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

Date of Decision: 18.03.2020

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CRL.REV.P. 237/2020 & CrI.M.A. 5687/2020

MUKESH

..... Petitioner

Through: Mr. Manohar Lal Sharma,
Ms. Suman and Mr. Kapil
Payla, Advocates

Versus

STATE

OF NCT OF DELHI

..... Respondent

Through: Mr. Rahul Merha, Standing
Counsel (Criminal) for the
State with Mr. Chaitanya
Gosain and Mr. Divyank
Tyagi, Advocates for the
State with Inspector Ravi
Shanker and SI Ranveer
Singh, P.S.: Vasant Vihar

CORAM:

HON'BLE MR. JUSTICE BRIJESH SETHI

J U D G M E N T

BRIJESH SETHI, J. (ORAL)

1. This is a revision petition filed under Section 397 of Cr.P.C. read with Section 482 CrPC challenging order dated 17.03.2020 in SC No. 114/2013, FIR No.413/12, passed by Ld. Addl. Sessions Judge, Patiala House Courts, New Delhi.

2. It is submitted by Ld. counsel that Death Warrant has been issued against the petitioner as well as other convicts and the

execution of sentence is fixed for 20.03.2020 at 5. AM at Tihar Jail. He, however, submits that certain facts have been concealed by the prosecution. It has come to his knowledge on 16.03.2020 through one Ex. Serviceman Bhagwan Singh that petitioner was tortured in the Jail and he filed complaints before various authorities regarding the said torture of petitioner Mukesh. The said complaints are as follows;

- i. Complaint dated 29.01.2013 to Hon'ble Chief Justice of India.
- ii. Complaint dated 29.01.2013 to Learned M.M. Court of Mr. Ajaya Garg, Saket Courts, New Delhi.
- iii. Complaint dated 30.01.2013 to Ministry of Home affairs.
- iv. Complaint dated 30.01.2013 to President Secretariat by hand.
- v. Complaint dated 30.01.2013 to Hon'ble Prime Minister of India.
- vi. Complaint dated 30.01.2013 to National Human Right Commission.

3. It is further submitted that prosecution has concealed the fact that petitioner was apprehended on 17.12.2012 in Karoli, Rajasthan and brought to Delhi where he was arrested on 18.12.2012 at 6 PM. Papers of transport of petitioner from Karoli, Rajasthan to Delhi on 17.12.2012 vide which he was handed over to Delhi police are relevant for deciding the the allegations leveled against the petitioner.

4. It is next submitted that PW-58 SI Arvind Kumar has

admitted in the Trial Court that they have gone Karoli by private Car, visited PS Karoli and apprehended petitioner Mukesh and then returned to Delhi. This fact has also not been appreciated by the Ld. Trial Court.

5. It is next submitted that one of the alleged accomplice Ram Singh was permanently disabled and could not operate his right hand and, therefore, he could not have operated the bus at the time of commission of offence. There is a Disability Certificate issued by the competent authority to this effect. The said Certificate dt. 25.08.2010 was not placed on record and thus the fact could not be considered by the Ld. Trial Court and this has resulted in miscarriage of justice.

6. It is next submitted that Ld. Addl. Sessions Judge without applying his mind has dismissed the application of the petitioner filed under Section 44 of the Indian Evidence Act, 1872 with harsh allegations of filing false averments by the counsel and recommended to the Bar Council for action against the Ld. counsel.

7. It is further submitted that Ld. Addl. Sessions Judge has not verified the documents which reveal torture of the petitioner Mukesh. This is the duty of the Ld. Public Prosecutor to prove the case beyond reasonable doubt. Denial of call of records by the Ld. ASJ and verification of evidence is not in accordance with law and has resulted in miscarriage of justice.

8. It was next argued that Statement of the petitioner under Section 313 CrPC was recorded when he was being tortured and thus a true and correct statement could not be recorded and this fact

vitiates the judgment passed against the petitioner.

9. Ld. counsel for the petitioner has next argued that judgment against the petitioner was obtained by fraud by the prosecution by concealing material documents and, it is, therefore, prayed that order dated 17.03.2020 passed by Ld. Addl. Sessions Judge be set aside, in the interest.

10. Learned Counsel for the petitioner has also relied upon one of the judgment of Hon'ble Supreme Court 'S. P. Chengalvaraya Naidu (dead) by L.Rs. vs. Jagannath (dead) by L.Rs. and others' AIR 1994 SUPREME COURT 853.

11. Ld. Standing Counsel (Criminal) for the State has vehemently opposed the petition and submitted that same deserves to be dismissed with heavy cost. It is submitted that present revision petition is misuse of the process of law and has been filed to delay the execution of the sentence of the petitioner and other convicts which is already fixed for 20.03.2020. Ld. Standing counsel submitted that a fair trial was conducted by the Ld. Addl. Sessions Judge vide which the petitioner was held guilty and sentenced to death. The appeal has also been dismissed by the High Court and thereafter Hon'ble Supreme Court has also dismissed the SLP as well as Curative petition filed by the petitioner. He has further submitted that Ld. Trial Court has rightly observed that petition is frivolous and the Ld. counsel needs to be sensitized and a copy of the order has been rightly sent to the Bar Council of India.

12. He has next argued that there is nothing on record to suggest that a fraud has been played upon the Court. The petitioner could

have taken all the pleas which have been raised here, before the Ld. Trial Court and this is not the stage to consider the documents being referred to by the Ld. counsel for the petitioner and has prayed for dismissal of the petition with heavy cost and prayed that contempt proceedings be initiated against the Ld. counsel for the petitioner for filing frivolous petition.

13. I have carefully considered the rival submissions. Ld. counsel for the petitioner has relied upon Hon'ble Supreme Court's judgment 'S. P. Chengalvaraya Naidu (dead) by L.Rs. vs. Jagannath (dead) by L.Rs. and others' AIR 1994 SUPREME COURT 853. I have gone through the same and it is distinguishable on the basis of facts and circumstances stated herein.

14. A very detailed order dated 17.03.2020 has been passed by Ld. ASJ on 17.03.2020 on the application moved by the Ld. Counsel for the petitioner U/S. 44 of the Indian Evidence Act, 1872. Ld. ASJ has categorically held that the application under U/S. 44 of the Indian Evidence Act 1872 is not maintainable. He has given detailed reasons for the same. Section 44 of the Indian Evidence Act, 1872 is qualified by Section 40, 41 and 42. Section 40 of the Act states the existence of any judgment, order or decree which by law prevents any Courts from taking cognizance of a suit or holding a trial is a relevant fact when the question is whether such Court ought to take cognizance of such suit, or to hold such trial. Section 41 of the Act relates to relevancy of certain judgments in probate, etc. Section 42 of the Act states that judgments, orders or decrees other than those mentioned in Section 41, are relevant if

they relate to the matters of public nature relevant to the enquiry; but such judgments orders or decrees are not conclusive proofs of that which they states. Ld. counsel for the petitioner was unable to clarify as to how Ld. ASJ is wrong in his order that Sec. 44 of the Indian Evidence Act, 1872 does not apply. Ld. Counsel for the petitioner has, however, argued that it is a settled law that the fraud vitiates the proceedings. According to him, a fraud has been played upon the court by suppressing the material facts.

15. I have given my thoughts to the contention of Ld. Counsel for the petitioner. No fraud has been played upon the Court. A fair and proper trial has been conducted by Ld. ASJ where fair and proper opportunity was given to the petitioner to cross examine all the prosecution witnesses and to give his statement under Section 313 Cr.P.C. Even opportunity was given to the petitioner to lead his evidence in defence. A detailed judgment was passed by the Ld. ASJ running into 237 pages vide which the petitioner was held guilty and convicted for the offences charged and was sentenced to death. The same has been affirmed by this court in appeal as well as by the Hon'ble Supreme Court in SLP. Curative petition of the petitioner has also been dismissed by the Hon'ble Supreme Court. The appeal of the petitioner and other convicts was dismissed by this Court vide a detailed judgment running into 340 pages. In the opinion of the Court, the plea of the petitioner is frivolous. In case there was any torture, the petitioner could have even written a letter from the jail to the concerned trial court, High Court or he could have brought this fact to the knowledge of his relatives during

meetings (*Mulakats*). He could have even brought this fact to the knowledge of the Ld. counsel representing him during the trial or even in appeal. In the opinion of this Court, the plea is taken at this stage only to delay the proceedings and therefore, the contention of the petitioner cannot be accepted and the same is rejected.

16. So far as complaint filed by Ex-Army man Sh. Bhagwan Singh is concerned, a photocopy thereof has been handed over to this court. A perusal thereof reveals that complaint pertains to the year 2013. This ground taken in the instant petition at such a belated stage is of no help to the petitioner as he has exhausted all the remedies available to him and has been held guilty by the Ld. Trial court and his appeal as well as SLP and curative petition stand dismissed. In the opinion of the Court, contention has only been raised to delay the proceedings and the same is hereby dismissed being devoid of any substance.

17. Ld. Counsel for the petitioner has alleged that the document Annexure P-1 which has been referred to by the Ld. Trial Court in its impugned judgment is not the same complaint which he had received from Ex- Army man Sh. Bhagwan Singh on 16.03.2020. I have given my thoughts to the matter and am of the opinion that even if it is assumed for the sake of argument that Annexure P-1 is not the complaint filed by the Ex-serviceman Sh. Bhagwan Singh, it does not vitiate the trial for the reason that there were number of opportunities available to the petitioner to raise the plea before the trial court where trial was going on or this court where the appeal was filed or even in SLP before the Hon'ble Supreme Court. This

frivolous plea has only been taken to delay the execution of the sentence imposed upon the petitioner.

18. The argument of Ld. Counsel for the petitioner that one accomplice Ram Singh was permanently disabled and was unable to drive the vehicle and this fact was not raised before the court concerned also does not help the case of petitioner. These points ought to have been taken at the appropriate stage and at this belated stage, the argument has only been raised with an intention to delay the execution of the sentence.

19. The Ld. counsel for the petitioner has next argued that petitioner was arrested from Karoli and was brought to Delhi and has been shown to have been arrested from Delhi on 18.12.2012. This fact was earlier also considered by this Court in its judgment and it has been observed that petitioner Mukesh in his statement recorded under Section 313 CrPC has submitted that he was apprehended from Ravi Dass Camp. This Court has further observed that in any event it is settled preposition of law that any irregularity in the arrest has no bearing on the trial. In this regard this Court has referred to number of judgments of Privy Council as well as of Hon'ble Supreme Court and has rejected the contention of the petitioner. A frivolous plea, therefore, has been taken by the petitioner which is devoid of any substance and is hereby dismissed.

20. During the course of arguments, Ld. Counsel for the petitioner submitted that in the impugned order of 17.03.2020, Ld. ASJ has made certain observations on the conduct of the counsel. Ld. ASJ has observed that the conduct of the Ld. Counsel for the

petitioner needs to be brought to the notice of the Bar Council of India for appropriate sensitization exercise. Perusal of the revision petition, however, reveals that no prayer has been made by the Ld. counsel to set aside the above comments. However, perusal of impugned order of 17.03.2020 reveals that Ld. Trial Court has nowhere recommended that an action be taken against Ld. Counsel for any misconduct. A very innocuous observation has been made to the effect that conduct of Ld. Counsel for the petitioner needs to be brought to the notice of Bar Council of India for sensitization and this observation has been made by Ld. ASJ keeping in view the fact that judicial time is precious and is required to be spent sagaciously. Since no prayer has been made in this petition for expunging these remarks and moreover the observation only refers to sensitization of the Ld. Counsel, there are no grounds to interfere in the observation made by the Ld. Trial Court.

21. This court is, therefore, of the opinion that there are no grounds to interfere in the detailed and reasoned order dated 17.03.2020 passed by the Ld. Trial Court. There is nothing on record to suggest that trial stands vitiated because material evidence was concealed. There is, thus, no infirmity, illegality or irregularity in the order passed by the Ld. Trial court. The present revision petition along with the other application is, therefore, dismissed and stands disposed of accordingly.

22. Dasti.

BRIJESH SETHI, J

MARCH 18, 2020/AP/AK/R