



2024:DHC:2908



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

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Judgment delivered on: 04.04.2024

+ **CRL.M.C. 2703/2024, CRL.M.A. 10298/2024, CRL.M.A. 10299/2024 & CRL.M.A. 10300/2024**

LAKSHAY JAISWAL

..... Petitioner

Through: Mr Harshit Jain, Mr Deepak Yadav
and Mr Shubham Singh, Advocates.

versus

STATE NCT OF DELHI AND ANR.

..... Respondents

Through: Mr Raghvinder Varma, APP for the
State with SI Sangeeta Malik, PS
Model Town.
Mr Sunil K. Mittal, Mr Vipin K.
Mittal and Ms Aanchal Mittal,
Advocates for R-2.**CORAM:****HON'BLE MR. JUSTICE VIKAS MAHAJAN****JUDGMENT****VIKAS MAHAJAN, J. (ORAL)**

1. The present petition has been filed by the petitioner praying for setting aside of the impugned order dated 23.03.2024 passed by the Court of learned Additional Session Judge, North District, Rohini Courts, Delhi in CR No. 86/2024. By way of said order the learned Additional Session Judge has set aside the order dated 19.03.2024 passed by the learned Metropolitan Magistrate and remanded the matter back to learned Metropolitan Magistrate to re-consider the application of the Investigating Officer seeking vacation

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of stay of proceedings initiated under Section 82 CrPC against the petitioner herein.

2. Issue notice. Learned APP for the State accepts notice. Notice is also accepted by the learned counsel for the complainant/respondent, who appears on advance notice.

3. With the consent of the parties, the matter is taken up for disposal today itself.

4. The relevant undisputed facts giving rise to the present petition are as follows:

- a. An FIR under Sections 354(B)/506/509 IPC came to be registered against the present petitioner at the instance of the complainant on 31.01.2024 at P.S. Model Town. Apprehending arrest in the said case, an application seeking pre-arrest bail under Section 438 CrPC was filed by the petitioner on 07.02.2024 before the learned ASJ. While the application of the petitioner under Section 438 CrPC was pending, NBW's were issued against the petitioner on 06.02.2024 and process under Section 82 CrPC was issued on 14.02.2024.
- b. On an application being filed by the petitioner seeking recall/cancellation of process under Section 82 CrPC, the learned Metropolitan Magistrate *vide* order dated 23.02.2024 stayed the process under Section 82 CrPC issued against the petitioner till 28.03.2024 and posted the matter for hearing on that date.

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- c. Being aggrieved by the order dated 23.02.2024 passed by the learned Metropolitan Magistrate, a revision petition being CR Rev 61/2024 was filed by complainant herein on 26.02.2023 before the learned ASJ.
- d. Thereafter, the application of the petitioner under Section 438 CrPC was dismissed by the learned ASJ on 04.03.2024. Feeling aggrieved by the said order, the petitioner approached this Court seeking anticipatory bail in BAIL APPLN 893/2024, which was listed for the first time before this Court on 12.03.2024.
- e. Having regard to the fact that the application of the petitioner seeking pre-arrest bail already stood dismissed by the learned ASJ, it was directed by the Revisional Court *vide* order dated 13.03.2024 that the learned Metropolitan Magistrate shall prepone the matter and decide the application moved on behalf of the petitioner seeking stay of the proceedings under Section 82 CrPC before the next date fixed by the Revisional Court i.e. 20.03.2024.
- f. During the pendency of the bail application of the petitioner before this Court on 18.03.2024, it was agreed between the parties that they shall make an endeavour to settle the matter amongst themselves and accordingly the matter was adjourned. This aspect of the matter is not in dispute.
- g. On the same day, the learned counsel for the petitioner appeared before the court of learned Metropolitan Magistrate



and apprised the Court of the proceedings that transpired before this Court. Accordingly, the learned Metropolitan Magistrate issued notice to the IO of the case and posted the matter for hearing on 19.03.2024, on which date learned Metropolitan Magistrate noting that the parties have agreed to explore the possibility of settlement and further since the accused has appeared before the Court through VC, the process issued under Section 82 CrPC was cancelled by the learned MM. Against this order, a revision petition was filed, wherein the impugned order came to be passed.

5. Mr. Harshit Jain, learned counsel for the petitioner submits that the impugned order whereby the order cancelling the process under Section 82 CrPC is set aside, has been passed to the prejudice of the petitioner/accused without issuing notice to him, which is contrary to the provisions of Section 399(2) and Section 401(2) of the Code of Criminal Procedure. The relevant provisions read as under:

“399. Sessions Judge's powers of revision.

- (1) XXXX XXXX XXXX
- (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.*

401. High Court's powers of revision

- (1) XXXX XXXX XXXX
- (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.”

6. He further submits that order of the learned Metropolitan Magistrate is well reasoned order passed after taking all attending factors in account, in as much as, before passing the order dated 19.03.2024, notice was issued to the IO, who had confirmed that it was jointly agreed between the parties that they shall explore the possibility of a settlement. He also contends that the order of the learned Metropolitan Magistrate was passed after the petitioner /accused had appeared before the learned Metropolitan Magistrate through Video Conferencing.

7. Mr. Jain also urged that the order of the learned Metropolitan Magistrate has been set aside by the learned Revisional Court taking into account the right of the complainant to be heard, however, the complainant has no role to play in proceedings under Section 82 CrPC as the matter is between the Court, the State and the petitioner/accused.

8. *Per Contra*, Mr. Sunil K. Mittal, the learned counsel for the respondent no. 2 submits that the order of the learned ASJ is a well reasoned order and the learned ASJ has only undone the calculated fraud which has been committed by the petitioner. Elaborating on his argument, he submits that petitioner is guilty of concealing various material facts from the learned Metropolitan Magistrate and thus, is not entitled to any relief. He invited the attention of the Court to the order dated 19.03.2024 to contend that the order of learned Metropolitan Magistrate has been passed in the absence of the



complainant and without issuing notice to the complainant and thus, no opportunity of being heard was afforded.

9. He submits the order dated 19.03.2024 has come to be passed at the instance of the petitioner after it was agreed between the parties before this Court that the parties shall amicably explore the possibility of settlement amongst themselves and shall not precipitate or press for further proceedings of any of the matters. He submits when such an understanding had been arrived at between the parties, the petitioner appearing before the learned Metropolitan Magistrate, without informing that the matter was required to be adjourned beyond the next date of hearing fixed by this Court has caused prejudice to the respondent no.2/complainant.

10. He also contends that order of the learned Metropolitan Magistrate is contrary to law, in as much as, the learned Metropolitan Magistrate does not have power to review its own order. He further submits that the order dated 19.03.2024 could not have been passed by the learned Metropolitan Magistrate taking into account that the accused has appeared before the Ld, Metropolitan Magistrate through Video Conferencing and the same is only an attempt to overreach the process of law.

11. In so far as the contention of the learned counsel for the petitioner that no notice was issued petitioner, it was submitted on behalf of the complainant that unexecuted NBWs are pending against the petitioner and even process under Section 82 Cr.P.C has also been initiated against the petitioner, hence issuance of notice would have been an exercise in futility. He further submits that no prejudice has been caused to the petitioner as the learned ASJ has only undone the calculated fraud played by the petitioner



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and the matter has been remanded back to learned MM for considering the application of the IO seeking vacation of stay of the proceedings under Section 82 CrPC.

12. I have heard the learned counsel for the parties, as well as, the learned APP for the State and have perused the material on record including the written submissions filed by the respective parties.

13. The primary ground urged by the learned counsel for the petitioner is that the impugned order has been passed by the learned ASJ contrary to law, inasmuch as no notice was issued before passing the impugned order to the prejudice of the petitioner.

14. There appears to be substance in the contention of the learned counsel for the petitioner, for the scheme of the CrPC reveals that the revisional powers exercised by the court of Sessions under Section 399 are akin to the revisional power of the High Court under Section 401 CrPC by virtue of Section 399(2) CrPC. A bare perusal of Section 401(2) CrPC manifests that while exercising powers under revisional jurisdiction, no order to the prejudice of the accused or other person shall be made unless he has had an opportunity of being heard either personally by his pleader. This requirement of law is in consonance with the principles of natural justice. Reference in this regard may be had to the decision of the Supreme Court in ***Raghu Raj Singh Rousha vs. Shivam Sundaram Promoters Private Limited & Anr: (2009) 2 SCC 363***, the relevant paragraphs of which read as under:

“12. Section 397 of the Code empowers the High Court to call for records of the case to exercise its power of revision in



order to satisfy itself as regards correctness, legality or propriety of any finding, sentence or order recorded or passed and as to the regularity of any proceedings of such inferior court. Sub-section (2) of Section 397 of the Code, however, prohibits exercise of power in relation to any interlocutory order passed in any proceeding.

13. *Whereas Section 399 of the Code deals with the Sessions Judge's power of revision, Section 401 thereof deals with the High Court's power of revision. Sub-section (2) of Section 401 of the Code reads thus:*

“401. (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.”

14. *Submission of Mr Jaspal Singh that by reason of the impugned order the appellant was not prejudiced and in any event at the pre-summoning stage, he was not an accused, cannot be accepted. Sub-section (2) of Section 401 of the Code refers not only to an accused but also to any person and if he is prejudiced, he is required to be heard. An order was passed partially in his favour. The learned Metropolitan Magistrate has refused to exercise its jurisdiction under Section 156(3) of the Code. Had an opportunity of hearing been given to the appellant, he could have shown that no revision application was maintainable and/or even otherwise, no case has been made out for interference with the impugned judgment.*

15. *In Makkapati Nagaswara Sastri v. S.S. Satyanarayan [(1981) 1 SCC 62 : 1981 SCC (Cri) 111] this Court opined that the principle of audi alteram partem is applicable in a proceeding before the High Court.*

16. *Yet again, in P. Sundarrajan v. R. Vidhya Sekar [(2004) 13 SCC 472 : (2006) 1 SCC (Cri) 345] this Court held: (SCC pp. 472-73, paras 4-5)*

“4. On the above basis, it proceeded to consider the material produced by the petitioner before it and without taking into consideration the defence that was



available to the respondent proceeded to set aside the order of the Magistrate, and directed the said court to take the complaint on file and proceed with the same in accordance with law.

5. In our opinion, this order of the High Court is ex facie unsustainable in law by not giving an opportunity to the appellant herein to defend his case that the learned Judge violated all principles of natural justice as also the requirement of law of hearing a party before passing an adverse order.”

15. In this view of the matter, the impugned order passed by the learned ASJ is clearly in the teeth of Section 399(2) read with Section 401(2) CrPC.

16. The contention of Mr Mittal that issuance of notice to the petitioners by the learned Revisional Court would have been an exercise in futility since the petitioner is absconding cannot be sustained. Suffice it to say that the right of being heard of an accused cannot be curtailed merely because proceedings under Section 82 CrPC have been initiated against the petitioner, more particularly when an order in favour of the petitioner had been passed by the learned Metropolitan Magistrate cancelling the process under Section 82 CrPC.

17. In view of the aforesaid discussion, the order of the learned ASJ dated 23.03.2024 is set aside and the matter is remanded back to the learned Additional Sessions Judge to consider the petition of the complainant afresh and to decide the same within three weeks from today after affording an opportunity of hearing to the petitioner in accordance with law. The parties are directed to appear before the learned Additional Sessions Judge on 16.04.2024.



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18. As this Court has set aside the impugned order and remanded the matter to the learned ASJ for a fresh decision on the limited ground as noted above, it is deemed appropriate not to comment on the conduct of the parties. However, to enable the learned ASJ to arrive at a just decision, it needs to be placed on record that during the pendency of the Bail Appln No. 893/2024 filed by the petitioner seeking anticipatory bail, the respective counsel for the parties had agreed that they shall explore the possibility of amicable settlement and for the said purpose the bail application of the petitioner was adjourned twice by this Court on 18.03.2024 and 28.03.2024. However, this Court has now been apprised that no such settlement has been arrived at till date nor there is any possibility of a settlement.

19. The petition is disposed of in the above terms.

20. Order be uploaded on the website of this Court.

21. Order *dasti* under the signatures of the Court.

VIKAS MAHAJAN, J

APRIL 04, 2024

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