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IN THE HIGH COURT OF DELHI AT NEW DELHI

Judgment Reserved On: 29th March, 2016

Judgment Pronounced On: 31st March, 2016

CRL.REV.P.605/2007

KASHMIR SINGH

..... Petitioner

Through : Mr. Pawan Sharma with Mr. Ravinder
Singh, Advocates

versus

N.C.T. GOVT OF DELHI & ORS.

..... Respondents

Through : Ms. Aashaa Tiwari, APP

CORAM:

HON'BLE MR. JUSTICE G.S.SISTANI

HON'BLE MS. JUSTICE SANGITA DHINGRA SEHGAL

G.S.SISTANI, J.

1. The present Criminal Revision Petition has been filed on behalf of Kashmir Singh for setting aside the judgment dated 18.07.2007 by which the respondents Surender Singh, Kartar Singh and Azad Singh have been acquitted.
2. During the pendency of this Revision Petition, on 28.03.2011 the following order was passed:

“In this case, one of the accused persons was convicted under Section 302 IPC and on filing of an appeal, this Court upheld the conviction. This is a revision petition seeking setting aside/quashing of the impugned judgment.

Learned counsel for the parties will address on the point as to whether the impugned judgment can now be set aside once the same has been upheld by the Division Bench of this Court.

Learned Counsel for the petitioner, at this stage, says that he would only limit his prayer to the quashing of the observations made against him in the impugned judgment. There is no prayer made in this regard.

List for hearing on 12th August, 2011.”

3. In para 60 of the impugned judgment dated 18.07.2007, the following

observations were made about Kashmir Singh(petitioner herein):

“60. Therefore I hold that accused Kartar Singh, Azad and Surender are innocent and have been falsely implicated in the present case by the complainant party. All these accused persons are languishing in jail for many years solely because PW5 Kashmir Singh, PW8 Kirpal Singh and PW14 Rishi Pal have falsely testified against them on oath. I am of the opinion that PW5 Kashmir Singh has knowingly or willingly given false evidence with intention that such evidence should be used in judicial proceedings on following points:

- (a) That accused Kartar Singh, Surender and Rishi Pal had fired from the roof of house of Suraj Bhan and one bullet and hit Vedu. (This version is falsified by the medical evidence that all the shots were fired on the deceased from a close range).
- (b) Accused Kartar Singh, Azad Singh and Surender came down and exhorted accused Mahavir to fire at Vedu. (This version is falsified because the defence witnesses have proved that at that time accused Kartar Singh and Azad Singh were present in Kalawati Saran Hospital.”

4. We may also notice, at this stage, that the appeal filed by the accused Mahabir Singh convicted under Section 302 IPC was decided by a judgment dated 22.05.2009. Mahabir Singh thereafter filed a Crl.A.No.559/2010 before the Supreme Court of India. The Supreme Court of India on 13.08.2015, *inter alia*, passed the following order:

“We are of the opinion that it would be more appropriate if the judgment and order passed by the High Court in Criminal Appeal No.498/2007 is set aside and it is directed that the said appeal be heard along with the criminal revision petition that is pending in the High Court. We order accordingly.

We request Hon’ble the Chief Justice of High Court to list the criminal appeal along with criminal revision petition before a Division Bench for hearing since the charge sheet was under Section 302 of the Indian Penal Code.

We make it clear that we have not expressed any opinion

one way or the other with regard to the decision passed by the High Court in Criminal Appeal No.498/2007.

The criminal appeal is disposed of.”

5. Today the appeal filed by Mahabir Singh being Crl.A.498/2007 is also listed along with the present Criminal Revision Petition. Counsel appearing on behalf of the appellant Mahabir Singh submits that he was not aware of the statement made by the petitioner in Criminal Revision Petition on 28.03.2011 that he would limit his prayer in the criminal revision to quashing of the observations made about him in the impugned judgment. Counsel appearing in the Criminal Revision Petition submits that he was not aware about the pendency of the Criminal Appeal before the Supreme Court. Counsel for Mahabir Singh submits that had he been aware about the order dated 28.03.2011, he would have brought the same to the notice of the Supreme Court and it would not have been necessary to pass the order dated 13.08.2015 by the Supreme Court.
6. Since the judgment of the High Court stands set aside by the Supreme Court, the appeal has been heard afresh. As far as the present Criminal Revision Petition is concerned, Mr. Sharma submits that the only issue which survives is with regard to quashing of the observations made against the revision petitioner Kashmir Singh in the impugned judgment. We are of the view that the present Criminal Revision Petition is not maintainable as no such prayer has been made in the Criminal Revision Petition and secondly, this issue was raised by the petitioner by filing Criminal Revision.
7. In Criminal Revision No.989/2007, the Single Judge observed that the Criminal Revision Petition was pre-mature and further the contents of paras 60 to 62 of the judgment should be read as a notice to the

petitioner and cannot be construed as a final opinion. The Single Judge further observed “*it means that the petitioners are free to take whatever contentions they wish to, in defence of their case under Section 344 Cr.P.C. It is also open to them, to adduce such evidence they may rely upon and whatever material they would choose to place before the Court.*” The Criminal Revision Petition No.489/2007 was dismissed as withdrawn on 31.07.2007.

8. The position, in our view, has remained unchanged as no proceedings have been initiated by the Trial Court and rightly so in view of the pendency of the appeal. In view of the statement dated 28.03.2011 and having regard to the fact that there is no prayer in the present Revision Petition with regard to the observations so made in the impugned judgment and the fact that the earlier Criminal Revision No.489/2007 stands dismissed as withdrawn, the present Revision Petition cannot be entertained; the same is accordingly dismissed.

G.S.SISTANI, J

SANGITA DHINGRA SEHGAL, J

MARCH 31, 2016

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