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

+ **CRL.A. 725/2003**

SAVANTA RAM

..... Appellant

Through: Mr. Ashok Kumar Garg and Mr. Amit
Joshi, Advs.

versus

STATE OF NCT OF DELHI

..... Respondent

Through: Mr. Hemant Mehla, APP for State
with SI Sukhwinder Singh, Crime
Branch NR II

CORAM:
HON'BLE MR. JUSTICE VIKAS MAHAJAN

ORDER
08.01.2024

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CRL.M.A. 710/2024 (for early hearing)

1. The present application has been filed seeking early hearing.
2. For the reasons mentioned in the application, the same is allowed.
3. The application stands disposed of.

CRL.A. 725/2003

4. Since the matter is covered by the judgment of this Court dated 28.11.2022 passed in connected **CRL. A. 736/2003** titled ***Ramesh Kaushik Vs. State of Delhi*** as well as judgment dated 03.01.2024 passed in **CRL. A. 741/2003** titled ***Ramesh & Anr. Vs. The State***, the present appeal is taken



up for disposal with the consent of the parties.

5. The appeal has been preferred by the appellant against the impugned judgment dated 20.10.2003 passed by the learned Additional District & Sessions Judge, Delhi, whereby the appellant alongwith four other co-accused, was held guilty and convicted under Section 304 (Part II) IPC read with Section 34 IPC. However, all the accused including the present appellant were acquitted of the charges under Section 201 IPC.

6. The challenge in the appeal is also to an order of sentence dated 23.10.2003 passed by the learned Additional District & Sessions Judge, Delhi whereby the appellant was sentenced to undergo rigorous imprisonment of 05 years alongwith a fine of Rs. 10,000/-.

7. The learned counsel for the appellant submits that the fine of Rs.10,000/- imposed on the present appellant has already been paid by him.

8. The appeal preferred by the appellant was admitted on 05.11.2003 and a direction was given to requisition the Trial Court Record (TCR) and nominal roll.

9. On 15.01.2004, the sentence of the appellant was suspended and he was released on bail. On 18.02.2009, the present appeal was listed alongwith connected matters, i.e., ***CRL A. 719/2003 titled Mahesh & Anr. Vs. State of NCT of Delhi*** and ***CRL. A. 736/2003 titled Ramesh Kaushik Vs. State of Delhi***. However, since it was stated that Trial Court Record is not traceable, the Registry was directed to trace out the Trial Court Record and prepare the compilation of the paper book and furnish the copies thereof to the other counsel.

10. Thereafter, the matter was adjourned from time to time and an endeavour was also made to reconstruct the TCR. However, the complete



TCR could not be reconstructed.

11. *Vide* order dated 30.09.2010, it was noticed that the Trial Court Records have been reconstructed to the maximum extent possible and direction was given to re-list the appeals for directions on 14.12.2010. However, *vide* order dated 02.02.2011, the Court directed to list the matter in the category of regular matters as per its year of filing.

12. As noted above, the appellant has now filed an application being *CRL.M.A. 710/2024* seeking early hearing in the matter. It has been pointed out in the application that this Court *vide* judgment dated 28.11.2022 passed in connected appeal i.e. ***CRL. A. 736/2003*** titled ***Ramesh Kaushik Vs. State of Delhi***, arising out of the same impugned judgment and order, has already acquitted the co-convict, namely, Ramesh Kaushik after recording a finding that the TCR could not be reconstructed as the same had been lost.

13. The learned counsel for the petitioner submits that subsequently this Court *vide* judgment dated 03.01.2024 has also allowed two other connected appeals i.e. ***CRL. A. 741/2003*** and ***CRL. A. 719/2003***.

14. The relevant part of the judgement in ***Ramesh Kaushik*** (*supra*) reads as under:-

15. In the present case, the impugned judgment is dated 20.10.2003 and the order of sentence is dated 23.10.2003. The appeal was filed immediately thereafter and was admitted. Despite the repeated efforts of this Court, the Trial Court record has not been re-constructed. The material documents including the depositions of the witnesses are not available despite the best efforts.

16. As already indicated, the order dated 12.11.2009 categorically states that the Trial Court record has been lost.



17. I am of the view that in the present case, every possible effort has been made to re-construct the Trial Court Record. Despite all the efforts by this Court, the Registry, the learned counsel for the parties, the Trial Court record has not been re-constructed as the same is lost.

18. I am in agreement with the submission of Mr. Sud, learned senior counsel that in the present case, the witnesses had already turned hostile and the impugned judgment is based upon preponderance of probabilities. In addition, re-trial is also not in the interest of justice as the material documents such as Inquiry Report of the ACP, Final Inquiry Report of the SDM, Seizure Memos, Post-Mortem Report, FSL/Viscera Report, Inquest Report, MLC and depositions of the witnesses are not available.

19. I am of the view that in order to affirm the conviction of the appellant, the perusal of the Trial Court Record is the essential element of hearing of the appeal. Every appellant has a right to satisfy the Appellate Court that the material evidence available on record did not justify his conviction and this is a valuable right which cannot be denied to an appellant.

20. As per settled principles of criminal jurisprudence, every accused carries with him the presumption of innocence even at the appellate stage.

21. For the aforesaid reasons and as per the guidelines laid down in the judgment titled “State of UP v. Abhay Raj Singh” (supra), the appeal is allowed and the order of judgment dated 20.10.2003 and order of sentence dated 23.10.2003 are hereby set aside.

22. The appeal is disposed of in the aforesaid terms.”

15. Since this appeal also arises out of the same impugned judgment dated 20.10.2003 passed by the learned Additional Sessions Judge, Delhi, therefore, the position in the present appeal as regard the unavailability of



TCR / material documents including the deposition of the witnesses, is common to the present appeal.

16. In view of the earlier judgments of this Court, referred to in paragraph 4 above, which squarely covers the present case also, the appeal is allowed and the judgment of conviction dated 20.10.2003 alongwith the order on sentence dated 23.10.2003 passed by the learned Additional Sessions Judge, Delhi in S.C. No. 203/2003, arising out of FIR No. 367/2001 under Sections 304/201/34 IPC, registered at PS Malviya Nagar, are set aside.

17. The appeal is disposed of in the above terms.

VIKAS MAHAJAN, J

JANUARY 8, 2024
N.S. ASWAL