

\$~24

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

%

Judgment delivered on: 09.05.2018

+ CRL.M.C. 1589/2018 & CrI. M.A. 5767/2018

SALMAN KHURSHID

..... Petitioner

versus

THE STATE GOVT OF NCT OF DELHI & ORS Respondents

Advocates who appeared in this case:

For the Petitioner :

Mr. Amrendra Sharan, Sr. Adv. with Mr. Pramod Kr. Dubey, Ms. Smriti Sinha, Mr. Adil Singh, Ms. Sakshi Kotiyal, Mr. Samrath and Mr. Saurav Kumar, Advs.

For the Respondents :

Mr. Akshai Malik, Addl. PP for the State
Mr. Puneet Mittal, Sr. Adv. with Ms. Vasudha Bajaj and Mr. Ankur Goel, Advs.

CORAM:-

HON'BLE MR JUSTICE SANJEEV SACHDEVA

JUDGMENT

09.05.2018

SANJEEV SACHDEVA, J. (ORAL)

1. The petitioner impugns order dated 08.01.2018 whereby the trial court has summoned the petitioner in case FIR No. 421 of 2015 under Section 448/34 of the IPC, Police Station Amar Colony, New Delhi.

2. Learned senior counsel for the petitioner submits that the impugned order is erroneous, in as much as, the entire case file was

not available before the Trial Court at the time when the Trial Court took on record the Supplementary Charge Sheet and issued the impugned summoning order. It is submitted that the case file had been transmitted to the Revisional Court where a Revision Petition filed by one of the co-accused is pending.

3. It is not disputed by learned Addl. PP that the entire case file was not before the trial court. It is submitted that the Supplementary Charge Sheet and its annexures were before the Trial Court and the Trial Court perused the same before passing the impugned order.

4. Order dated 08.01.2018 has been passed in two parts; one prior to 12.00 noon and the other post 12.00 noon. The order recorded Prior to 12 noon notes that the Supplementary Charge Sheet has been filed and considered court and thereafter matter kept post noon for orders and thereafter the impugned order was passed.

5. In the first part of the order dated 08.01.2018, the trial court has specifically recorded that file is pending before the Court of learned Addl. Sessions Judge and be awaited. Thereafter it is recorded in the order that Supplementary Charge Sheet has been filed, which was perused and arguments heard and thereafter post noon the impugned summoning order issued.

6. Both the Charge Sheet and Supplementary Charge Sheet have been placed on record. Perusal of the Charge Sheet shows that

substantial documents formed part of the Charge Sheet. The Charge Sheet also adverts to the role of the petitioner and does not implicate him. Admittedly, this Charge Sheet and its annexures were not available before the Trial Court, when the impugned order was passed.

7. In my view since the Charge Sheet also records the role of the petitioner though to limited extent, it was incumbent on the Trial Court to consider the Charge Sheet as well as the Supplementary Charge Sheet before passing the order summoning the petitioner.

8. In view of the above, the impugned order dated 08.01.2018 is set aside. The matter is remitted to the trial court to reconsider the Charge Sheet as well as the Supplementary Charge Sheet along with the documents and to pass an order afresh, in accordance with law.

9. It is clarified that this Court has neither considered nor opined on the merits of the case of either party.

10. The petition is allowed in the above terms.

11. Order *Dasti* under signatures of Court Master.

SANJEEV SACHDEVA, J

May 09, 2018
‘rs’