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IN THE HIGH COURT OF DELHI AT NEW DELHI

Judgment Delivered on : 19.02.2020

CRL.REF. 2/2017

COURT ON ITS OWN MOTION

.... Petitioner

Versus

STATE

.... Respondent

Advocates who appeared in this case:

For the Petitioner : Mr. Dayan Krishnan, Senior Advocate (Amicus Curiae)
with Ms. Manvi Priya, Ms. Aakash L., Mr. Sukrit Seth, Mr.
Sanjeev S., and Ms. Niharika Kaul, Advocates.
Mr. Raj Mohan, Advocate for Mr. Siddharth Agarwal (Amicus
Curiae).
For the Respondent : Mr. Ravi Nayak, APP for State.

CORAM:

HON'BLE MR. JUSTICE SIDDHARTH MRIDUL

HON'BLE MR. JUSTICE I.S. MEHTA

J U D G M E N T

SIDDHARTH MRIDUL, J (OPEN COURT).

1. In order to effectively adjudicate the purely academic and in our view, the premature and inchoate issue raised in the present reference, it would be profitable to extract *in extenso* the provisions of Section 395 of the Code of Criminal Procedure, 1973.

“395. Reference to High Court.

(1) Where any Court is satisfied that a case pending before it involves a question as to the validity of any Act,

Ordinance or Regulation or of any provision contained in an Act, Ordinance or Regulation, the determination of which is necessary for the disposal of the case, and is of opinion that such Act, Ordinance, Regulation or provision is invalid or inoperative, but has not been so declared by the High Court to which that Court is subordinate or by the Supreme Court, the Court shall state a case setting out its opinion and the reasons therefor, and refer the same for the decision of the High Court. Explanation.- In this section, "Regulation" means any Regulation as defined in the General Clauses Act, 1897 (10 of 1897), or in the General Clauses Act of a State.

(2) A Court of Session or a Metropolitan Magistrate may, if it or he thinks fit in any case pending before it or him to which the provisions of sub-section (1) do not apply, refer for the decision of the High Court any question of law arising in the hearing of such case.

(3) Any Court making a reference to the High Court under sub-section (1) or sub-section (2) may, pending the decision of the High Court thereon, either commit the accused, to jail or release him on bail to appear when called upon."

2. A plain reading of the mandate of the above extracted provision, makes it clear that, the *sine qua non* for its invocation, is the requirement of the **recording of satisfaction of the concerned Court, that in a case pending adjudication before it, questions** as to the validity of an Act, Ordinance or Regulation or of any provision

contained in an Act, Ordinance or Regulation, **the determination of which is necessary for the disposal of that case, arise for consideration.**

3. The second requirement of the instant provision stipulates that, if the subordinate Court is of the opinion that, such Act, Ordinance or Regulation or provision is invalid or inoperative, but has not been so declared by the High Court to which such Court is subordinate or by the Hon'ble Supreme Court, that Subordinate Court shall state a case setting out such an opinion and the reasons therefor, and refer the same, for the decision of the concerned High Court.

4. In the present reference, we observe that the same is inchoate and pre-mature, inasmuch as, there is no articulation of the facts and circumstances - attendant and antecedent - of the case, out of which the present reference arises. In this behalf it is pertinent to observe that the determination of a question involved in a given case, as to the validity and operability of a provision contained in an Act, Ordinance or Regulation, can only arise from the facts and circumstances of such a case. In this regard, it is also observed that, the subject case was at the stage of hearing arguments on charge, when the present reference was made.

5. We are, therefore, of the considered view that, it was not competent for the Magistrate, at the stage of hearing arguments on charge, to project and speculate in relation to the questions that could arise for consideration, involving the determination of the validity of a provision of any Act, Ordinance or Regulation, i.e. Section 29 *vis-à-*

vis statutory powers of a Court; so as to warrant a reference of the same for the decision of the High Court.

6. Even otherwise, the Code of Criminal Procedure, 1973; and in particular the provisions of Sections 325 and 323 statutorily and appropriately address the academic issue that is sought to be raised in the present reference.

7. Before we part with the order, it is incumbent upon us to observe that, the factual matrix of the relevant case, that is pending adjudication before the Magistrate concerned; as well as the legal context in which the present reference has been made, is conspicuous by its absence.

8. We are therefore, of the considered view that the present reference is inchoate and premature and resultantly does not warrant a decision *qua* the validity or operability of any provision of law, at this stage. The same is answered accordingly.

SIDDHARTH MRIDUL
(JUDGE)

I.S. MEHTA
(JUDGE)

FEBRUARY 19, 2020
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