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IN THE HIGH COURT OF DELHI AT NEW DELHI

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W.P.(CRL) 2591/2018 & Crl. M.A. Nos. 31140-41/2018

VIPIN SHARMA

..... Petitioner

Through: Mr. Akhand Pratap Singh, Mr. Bahul Kalra,
Ms. Meghna Sharma, Ms. Aditi Mittal and
Mr. Arjun Raghuvanshi, Advocates.

Versus

REGISTRAR GENERAL, HIGH COURT OF DELHI & ANR

..... Respondents

Through: Ms. Anu Bagai, Advocate for Respondent
No.1.

Mr. Sanjay Lao, Additional Standing
Counsel for Respondent No.2.

CORAM:

HON'BLE MR. JUSTICE NAJMI WAZIRI

ORDER

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31.08.2018

Crl. M.A.Nos. 31140-41/2018 (for exemption)

Allowed, subject to all just exceptions.

The applications stand disposed-off.

W.P.(CRL) 2591/2018

The petitioner is aggrieved by an unusual turn of events in his case. He has been incarcerated for more than 8 ½ years, his case was heard twice, judgment was reserved twice, but each time before the judgement could be delivered, learned Special Judges was transferred.

On 28.11.2017, this Court had passed the following order in W.P. (Crl.) 3093/2017:-

This writ petition seeks the following relief:-

“ It is most respectfully prayed that this Hon'ble Court may kindly be pleased to direct Sh Rakesh Pandit (DHJS), Joint registrar. Delhi High Court to write the judgment in SC No. 8809/16, State vs Vipin Sharma, FIR No.71/09, PS Special Cell and send the same for pronouncement to his Ld Successor Court and pass any other order/s which this Hon'ble court may deem fit and proper to meet the ends of justice”.

The Judicial Officer who had heard the case is not more designated officer to hear the case, since by an order of this Court he has been transferred as Joint Registrar on 01.11.2017. Judgment had been reserved and was to be pronounced on 10.11.2017. By virtue of the aforesaid notification, the Judicial Officer was to join the High Court on 06.11.2017. Evidently due to paucity of time the judgment could not be pronounced. Another Judicial Officer has been designated instead. Therefore, the Judicial Officer who had heard the case cannot pronounce the judgment under section 353 of Cr.PC.

The learned counsel for the petitioner has relied upon Note-II of the High Court's notification dated 08.02.2010, which reads as under:

“.....2. The Judicial Officers under transfer shall pronounce the judgment/ orders in the cases in which he/ she had reserved judgments/ orders before relinquishing the charge of the Court in terms of the posting/ transfers order....”

*Mr. Viraj Datar, the learned counsel for respondent no. 1 submits that this Court has adjudicated on the Note in **Jitender alias Kalle vs. State** delivered on 02.11.2012 as under:-*

“47. We are now left to deal with ‘note 2’ of the High Court order dated 08.02.2010. While it is true that the note sought to enable the judicial officers to pronounce judgments/orders within a period of 2/3 weeks,

notwithstanding, the posting/transfer, that was merely an administrative order and cannot over ride the statutory provisions of the 1973 Code. The High Court could not permit something by way of an administrative order which was not permissible under the 1973 Code. The mere fact that there is a note such as note 2 in the order dated 08.02.2010 would not enable us to detract from the statutory provisions which do not permit the pronouncement of a judgment by a successor judge which have been written and signed by the predecessor and that, too, after the predecessor ceased to have jurisdiction over the said case. It is important to remember that Mr Bharat Parasar ceased to exercise jurisdiction as an Additional Sessions Judge of North West District with effect from 11.02.2010. Consequently, he could do nothing in respect of the cases of that district after 11.02.2010. It is not even as if he had written his judgments prior to 11.02.2010 at which point of time he did have jurisdiction. He wrote the judgments and signed them on 02.03.2010 and 06.03.2010 much after he ceased to have jurisdiction in respect of the said matters. The judgments were not even pronounced in the manner indicated in section 353 of the 1973 Code. They were merely “announced”, whatever that expression may mean. As such, they were not judgments in law.”

In view of the aforesaid, Mr. Mir, the learned counsel for the petitioner, fairly states that justice would be served merely if the trial court is directed to dispose off the case in a fixed time frame. He states that this request is made especially since the trial is pending adjudication from 2009.

In the aforesaid circumstance, the designated Court is requested to so schedule the hearing of the case that it is completed within a period of two months from receipt of this order and pronounce a judgment as soon as may be practicable thereafter, preferably in the subsequent two months.

*The parties shall appear before the Court on 04.12.2017.
The petition is disposed off in the above terms.”*

On 17.07.2018 the following order was passed in BAIL APPLN. 1646/2018.

“The petitioner seeks extension of interim bail which is due to expire on 18.07.2018. She was granted bail on 14.12.2017 on account of her medical ailments. According to the Status Report submitted by the Special Branch, Delhi Police, in the opinion of the Doctors attending to her at AIIMS, no urgent medical intervention is required and she can otherwise be treated through OPD by pursuing conservative method of treatment.

Mr. Tanvir Mir, the learned counsel for the petitioner submits that the petitioner suffers from recurring ovarian cysts which requires regular visits to hospital, due to the ailment she suffers significant physical discomfort and pain; and for the treatment of her ailments she has already undergone four surgeries earlier. He further submits that the petitioner has been incarcerated for a period of more than 6 years and during such incarceration, she has not flouted the jail rules. She has never misused any period of liberty granted to her. It is the petitioner’s grievance that despite the case having been heard twice, judgment could not be pronounced on either occasion because the learned Judge was transferred each time. He submits that the first time, judgment had indeed been reserved. Subsequently also the case was heard once again, but again the learned Judge was transferred. The case is now listed for Final Arguments on 31.07.2018.

Mr. Amit Chadha, the learned counsel for the State submits upon instructions that the State will endeavour to advance its arguments on the said date and to have the case disposed-off at the earliest possible and no adjournments will be sought by the State.

Mr. Mir submits that it will be in the petitioner’s paramount interest to see that the case is disposed-off at the earliest, therefore there would be no occasion for the petitioner to seek an adjournment in the case.

He refers to this Court’s order dated 28.11.2017 in W.P. (CRL) 3093/2017 which inter alia observed:

“This writ petition seeks the following relief:-

"It is most respectfully prayed that this Hon'ble Court may kindly be pleased to direct Sh Rakesh Pandit (DHJS), Joint registrar. Delhi High Court to write the judgment in SC No. 8809/16, State vs. Vipin Sharma, FIR No.71/09, PS Special Cell and send the same for pronouncement to his Ld Successor Court and pass any other order/s which this Hon'ble court may deem fit and proper to meet the ends of justice ".

The Judicial Officer who had heard the case is no more designated officer to hear the case, since by an order of this Court he has been transferred as Joint Registrar on 01.11.2017. Judgment had been reserved and was to be pronounced on 10.11.2017. By virtue of the aforesaid notification, the Judicial Officer was to join the High Court on 06.11.2017. Evidently due to paucity of time the judgment could not be pronounced. Another Judicial Officer has been designated instead. Therefore, the Judicial Officer who had heard the case cannot pronounce the judgment under section 353 of Cr.PC.

The learned counsel for the petitioner has relied upon Note-II of the High Court's notification dated 08.02.2010, which reads as under:

" 2. The Judicial Officers under transfer shall pronounce the judgment/ orders in the cases in which he/ she had reserved judgments/ orders before relinquishing the charge of the Court in terms of the posting/ transfers order...."

*Mr. Viraj Datar, the learned counsel for respondent no. 1 submits that this Court has adjudicated on the Note in **Jitender alias Kalle vs. State** delivered on 02.11.2012 as under:-*

"47. We are now left to deal with 'note 2' of the High Court order dated 08.02.2010. While it is true that the note sought to enable the judicial officers to pronounce judgments/orders within a period of 2/3 weeks, notwithstanding, the posting/transfer, that was merely an administrative order and cannot over ride the statutory provisions of the 1973 Code. The High Court could not permit something by way of an administrative order which was not permissible under the 1973 Code. The mere fact that there is a note such as note 2 in the order dated 08.02.2010 would not enable us to detract from the statutory provisions which do not permit the pronouncement of a judgment by a successor judge which have been written and signed by the predecessor and that, too, after the predecessor ceased to have jurisdiction over the said case. It is important to remember that Mr Bharat Parasar ceased to exercise jurisdiction as an Additional Sessions Judge of North West District with effect from 11.02.2010. Consequently, he could do nothing in respect of the cases of that district after 11.02.2010. It is not even as if he - had written his judgments prior to 11.02.2010 at which point of time he did have jurisdiction. He wrote the judgments and signed them on 02.03.2010 and 06.03.2010 much after he ceased to have jurisdiction in respect of the said matters. The judgments were not even pronounced in the manner indicated in section 353 of the 1973 Code. They were merely "announced", whatever that expression may mean. As such, they were not judgments in law.."

In view of the aforesaid, Mr. Mir, the learned counsel for the petitioner, fairly states that justice would be served merely if the trial court is directed to dispose off the case in a fixed time frame. He states that this request is made especially since the trial is pending adjudication from 2009.

In the aforesaid circumstance, the designated Court is requested to so schedule the hearing of the case that it is completed within a period of two months from receipt of this

order and pronounce a judgment as soon as may be practicable thereafter, preferably in the subsequent two months.

The parties shall appear before the Court on 04.12.2017.

The petition is disposed off in the above terms.”

In view of the above, the learned counsel for the parties submit that a request would be made to the Court concerned that the case be disposed-off at the earliest and the hearing be completed preferably on day-to-day basis.

In the aforesaid circumstances, at this stage, Mr. Mir states that he does not press the present petition. Accordingly, it is dismissed as withdrawn.”

Pursuant to the latter order, arguments were addressed by the petitioner, but the prosecution’s arguments were yet to be concluded, when the learned Special Judge concerned was transferred yet again. The Court is informed that a new Special Judge is yet to be appointed. The petitioner is aggrieved by the long pending trial, which, he says, is in breach of his constitutional right for an expeditious disposal of a criminal trial. He requests that an order similar to the one passed on 17.07.2018, be passed fixing peremptory dates for hearing.

Mr. Lao, the learned Additional Standing Counsel for the State submits that they cannot have any objection to the expeditious disposal of the case.

In view of the above, this Court would request the learned Special Judge, when he takes over the case, to schedule it preferably on a day-to-day basis, so that the arguments could be concluded within a period of two months and the case could be disposed off as expeditiously as possible thereafter.

The petition is disposed-off in the above terms.

NAJMI WAZIRI, J.

AUGUST 31, 2018

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