



2024:DHC:4267



\$~73

* **IN THE HIGH COURT OF DELHI AT NEW DELHI*****Date of decision: 22.05.2024***

+ W.P.(CRL)-1657/2024 & CRL.M.A. 16152/2024

MUNNA SINGH & ANR.

..... Petitioners

Through: Mr.Kamlesh Kr. Mishra,
Ms.Renu, Ms.Manya Mishra,
Mr.Dipak Raj Singh,
Mr.Yashvardhan and
Ms.Shivani Verma, Advs.

versus

STATE OF NCT OF DELHI & ORS. Respondents

Through: Mr.Amol Sinha, ASC (Crl),
Mr.Kshitiz Garg, Mr.Ashvini
Kumar, Ms.Zhavi Lazarus,
Advs. with SI Sachin Gulia.
Mr.Aman Usman, APP
Mr.Shashank Garg and
Ms.Aradhya Chaturvedi, Advs.
for R-2/RG,DHC.

CORAM:**HON'BLE MR. JUSTICE NAVIN CHAWLA****NAVIN CHAWLA, J. (ORAL)**

1. This petition has been filed under Article 226 of the Constitution of India read with Section 482 of the Code of Criminal Procedure, 1973 (in short, 'Cr.P.C.'), praying for a declaration that the arrest of the petitioners made on 18.05.2024 in relation to the Criminal case, being SC no. 652/2016, titled ***State v. Dharam Pal Etc.***, without there being any judicial Order convicting the petitioners, was illegal.



2024:DHC:4267



2. As a brief background, the learned counsel for the petitioners contends that the petitioners are facing trial in the abovementioned Criminal Case arising out of the FIR No.71/2024 registered at Police Station: Crime Branch, Delhi, pending adjudication before the learned Additional Sessions Judge (FTC), Shahdara District, Karkardooma Courts, Delhi, (hereinafter referred to as the 'Trial Court'). It is stated that the petitioners were granted Bail during the course of the trial. It is further stated that on 15.05.2024, the statement of the petitioners under Section 313 of the Cr.P.C. was recorded and the case was put up on 18.05.2024 for consideration/judgment.

3. By the order dated 15.05.2024, the learned Trial Court also directed the petitioners to deposit bail bonds in compliance with Section 437A of the Cr.P.C., if not already furnished.

4. It is stated that on 18.05.2024, when the petitioners appeared before the learned Trial Court, they were taken into custody, however, no orders taking them into custody were supplied to the petitioners or to their counsels.

5. It is stated that the petitioners, therefore, on 20.05.2024, even tried to move an application seeking a copy of the Order dated 18.05.2024, however, the same was also not taken on record, and the Reader merely showed the application to the learned Trial Court, whereafter, the learned Trial Court stated that the Order will be passed on or before 23.05.2024.

6. Faced with this situation, the petitioners filed the present petition.



2024:DHC:4267



7. The petition was listed yesterday, on being mentioned.
8. This Court by an Order dated 21.05.2024, recorded the submission of the learned counsel for the petitioners that the Order dated 18.05.2024 has now been uploaded on the website, however, the judgment on conviction, of the same day, is still not available on the website nor has been supplied to the petitioner or their counsels. The petition was, therefore, listed for today for the learned counsel for the respondent no.2 to seek instructions in this regard.
9. In the pre-lunch session, when the matter was called, the situation still remained the same and the judgment on conviction was still not available on the website. It had also not been supplied to the petitioners as the petitioners had not been produced from jail.
10. The learned Registrar General of this Court was therefore, directed to telephonically seek a report from the learned Trial Court, concerning the judgment that is purported to have been pronounced on 18.05.2024 in SC no. 652/2016 titled *State v. Dharam Pal Etc.*, convicting the petitioners herein, as also on, if it already stands pronounced, then why the same has still not been uploaded on the website. The report was directed to be placed before this Court at 04.00 PM, today itself.
11. At 04.00 P.M., when the petition was called again, the learned counsel for the respondent no.2, on instructions, informed that the judgment dated 18.05.2024 has now been uploaded on the website and has also been sent to the petitioners



through the concerned Jail Superintendent.

12. The instant petition presents the Court with a glaring infirmity in the procedure followed by the learned Trial Court.

13. Section 353 of the Cr.P.C. reads as under:

“353. Judgment.—(1) The judgment in every trial in any Criminal Court or original jurisdiction shall be pronounced in open Court by the presiding officer immediately after the termination of the trial or at some subsequent time of which notice shall be given to the parties or their pleaders,—

(a) by delivering the whole of the judgment; or

(b) by reading out the whole of the judgment; or

(c) by reading out the operative part of the judgment and explaining the substance of the judgment in a language which is understood by the accused or his pleader.

(2) Where the judgment is delivered under clause (a) of sub-section (1), the presiding officer shall cause it to be taken down in shorthand, sign the transcript and every page thereof as soon as it is made ready, and write on it the date of the delivery of the judgment in open Court.

(3) Where the judgment or the operative part thereof is read out under clause (b) or clause (c) of sub-section (1), as the case may be, it shall be dated and signed by the presiding officer in open Court, and if it is not written with his own hand, every page of the judgment shall be signed by him.

(4) Where the judgment is pronounced in the manner specified in clause (c) of sub-section (1), the whole judgment or a copy thereof shall be immediately made available for the perusal of the parties or their pleaders free of cost.



2024:DHC:4267



(5) If the accused is in custody, he shall be brought up to hear the judgment pronounced.

(6) If the accused is not in custody, he shall be required by the Court to attend to hear the judgment pronounced, except where his personal attendance during the trial has been dispensed with and the sentence is one of fine only or he is acquitted:

Provided that, where there are more accused than one, and one or more of them do not attend the Court on the date on which the judgment is to be pronounced, the presiding officer may, in order to avoid undue delay in the disposal of the case, pronounce the judgment notwithstanding their absence.

(7) No judgment delivered by any Criminal Court shall be deemed to be invalid by reason only of the absence of any party or his pleader on the day or from the place notified for the delivery thereof, or of any omission to serve, or defect in serving, on the parties or their pleaders, or any of them, the notice of such day and place.

(8) Nothing in this section shall be construed to limit in any way the extent of the provisions of section 465."

14. A reading of the above would show that the judgment has to be pronounced in the open Court by the presiding officer either by delivering the whole of the judgment or by reading out the whole of the judgment or by reading out the operative part of the judgment and explaining the substance of the judgment in a language which is understood by the accused or his pleader, signing the same on each page in the open Court, and by



2024:DHC:4267



making a copy thereof immediately available for the perusal of the parties or their pleaders free of cost.

15. In the present case, this Court has been left with a belief that on 18.05.2024, when the petitioners were taken into custody, the judgment on conviction was not even ready with the learned Trial Court. This belief is strengthened by the Order dated 18.05.2024, which, it is claimed, was uploaded later, only on 21.05.2024, on the website by the learned Trial Court. Even copy of this order is claimed to have not been supplied to the petitioners. The same reads as under:

“Vide separate judgment of this day, both the accused are convicted for the offence(s) charged with. Both the convicts are taken into custody and remanded to JC.

Put up on 22.05.2024 for supplying the copy of the judgment.

Put up on 28.05.2024 for arguments on the point of Sentence as requested by Ld. Assisting Counsel for the accused.”

16. If the judgment was ready, there was no reason for the learned Trial Court to put the case for supplying copy thereof to the petitioners on 22.05.2024.

17. Making available a copy of the judgment, at least, for the perusal of the accused or his/her pleader, is vital as the accused can avail of a remedy of appeal against the Order/judgment of conviction immediately without awaiting the Order on sentence. The accused is also entitled to know the reason for his conviction and why he/she is being arrested and his/her liberty being taken away.



2024:DHC:4267



18. In the present case, not making available a copy of the judgment on conviction to the accused, and taking them into custody, in my view, therefore, was inappropriate on the part of the learned Trial Court and denial of not only a Statutory Right but also a Constitutional Right to the accused, as the judgment was not read as a whole in open court.

19. The learned ASC (Crl.) and the learned APP, however, state that this would, at best, be a procedural lapse and should not vitiate the proceedings/the judgment on conviction passed by the learned Trial Court. Taking into account the judgment of the Supreme Court in *Iqbal Ismail Sodawala v. State of Maharashtra & Ors.*, (1975) 3 SCC 140, I am in agreement with their submission.

20. Now that the said judgment is available with the petitioners as also has been stated to be uploaded on the website, the present petition is disposed of reserving all liberty with the petitioners to avail of such remedy as may be available to them in accordance with law.

21. A copy of this Order shall, however, be placed before the '*Inspecting Judges Committee*' of the Officer concerned.

22. The learned Principal District and Sessions Judges of all the Districts Courts in Delhi are requested to sensitize the presiding judicial officers to pronounce their judgments on conviction only when they are ready for pronouncement and, in case where they are convicting the accused and taking the accused into custody, immediately supply a copy thereof, free



2024:DHC:4267



of cost, to the accused for the accused to avail of the remedies available to them in accordance with law.

23. A copy of this Order be circulated to the learned Principal District and Sessions Judges of all the District Courts in Delhi.

24. The pending application also stands disposed of.

NAVIN CHAWLA, J

MAY 22, 2024/ns/AS

Click here to check corrigendum, if any