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

% Judgment delivered on: 21.08.2018

+ CRL.M.C. 730/2018 & CRL.M.A. 2632/2018

B VENKATESHWARA RAO Petitioner

versus

STATE & ANR Respondents

Advocates who appeared in this case:

For the Petitioner : Mr.Dayan Krishnan, Sr.Adv. with Mr.Gurpreet Singh and Ms.Aakash Lodha, Advs.

For the Respondent: Mr.Raghuvinder Verma, Addl. PP for the State with SI Brijesh Kumar, P.S.Lodhi Colony. Mr.H.K.Chaturvedi, Adv. for R-2.

CORAM:-

HON'BLE MR JUSTICE SANJEEV SACHDEVA

JUDGMENT

21.08.2018

SANJEEV SACHDEVA, J. (ORAL)

1. The petitioner impugns judgment dated 30.11.2017 passed by the Revisional Court whereby the revision petition impugning order dated 12.08.2016 of the Trial Court taking cognizance of the offence under Section 352/323/509 IPC has been dismissed.

2. Learned senior counsel for the petitioner points out that on the

complaint investigation was carried out by the prosecution and statement of several witnesses was recorded under Section 161 Cr.P.C. Thereafter a closure report was filed, however none of the statements were annexed with the closure report.

3. It is submitted that in the impugned summoning order dated 12.10.2016 the Trial Court has stated that *the closure report and other materials available on record including statements of witnesses and victim as well as complainant have been carefully perused.*

4. Learned senior counsel points out that on inspection none of these documents were found on record. An application was filed before the Trial Court under Section 207 Cr.P.C which was disposed of by order dated 23.12.2017 wherein the Trial Court has noticed that statements of witnesses under Section 161 Cr.P.C are not found in the judicial record.

5. Learned senior counsel points out that the order dated 23.12.2017 shows that the impugned order of the Trial Court dated 12.08.2016 summoning the petitioner was without examination of the material including the statement of witnesses which admittedly as per the Court was not found on the judicial record.

6. Learned senior counsel points out to the closure report which specifically refers to the statement of several witnesses recorded under Section 161 Cr.P.C. However, the said statements are not filed along

with the closure report and are not part of the judicial record. It is not disputed by learned counsel appearing for the respondent No.2 as well as learned APP under instructions from the IO that the statements are not available on the judicial record.

7. In view of the fact that the Trial Court has specifically noticed in the impugned order dated 12.08.2016 that *the closure report and other materials available on record including statements of witnesses and victim as well as complainant have been carefully perused*, and the same are admittedly not on record, clearly the impugned summoning order is without consideration of the material and is not sustainable.

8. Accordingly, the impugned order dated 12.08.2016 as well as the order of the Revisional Court dated 30.11.2017 are set aside. The matter is remitted to the Trial Court

9. The Deputy Commission of Police concerned is directed to conduct an enquiry with regard to the missing record inter alia the relevant statements under Section 161 Cr.P.C and to have the same traced out and placed before the Trial Court.

10. Enquiry be conducted and concluded and the documents traced and placed before the Trial Court within a period of four weeks from today.

11. Once the material is placed before the Trial Court, the Trial

Court shall reappraise the same and pass appropriate order in accordance with law, without being influenced by anything stated in this order. It is clarified that this Court has neither examined nor commented upon the merits of the case of either party.

12. The petition is disposed of in the above terms.

13. Keeping in view the fact that this is a third round of litigation to this Court, the Trial Court is directed to expedite the proceedings.

14. Order *Dasti* under signatures of the Court Master.

AUGUST 21, 2018
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SANJEEV SACHDEVA, J

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