurisdiction subordinate to such Appellate Court or committed for trial, or (ii) alter the finding, maintaining the sentence, or (iii) with or without altering the finding, alter the nature or the extent, or the nature and extent, of the sentence, but not so as to enhance the Same;

(c) in an appeal for enhancement of sentence

(i) reverse the finding and sentence and acquit or discharge the accused or order him to be re- tried by a Court competent to try the offence, or (ii) alter the finding maintaining the sentence, or (iii) with or without altering the finding, alter

the nature or the extent, or the nature and extent, of the sentence, so as to enhance or reduce the same;

(d) in an appeal from any other order, alter or reverse such order;

(e) make any amendment or any consequential or incidental order that may be just or proper; Provided that the sentence shall not be enhanced unless the accused has had an opportunity of showing cause against such enhancement: Provided further that the Appellate Court shall not inflict greater punishment for the offence which in its opinion the accused has committed, than might have been inflicted for that offence by the Court passing the order or sentence under appeal.”

14. Discussing the scope and ambit of the provisions under Section 386 of Cr.P.C., High Court of Andhra Pradesh in ***Yenuganti Tata Rao MANU/AP/0527/2010 : 2010 (2) ALD (Cri) 951*** held that criminal law knows only remand of an accused and not remand of a case. The concept of remand of a case is outside the scope of criminal procedure. Section 386(b), Cr.P.C., does not entitle the Appellate Judge in an appeal from conviction to confirm the conviction and at the same time remit back the case to the Trial Court for consideration regarding the sentence alone. Instead, the Appellate Court is entitled to decide the matter regarding both conviction as well as order on sentence together. The proper procedure will depend on the facts and circumstances of each case for which no straitjacket formula of universal and invariable application can be formulated. Thus, the exercise of power by Appellate Court is a blatant violation of law laid down in Section 386 of Cr.P.C.

15. It is also necessary to discuss the provision under Section 465 of the Cr.P.C. which reads as under:-

“465. Finding or sentence when reversible by reason of error, omission irregularity.

(1) Subject to the provisions hereinbefore contained, no finding, sentence or order passed by a Court of competent jurisdiction shall be reversed or altered by a Court of appeal, confirmation or revision on account of any error, omission or irregularity in the complaint, summons, warrant, proclamation, order, judgment or other proceedings before or during trial or in any inquiry or other proceedings under this Code, or any error, or irregularity in any sanction for the prosecution, unless in the opinion of that Court, a failure of justice has in fact been occasioned thereby.

(2) In determining whether any error, omission or irregularity in any proceeding under this Code, or any error, or irregularity in any sanction for the prosecution has occasioned a failure of justice, the Court shall have regard to the fact whether the objection could and should have been raised at an earlier stage in the proceedings.”

16. In the recent case decided by High Court of State of Telangana in ***P. Rama Devi vs. M. Seeta and Ors. MANU /TL/1821/2022, Criminal Petition No. 4448 and 4449 of 2021***, the impugned order was challenged by the petitioner wherein the matter was sent back to the learned Metropolitan Magistrate after upholding the conviction for sending the file in proper form on the ground that there was discrepancy in the depositions. The Court relied on:-

“16. In P. Mazher, the High Court MANU/AP/0602/2003 : 2003 (2) ALD (Cri) 258 of Andhra Pradesh at Hyderabad while examining the powers of appellate Court under Section - 386 of the Cr.P.C., facts of the case therein and also the principles laid down by the Delhi High Court, the Calcutta High Court and the Madras High Court held that the Appellate Judge has got the option to reverse the finding and sentence and acquit the accused of the offence of which he

*was charged. The Appellate Court is also at liberty to order retrial of the accused by a Court of competent jurisdiction subordinate to such Appellate Court or committed for trial. The Appellate Court is also at liberty to alter the finding and maintain the sentence imposed by the Trial Court. It has also got the option with or without altering the finding, alter the nature and extent of the sentence. However, it has no power to enhance the sentence given by the Trial Court. **Section 386(b), Cr.P.C., does not entitle the Appellate Judge in an appeal from conviction to confirm the conviction and at the same time remit back the case to the Trial Court for consideration regarding the sentence alone. Thus, the learned Sessions Judge has committed an error in remitting the case to the Trial Court regarding the sentence alone after confirming the conviction imposed by the Trial Court.***

17. The Madras High Court in Roja Kamalam v. State [MANU/TN/0174/1971: AIR 1971 Mad 41] held that the Appellate Court cannot remand the case for the purpose of passing proper sentence. The Calcutta High Court in State v. Pulish Ghosh [MANU/WB/0219/1971: 1973 CrL.L.J. 510] reiterated the same principle. In Mukand Lal v. State [MANU/DE/0272/1978: 1979 CrL.L.J. 105], the Delhi High Court held that the order of the Sessions Judge remanding the case to the lower Court to offer an opportunity of hearing on the question of sentence is irregular.”

17. When an appeal is preferred before the Appellate Court, the whole record is before the Appellate Court for consideration as per the rule contained in Section 382 of Cr.P.C. and it gives Appellate Court has all the powers to reverse the finding and sentence or acquit or discharge the accused, or order judgment or to give any other relief. Also, as per the impugned order, it is not the case wherein the matter is remanded back to consider any material evidence that was not examined but a mere passing of fresh order on sentence as the conviction of the petitioner was upheld by the Appellate Court. But in

the present, sending back the case back to the learned Trial Court to give an opportunity of hearing on the question of sentence, the Appellate Court was not empowered to do so has been held by Delhi High Court in *Mukand Lal v. State, 1979 Crl.L.J. 105*.

18. However, it is not the case wherein the Appellate Court found out that the finding on conviction was erroneous and needs consideration. Neither it was contended that the same error or irregularity should have been raised at an earlier stage of the proceedings.

19. Considering the overall facts of the present case, and the settled law regarding limited scope in case of appeal which is to be exercised by the Appellate Court with regard to the order on sentence as well as the fact that on 14.09.2018 when the present matter was listed before this Hon'ble Court and the counsel for the respondent had submitted that he had installed the ETP in the year 2000 itself and an officer from the office of the Delhi Pollution Control Committee was directed to be present along with all relevant documents to show that the machinery installed by the Respondent is functional and on 12.10.2018, as directed by this Hon'ble Court, an officer of the DPCC was present and Hon'ble court took cognizance of the fact which reads as – *“at the time of inspection on 03.06.2000, the requisite Effluent Treatment Plant (ETP) had not been installed by the respondent, therefore, the respondent did not have any Consent To Operate (CTO) and that the CTO was issued for the first time to the respondent M/s Kanwarji Raj Kumar on 08.08.2018 and not 18 years ago, as claimed by the respondents.”*

20. The course adopted by the learned Appellate Court is totally alien and unknown to law. There is no provision in law that gives any power to a Court to send back a case after upholding conviction to again remand back the case to the Magistrate for hearing arguments afresh and giving opportunity to give evidence on point of sentence. There was no occasion even to remand back the case for hearing arguments afresh as it is not the case of the respondent i.e, the appellant before the Trial Court that he was not given opportunity to be heard on point of sentence.

21. For the foregoing discussion, the impugned order of the learned Special Judge confirming the conviction and at the same time setting aside the sentence and remitting back the case to the Magistrate for order on sentence alone is bad in law and is liable to be set aside. However, it is clarified that the conviction based on the material placed on record was correct and just in law and the present petition is allowed to the extent that the judgment passed by the learned Judge for setting aside the order on sentence remitting back to Trial Court is set aside. The case is remanded back to learned Special Judge, Appellate Court for deciding the appeal on order on sentence in accordance with law.

SWARANA KANTA SHARMA, J

DECEMBER 19, 2022/kss