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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ **CRL.M.C. 225/2018 & CRL.M.A.891/2018**

BRIJ BHUSHAN Petitioner
Through: Mr. Satish Aggarwala & Mr.
Gagan Waswani, Advocates

versus

STATE (NCT OF DELHI) Respondent
Through: Mr. Amit Chadha, APP with

CORAM:

HON'BLE MR. JUSTICE CHANDER SHEKHAR

ORDER

% **04.09.2019**

1. The petitioner has filed the present petition under Section 482 of the Code of Criminal Procedure, 1973 (Cr.PC) against the order dated 15.1.2018 passed by the learned Additional Sessions Judge-02 (Central), Tis Hazari, Delhi in SC No.28673/2016.

2. Learned counsel for the petitioner submitted that he has certain apprehensions that the Trial Court may not comply with the judgment dated 22.3.2010 passed by this Court in Crl.M.C.2344/2004, titled Brij Bhushan v. State & Anr. and Crl.M.C.354/2005, titled Vikas Thukral @ Vicky & Ors. v. State & Anr., in view of the orders dated 10.1.2018 and 15.1.2018. Learned counsel for the petitioner submitted that he has stated so in grounds (c) to (f) of the petition, which are as under:

“(c) By not following the directions embodied in para No.35(iv) of the order, the learned ASJ has overreached this Hon’ble Court.

(d) On 10.1.2018, the learned ASJ, after perusing

the directions, had fixed 15.1.2018 for hearing arguments on the question of sanction.

(e) The order of this Hon'ble Court dated 22.3.2010 had been accepted by both the parties and had attained finality.

(f) The learned ASJ, Delhi did not appreciate that if the question of sanction under Section 155 of the Customs Act and Section 197 of the Cr.PC is not decided before passing the final judgment in terms of directions of this Hon'ble Court, it may seriously prejudice the petitioner.

It may also be added that if the issue of sanction is decided separately i.e. prior to the final arguments, it will not and cannot prejudice the respondents.”

3. Learned APP submitted that this Court, vide judgment dated 22.3.2010, in CrI.M.C.2344/2004, titled Brij Bhushan v. State & Anr. and CrI.M.C.354/2005, titled Vikas Thukral @ Vicky & Ors. v. State & Anr. held in para 34 as under:

“34. Thus, in the facts and circumstances of the two petitions, I am of the considered view that at this stage it would not be appropriate for this Court to quash either of the proceedings. The question of sanction with regard to acts of the custom officer can be gone into by the concerned court after recording of evidence of the parties if the court feels that it is not a case of exceeding self defence and the firing was done by the custom officer so as to save himself and was necessary in discharge of his duties the court can certainly make an observation in this regard and call upon the State to answer the query as to whether they would like to consider granting sanction or not. If such a query is raised and State decides to grant sanction then

appropriate orders can be passed by the court concerned. However, if State decides not to grant sanction then consequences will follow. However, if the court comes to the conclusion that no sanction is required then court can pass appropriate orders.

4. Thereafter, the Court passed the following directions in para 35:-

“i) The Custom Officer, Brij Bhushan, will appear in the Court of MM concerned on 8.4.2010, which is the date already fixed in the matter, in a case arising out of FIR No.628/2000.

(ii) The Customs Officer, however, will be released on bail at the time of his arrest on furnishing a bail bond in the sum of Rs. 25,000/- (rupees twenty five thousand only) with one surety in the like amount in the peculiar facts of the case.

(iii) The Magistrate concerned will immediately refer the matter arising out of FIR No. 628/2000 for transfer to the Principal District and Sessions Judge, Tis Hazari on the same day. The learned Principal District and Sessions Judge, Tis Hazari will transfer this matter to the same Sessions Court where the case arising out of FIR No. 295/2000 is pending hearing.

(iv) The question as to whether sanction is required to be obtained or not for prosecuting the Custom Officer, Brij Bhushan, under Section 197 Cr.P.C. or under Section 155 of the Customs Act shall be decided by the Trial court i.e. the Court of Sessions after concluding the evidence of the prosecution as well as the defence in terms of the observation made by me in paragraph 34.

(v) Both the cases arising out of FIR No. 628/2000 and FIR No. 295/2000 shall be decided by the same Sessions Judge. A copy of this judgment be sent to

the concerned Courts for information and compliance.

(vi) The petitioners in a case arising out of FIR No. 295/2000 shall appear before the concerned Sessions Court on 8.4.2010 itself when the court will proceed with the case from the stage it is pending before the said court in accordance with law after awaiting transfer of the case arising out of FIR No. 628/2000 in terms of the directions given above and will try both the cases together.

(vii) Nothing stated herein shall cast any aspersion on the merits of the case during the course of trial.”

5. Learned counsel for the petitioner, on the query of the Court, submitted that the judgment dated 22.3.2010 was not challenged by the petitioner before the Supreme Court and the same has attained finality and is binding upon the parties.

6. In view of the judgment dated 22.3.2010 passed by this Court, the submissions and the facts of the case, the Trial Court is directed to fully comply with the judgment dated 22.3.2010 in its letter and spirit and dispose of the matter at the earliest.

7. The petition is disposed of in above terms. Pending application is also disposed of.

CHANDER SHEKHAR, J

SEPTEMBER 04, 2019/tp