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

+ CRL.M.C. 3343/2022, CRL.M.A. 14063/2022, CRL.M.A. 20473/2022

IQBAL SINGH @ IQBAL AHMED

..... Petitioner

Through: Mr. Pradeep Kumar Arya, Mr. Prateek Singh and Mr. Gaurav Chaudhry, Advocates

versus

STATE & ANR.

..... Respondents

Through: Mr. Raghuvinder Verma, APP for the State with IO

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Date of Decision: 24th April, 2023

CORAM:

HON'BLE MR. JUSTICE DINESH KUMAR SHARMA

J U D G M E N T

DINESH KUMAR SHARMA, J. (Oral)

1. The present petition has been filed challenging the order dated 09.10.2019 whereby the learned Principal District and Sessions Judge allowed the Criminal Revision No. 94/2019 being filed by the respondent No.2/complainant and remanded the matter back to the learned Trial Court with a direction to pass a fresh order in

accordance with law.

2. In brief, facts of the case are that a case FIR No.354/2015 under Sections 406/419/420/465/467/468/471/34 IPC, registered at PS Sector 23, Dwarka was lodged on the complaint of Respondent No.2.
3. The Police after investigation filed the cancellation report inter alia holding that on the basis of the statement of witnesses, FSL report and documents collected during investigation, no offence of forgery, breach of trust, cheating, impersonation etc as alleged by the complainant could not be established against the Iqbal Singh and other accused persons. The complainant filed the protest petition and vide order dated 04.06.2019, after taking into account, the entire facts and circumstances, Learned Trial Court accepted the cancellation report and dismissed the protest petition. Aggrieved of the said order of dismissal, the complainant-respondent No.2 filed the revision petition a bearing CR No.94/2019 in which the impugned order was passed.
4. Admittedly, in these proceedings, the respondent No.2/complainant did not implead the petitioner/accused. The learned Principal District and Sessions Judge also did not implead the petitioner/accused and decided the revision petition without issuing of the notice.
5. Learned APP for the State submits that as per instructions, they have already filed the charge sheet before the learned Trial Court.
6. At the outset, this court is of the opinion that impugned order cannot be sustained in view of Section 399 Cr. PC and Section 401 of the Cr.

PC. Section 401 reads as under:

“401. High Court's Powers of revisions.

(1) In the case of any proceeding the record of which has been called for by itself or Which otherwise comes to its knowledge, the High Court may, in its discretion, exercise any of the powers conferred on a Court of Appeal by sections 386, 389, 390 and 391 or on a Court of Session by section 307 and, when the Judges composing the Court of revision are equally divided in opinion, the case shall be disposed of in the manner provided by section 392.

(2) No order under this section shall be made to the prejudice of the accused or other person unless he has had an opportunity of being heard either personally or by pleader in his own defence.

(3) Nothing in this section shall be deemed to authorise a High Court to convert a finding of acquittal into one of conviction.

(4) Where under this Code an appeal lies and no appeal is brought, no proceeding by way of revision shall be entertained at the instance of the party who could have appealed.

(5) Where under this Code an appeal lies but an application for revision has been made to the High Court by any person and the High Court is satisfied that such application was made under the erroneous belief that no appeal lies thereto and that it is necessary in the interests of justice so to do, the High Court may treat the application for revision as a petition of appeal and deal with the same accordingly.”

7. Section 399 Cr. PC reads as under:

“(1) In the case of any proceeding the record of which has been called for by himself, the Sessions judge may exercise all or any of the powers which may be exercised by the High Court under sub- section (1) of section 401.

(2) Where any proceeding by way of revision is commenced before a Sessions Judge under sub- section (1), the provisions of sub- sections (2), (3), (4) and (5) of section 401 shall, so far as may be, apply to such proceeding and references in the said sub- sections to the High Court shall be construed as references to the Sessions Judge.

(3) Where any application for revision is made by or on behalf of an person before the Sessions Judge, the decision of the Sessions Judge thereon in relation to such person shall be final and no further proceeding by Way of revision at the instance of such person shall be entertained by the High Court or any other Court.”

8. Section 401(2) has to be read along with Section 399 (2) and the conjoint reading of Section 401 (2) and 399(2) makes it crystal clear that the learned Sessions Judge was duty bound to issue the notice to the petitioner before deciding the revision petition.
9. On account of this position of law, the impugned order is set aside and the matter is remanded back to the Court of learned Principal District and Sessions Judge, South West, Dwarka, New Delhi to decide the CR No. 94/2019 after giving the opportunity to the respondent of being heard.
10. In any case, while deciding the CR No. 94/2019, Principal District and Sessions Judge, South West, Dwarka, New Delhi may take into

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account the fact that the charge sheet has already been filed.

11. In view of the above, the present petition along with pending applications stands disposed of.

DINESH KUMAR SHARMA, J

APRIL 24, 2023

Pallavi