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IN THE HIGH COURT OF DELHI AT NEW DELHI

+ **CRL.A. No.375/2015 & CrI.M.(Bail) No.1516/2016**

RAJENDER @ KALLU Appellant
Through Mr.Hemendra Jailiya, Adv.

versus

STATE Respondent
Through Ms.Aashaa Tiwari, APP for the State.
Insp.Ramesh Thakur, PS Maurya
Enclave.

CORAM:
HON'BLE MS. JUSTICE GITA MITTAL
HON'BLE MR. JUSTICE P.S.TEJI

GITA MITTAL, J (Oral)

1. A report has been received from the District Judge (Headquarters) with regard to the compliance of all the directions made by us in our judgment dated 1st August, 2014 being ***Death Reference No.5/2010 entitled State Vs. Jagtar & Ors.*** The report shall be kept on record.

2. A status report dated 8th September, 2016 under signatures of Inspt.Mukesh Kumar, SHO of the Police Station Maurya Enclave has been handed over in Court which has been taken on record. As per this status report, Smt.Malti Devi, mother of the appellant, is not paralysed and is under treatment as OPD patient. There is, therefore, no need for the suspension of sentence of the appellant for the purposes of caring for her at this stage

3. We had also directed the concerned police to conduct enquiry with regard to the juvenility of the appellant Rajender@Kallu. The appellant has placed before us a certificate dated 1st September, 2016 from the North Delhi Municipal Corporation Primary School, Pitampura where the appellant was studying, certifying his date of birth as 1st March, 1990. Our attention is drawn to the other supporting documents including the extracts of the caste registration as well as the school register also. An affidavit of the mother certifying the date of birth of the appellant has also been placed on record. As per these documents, as on 6th June, 2010, which was the date of the incident, the appellant was aged nineteen years and was not a juvenile. No further inquiry is necessary in this regard.

4. During the course of hearing, one of the submissions pressed on behalf of the appellant is that there was a delay in compliance of the requirement of Section 157 of the Code of Criminal Procedure whereby an officer in-charge of a police station is required to forthwith send a report of commission of an offence which he is empowered to investigate under Section 156(2) Cr.P.C. to a Magistrate empowered to take cognizance of such offence upon a police report.

5. Section 157 was enacted when no e-transmission and internet was available. Today it can be argued that e-registration of FIRs and their being simultaneously put in the public domain would effectively be in compliance with the requirements of Section 157 of the Cr.P.C.

6. The legislature has not kept pace with the development in technology especially so far as Cr. P.C. is concerned. We find that appropriate amendments have been made in the Evidence Act and in some other statutes. However, there is no reason why the courts cannot use technology as available and mould procedural compliances accordingly without any infraction of the substantive statutory provisions.

7. There are several instances (noted in judicial precedents) where the prosecution has been unable to explain the delay in the compliance which has been treated as fatal to the prosecution cases resulting in acquittals of dangerous crimes.

8. We find that this very objection is being taken in several appeals challenging convictions for heinous crimes. It is being vehemently pressed that delayed compliance of this mandatory requirement must be treated as an effort on the part of the investigating agency to build a false case against the accused persons and of padding in the investigation. In this regard, reference can be made to the pronouncement of the Supreme Court in *(2009) 15 SCC 121 State of Kerala Vs. Suresh & Ors.*; *(2008) 15 SCC 315 NH Muhammed Afras Vs. State of Kerala* & *(2001) 9 SCC 704 Jang Singh & Ors. Vs. State of Rajasthan*.

9. In this regard, we may usefully extract the observations of the Supreme Court in *(2011) 9 SCC 561 Shivilal Vs. State of Chhattisgarh* wherein the Court held thus:-

“18. This Court in *Bhajan Singh v. State of Haryana* [(2011) 7 SCC 421: (2011) 3 SCC (Cri) 241] has elaborately dealt with the issue of sending the copy of the FIR to the Ilaqa Magistrate with delay and after placing reliance upon a large number of judgments including *Shiv Ram vs. State of U.P.* [(1998) 1 SCC 149: 1998 SCC (Cri) 278 : AIR 1998 SC 49] and *Arun Kumar Sharma v. State of Bihar* [(2010) 1 SCC 108 : (2010) 1 SCC (Cri) 472], came to the conclusion that CrPC provides for internal and external checks: one of them being the receipt of a copy of the FIR by the Magistrate concerned. It serves the purpose that the FIR be not ante-timed or ante-dated. The Magistrate must be immediately informed of every serious offence so that he may be in a position to act under Section 159 Cr. P.C., if so required. The object of the statutory provision is to keep the Magistrate informed of the investigation so as to enable him to control the investigation and, if necessary, to give appropriate direction. However, it is not that as if every delay in sending the report to the Magistrate would necessarily lead to the inference that the FIR has not been lodged at the time stated or has been ante-timed or ante-dated or the investigation is not fair and forthright. In a given case, there may be an explanation for delay. An unexplained inordinate delay in sending the copy of the FIR to the Ilaqa Magistrate may affect the prosecution case adversely. However, such an adverse inference may be drawn on the basis of attending circumstances involved in a case.”

10. We find that pursuant to the judgment dated **6th December, 2010** passed by this Court in ***W.P. (Crl.) No.468/2010*** entitled ***Court on its own Motion Vs. State***, directions were given to the Delhi Police for uploading all FIRs which are registered on the website of the Delhi Police w.e.f. 1st February, 2011. This substantially puts the FIR in the public domain. Of course, certain reservations qua certain specified offences with regard to putting the FIR in public domain have been noted by the

court.

11. We are informed that as a result, with the First Information Reports registered with effect from 1st February, 2011 by all police stations in Delhi (except those relating to sensitive matters such as sexual offences, offences pertaining to insurgency, terrorism and of that category & offences under POCSO Act), are immediately uploaded on the Delhi Police website.

12. Taking note of the above decision, directions in similar terms have been issued to all states by the Supreme Court of India vide a direction passed on 7th September, 2016 in *W.P. (Crl.). No.68 of 2016* entitled ***Youth Bar Association of India Vs. Union of India & Ors.***

13. So far as our understanding goes, the Delhi Police is registering all FIRs electronically. It is only refraining from putting certain FIRs (as stipulated by Court order or law) on the website.

14. We note that so far as communication of the first information report to the Magistrate is concerned, Section 157 of the Cr.P.C. draws no exception. The compliance is mandatory. There can thus be no reservation on account of confidentiality and privacy concerns in such communication.

15. Given the electronic mode of communication which is now available with the police as well as the Delhi judiciary, we see no reason as to why the investigating agency should not resort to utilization of e-

transmission of the report to the concerned jurisdictional magistrates with sufficient to ensure timely compliance of Section 157 of Cr.P.C. This would effectively obviate all objections which are taken by the accused persons as well as convicts based on delay in compliance thereof. Most importantly, it would save valuable time and effort on the part of the investigating agency whose services are already stretched beyond capacity and limits. This compliance is mandatory at a stage when the police may be required to undertake critical investigation say recording of victim and eyewitness accounts, effecting searches and seizures, tracking accused persons.

16. We also find that illegibly handwritten police documents may create impediments to effective investigation. They also may lead to errors during investigation or even during trial. Certainly, court time is unnecessarily expended in deciphering the statements and several memos/documents (of seizures/recoveries/arrests/searches) which several times are in bad handwritings. It may not be always possible to type out the documents when prepared. There is no reason, however, why a correctly typed record is not prepared, as soon as possible after the event. This would help the police and the trial courts. It would facilitate e-transmission and expedition in preparation of appeals before higher courts.

17. But then, there may be difficulties faced by the police, which we

may not be aware of. Or sensitive issues too. However, it cannot be denied that these areas do deserve immediate and priority attention.

18. Let a copy of this order be furnished to Mr. Rahul Mehra, learned Standing Counsel (Crl.) for the State. We also forward a copy of this order to the Commissioner of Police, Delhi as well as to the District Judges of all districts to suggest the possibility and method of e-transmission of the reports in compliance with Section 157 of the Cr.P.C. as well as preparing typed copies of investigation records.

19. Meetings for the purpose shall be convened under the Chairmanship of the District Judge (Headquarters) for this purpose to consider as to how modern methods of such transmission shall be evolved and implemented.

20. It shall be open for the District Judges (Headquarters) to join the Director Prosecution and Standing Counsel (Criminal) as well as any other person(s) or authority who may be dealing with e-transmission processes in the Courts in such deliberations. The Commissioner of Police shall depute an officer of the rank of Joint Commissioner to participate in the deliberations.

21. A report in this regard shall be placed by the District Judge (Headquarters) before this Court within a period of four weeks from today.

22. The appellant has been produced in custody. There is no need for

producing him again.

Renotify on 19th September, 2016.

Dasti.

(GITA MITTAL)
JUDGE

(P.S.TEJI)
JUDGE

SEPTEMBER 09, 2016
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