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

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Judgment delivered on: 24.04.2019

+ CRL.REV.P. 415/2019 and CrI.M.A.7424/2019

SH. ADI MALIK

..... Petitioner

versus

STATE

..... Respondent

Advocates who appeared in this case:

For the Petitioner : Mr.Darshan Singh, Adv.
For the Respondent : Mr.Hirein Sharma, Addl. PP for the
State with ASI Ashok Kumar,
P.S.Moti Nagar.

CORAM:

HON'BLE MR. JUSTICE SANJEEV SACHDEVA

JUDGMENT

SANJEEV SACHDEVA, J. (ORAL)

1. Petitioner impugns order dated 19.03.2019 whereby the appeal of the petitioner impugning order dated 22.11.2017 convicting the petitioner of an offence punishable under Sections 454/380/34 IPC and sentencing him to Simple Imprisonment for a period of six months for each of the offences has been dismissed.

2. Learned counsel for the petitioner submits that the petitioner had pleaded guilty before the Trial Court on 22.11.2017 with the expectation that keeping in view the mitigating circumstances and settlement with the complainant, petitioner would be acquitted or a

lenient view would be taken.

3. Learned counsel submits that petitioner had been arrested in one case and subsequently the present false case has been planted on the petitioner. Learned counsel further submits that the Trial Court erred in convicting the petitioner by order dated 22.11.2017 and recording his plea of guilt as the Trial Court had not yet reached the stage of framing of charge and as such could not have recorded any plea of guilt or otherwise in contravention of Section 240 & 241 Cr.P.C.

4. Learned APP points out that on the same date petitioner had pleaded guilty to not only the offences in the subject FIR but also to similar offences in another FIR. He submits that the order of the trial court and Appellate Court in the other FIR were also challenged by the petitioner in Crl. Revision petition No.414/2019, however, said petition has been dismissed by order dated 08.04.2019.

5. Learned counsel for the petitioner per contra submits that order dated 08.04.2019 does not consider the legal proposition being raised in this petition.

6. Petitioner is alleged to have committed the offence under Section 454/380/34 IPC. Perusal of order dated 22.11.2017 shows that on the said date charge sheet was filed. Same was checked and registered. Trial Court took cognizance of the offences. Copy of the

chargesheet and other documents were supplied to the petitioner. Thereafter the petitioner submitted before the Court that he wanted to plead guilty. Accordingly, plea of guilt was recorded and order of conviction was passed.

7. Section 238 Cr.P.C. obligates the Magistrate to satisfy himself with regard to compliance of provisions of Section 207 i.e. supply to the accused of the copy of the police report and other documents. Thereafter, Section 239 Cr.P.C. requires the Magistrate to consider the police report and documents sent thereunder and in case situation so warrants discharge the accused if the Magistrate considers the charge against the accused to be groundless. Under Section 240 Cr.P.C., if upon consideration, examination and hearing the accused, the Magistrate is of the opinion that there is ground for presuming that the accused has committed the offence, and he is competent to try the same, he shall frame a charge in writing against the accused.

8. The charge is thereafter to be read and the explained to the accused and he is to be asked whether he pleads guilty of the offences charged or claims to be tried. If the accused pleads guilty, under Section 241 Cr.P.C the Magistrate is to record the plea and in his discretion convict him thereon.

9. Perusal of order dated 22.11.2017 shows that the accused was produced from judicial custody and there was no counsel representing the accused. Though the orders shows that the Magistrate warned the

accused of the consequences of his pleading guilty, the Magistrate did not appoint an amicus to represent the accused. Legal counsel apparently was not made available to the accused at the stage when he pleaded guilty.

10. Perusal of order dated 22.11.2017 further shows that there was no consideration by the magistrate, as is mandated under Section 239 and Section 240 Cr.P.C. Further, no charge was framed. As no charge was framed there was no question of the Magistrate at that stage to record the plea of guilt or otherwise of the accused, even if voluntarily made.

11. Since the procedures prescribed by Sections 239 & 240 were not followed the Magistrate could not have convicted the petitioner under Section 241 on his plea of guilt.

12. Reference though may be had to Section 464 Cr.P.C which stipulates that no finding, sentence or order shall be deemed invalid merely on the ground that no charge was framed unless in the opinion of the Court of appeal, confirmation or revision, a failure of justice has in fact been occasioned thereby.

13. In the present case there is apparently no compliance with Sections 239 and 240 i.e. consideration by the Magistrate of the police report and the material submitted before it and an opinion formed that charge should be framed. Further, no legal counsel apparently has

been provided to the petitioner before recording his plea of guilt.

14. In view of the above circumstances, I am satisfied that failure of justice has occasioned in the present case.

15. The fact that petitioner had filed another revision petition challenging a similar order regarding a plea of guilt as also the dismissal of his appeal, in my view does not preclude the petitioner from raising a pure question of law as has been done in the present case.

16. Further, perusal of order dated 08.04.2019 in Crl.Rev.P.414/2019 arising out of other proceedings shows that such a plea was neither raised nor considered by the Coordinate bench of this Court and as such mere dismissal of the revision petition arising out of other proceedings, in my view would not preclude the petitioner from raising such plea in these proceedings.

17. As noticed above, I am satisfied that failure of justice has occasioned in the present case. Accordingly, the impugned orders dated 22.11.2017 of the Trial Court recording the plea of guilt and convicting the petitioner and the judgment dated 19.03.2019 of the Appellate Court dismissing his appeal are quashed.

18. The matter is remitted to the Trial Court to the stage of Section 207 Cr.P.C. The Magistrate shall proceed further in accordance with the Cr.P.C.

19. The petition is allowed in the above terms.
20. List the case before the Trial Court on 09.05.2019.
21. Petitioner shall be produced from custody before the Trial Court on the said date, as he is incarcerated in other cases.
22. In case there is no advocate appearing for the petitioner before the trial court, the Magistrate shall provide legal aid counsel to the petitioner to represent his case prior to proceeding further with the case.
23. Copy of the order be forwarded to the Trial Court as also the concerned Superintendent jail for compliance.
24. Order *dasti* under signatures of the Court Master.

APRIL 24, 2019
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SANJEEV SACHDEVA, J