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

+ CRL.M.C. 3724/2016 & CrI.M.A. 15575/2016 (stay)

MANGE RAM & ANR

..... Petitioner

Represented by: Mr. Gaurav Sharma, Mr. D.P.
Sharma, Advs.

versus

GOVT OF NCT OF DELHI & ORS

..... Respondent

Represented by: Mr. Ashok K. Garg, APP with
SI Yogesh Kumar PS
Timarpur.

CORAM:

HON'BLE MS. JUSTICE MUKTA GUPTA

ORDER
29.11.2016

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1. By the present petition, the petitioner seeks quashing of FIR No.333/99 under Sections 420/467/471/34 IPC and the proceedings pending pursuant thereto before the learned Metropolitan Magistrate on the ground that the petitioners are facing a protracted trial for more than 17 years.

2. In view of the delay in trial a report was called from the learned Trial Court. The report of the learned Trial Court reads as under:

“The charge sheet was filed on 30.05.2000. The cognizance to the accused Mange Ram Acharya was taken on 12.09.2000 and the accused Subodh appeared on 23.09.2000 and was admitted on bail. After compliance of section 207 Cr.P.C., the matter was kept for consideration on charge. Arguments were also heard by the Court. During this time, the counsel was changed

and fresh vakalatnama filed on 01.10.2001 and at request matter was fixed for arguments on charge. On 25.01.2002, written submissions was also filed and the matter was fixed for orders. On the next date, the Presiding Officer was on leave. On 06.05.2002, the accused was reported to be in custody in other case and on the next date i.e. 28.05.2002, P/W was issued to produce the accused Mange Ram Acharya. On 27.07.2002, the holiday was declared. The matter remained for the purpose of consideration on charge till 05.02.2004 and thereafter the accused Mange Ram Acharya has absconded the trial and NBW was issued against him. The coercive process was issued against the accused Mange Ram Acharya and warrants of attachment against the surety were ordered. After the proclamation u/s 82/83 Cr.P.C. the accused Mange Ram Acharya appeared on 21.11.2008. The matter was again fixed for arguments on charge. On 26.08.2009, it was submitted by the prosecution that the FSL report is not on record. The Presiding Officer gave notice to the SHO & DCP with the observation that in majority of the cases either the FSL report is not filed with the charge sheet or no one bothered to file the FSL report later on. On the next date of hearing, the DCP (N) sought time to file the FSL report. On the next date, the accused Mange Ram Acharya was reported to be in JC & P/W was issued and after many production warrants the accused was not produced and finally the accused appeared on 16.12.2010. On 16.12.2010, the Court summoned the IO to file the status report on the FSL. On the next date of hearing, the IO & SHO were again summoned with the result of the FSL. On 04.07.2011, production warrant was issued to produce the accused Mange Ram Acharya with the direction to SHO/IO to file the FSL report. On 05.08.2011, the Court observed that the IO has failed to file the FSL report despite lapse of more than 10 years and it shows their lack of sincerity and responsibility. It is further observed that

“The investigating authority has failed to file the FSL report despite lapse of more than ten years. This shows their lack of sincerity and seems to be taking their responsibilities casually. That due to default on the part of SHO and IO

concerned, the delay in the trial has occurred and precious time of the Court has been lost.

In these circumstances, DCP North is directed to initiate separate inquiry against the guilty officials for the said default and dereliction of duty.”

On 05.09.2011, the SHO sought some more time to file the FSL report. The status report was filed on 28.11.2011 and the same was considered on 30.01.2012. As per the status report, the documents after examination was handed over by CFSL to SI Dharmender of PS Krishna Nagar. SI Dharmender had stated that he had handed over the report along with the documents to the concerned IO namely Inspector Mahesh Kumar. Inspector Mahesh Kumar denied to have received the documents from SI Dharmender. In the order dated 30.01.2012 the concerned court observed that “The matter is still at the stage of consideration of charge, though the case pertains to the year 1999. The said delay has occurred due to default on the part of successive SHO’s concerned and IOs and that due to their default only, the report along with exhibits have been lost. The precious time of the court has been wasted due to the said default only.”

On 10.02.2012, it was reported on behalf of DCP (N) that the inquiry has been initiated against the erring officers. Vide order dated 28.03.2012, the charge was framed against both the accused for the offence u/s 420/468/471/120B IPC. After framing of charge, total seven witnesses have been examined so far.

This case file was put up before me on 23.02.2016 after my joining to this Court on 15.02.2016. On that day, I called four witnesses for the two consecutive dates. In the testimony of PW6 examination in chief was deferred as CFSL report was not available and hence notice was given to the SHO to place the CFSL report on record. On the last date of hearing, one witness was examined and it was observed by the court that question document along with specimen signatures were sent to the CFSL and the same was returned through Inspector Dharmender Kumar who submitted that he had handed over the

record to the concerned Police station. On the last date of hearing, notice was given to the DCP to file the report as to what action was taken on the order dated 05.08.2011.

In nutshell, the main reasons of delay in the trial are non filing of CFSL report and the absence of the accused Mange Ram Acharya during the trial for substantial period of time.”

3. The inference of the learned Trial Court is right. The proceedings have been delayed primarily on the ground of non-filing of CFSL report and absence of petitioner No.1 during the trial for substantial period of time.

4. Be that as it may, now the petitioners are available for trial. Enquiry as to why further action was not taken for seeking FSL opinion and lack of coordination between the officers' concerned has already been initiated as reported by the DCP North. A perusal of the charge-sheet reveals that 13 witnesses were cited and as per the order-sheet 7 witnesses have already been dropped. Further 7 witnesses have already been examined before the learned Trial Court. Thus only a few more of witnesses would be required if so as substitute for the witnesses who were earlier named in the charge-sheet. The learned Trial Court is directed to expedite the trial and conclude the same preferably within a period of six months from the date of this order.

5. With these directions the petition and application are disposed of.

MUKTA GUPTA, J.

NOVEMBER 29, 2016

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