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

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Reserved on: 13.12.2023***Pronounced on: 08.01.2024***+ **CRL.M.C. 9128/2023 & CRL.M.A. 34100/2023****MANJINDER SINGH SIRSA**

..... Petitioner

Through: Mr. R.K. Handoo, Mr. Yoginder Handoo, Mr. Aditya Chaudhary, Mr. Solanki and Ms. Medha Gaur, Advocates.

versus

STATE OF NCT OF DELHI AND ANR.

..... Respondents

Through: Mr. Manoj Pant, APP for the State.
Mr. Mohit Mathur, Sr. Advocate along with Mr. Naginder Benipal, Mr. Sumit Mishra, Ms. Bharti Nayar Benipal, Mr. Naveen Chaudhary, Mr. Marithi Kambiri and Mr. Ankit Siwach, Advocates

CORAM:**HON'BLE MS. JUSTICE SWARANA KANTA SHARMA****JUDGMENT****INDEX TO THE JUDGMENT**

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SWARANA KANTA SHARMA, J.

1. The present petition under Section 482 of the Code of Criminal Procedure, 1973 ('Cr.P.C') has been filed on behalf of the petitioner, seeking quashing and setting aside of order dated 06.12.2023, passed by learned Additional Chief Metropolitan Magistrate-04, Rouse Avenue District Court, New Delhi in Complaint Case No. 09/2023, titled '*Manjit Singh G.K. v. Manjinder Singh Sirsa & Ors.*' whereby the petitioner's application seeking transfer or return of complaint on account of lack of jurisdiction, was rejected by the learned ACMM.

FACTUAL BACKGROUND

2. The background facts, leading to the filing of present petition, are that the Hon'ble Apex Court, with the object of bringing about electoral reforms, had passed various directions in the case titled *Ashwini Kumar Upadhyay v. Union of India & Anr. W.P. (C) 699/2016*. These directions are contained in a series of orders starting from 01.11.2017, whereby, the setting up of Special Courts in various States including the State of Delhi, to escalate trial dealing with criminal cases in which MPs/MLAs are involved, were passed. Thereafter, Special Courts were constituted in Delhi vide a notification dated 23.02.2018.



3. By way of present petition, it is submitted that on 09.11.2023, in the aforesaid case, detailed directions were passed by the Hon'ble Apex Court whereby Special Courts were directed to expedite the trial of cases relating to MPs/MLAs.

4. It is the case of petitioner that he was elected as a member of Legislative Assembly of Delhi, and had become MLA on 14.04.2017, however, he had ceased to be an MLA on 11.02.2020. It is stated that the copy of the notification dated 11.02.2020, dissolving the Legislative Assembly of the NCT of Delhi, can be referred to in this regard. It is stated that since the petitioner has ceased to be an MLA on the said date, and a criminal complaint had been filed against him pertaining to the period when the petitioner had ceased to be an MLA since the allegations relate to the period post 16.02.2020, the case pending against him could not have been tried by a Special Court dealing with cases against MPs/MLAs.

5. It is also stated that respondent no. 2, who is the complainant before the learned Trial Court, had led evidence and examined certain witnesses, on the basis of which the learned ACMM had been pleased to pass summoning order dated 30.06.2023 *qua* the present petitioner. It is stated that pursuant to the passing of the summoning order, seeking appearance of the petitioner, the petitioner had appeared before the learned Trial Court, through his counsel, since he was not in India, and the proceedings were adjourned from 17.07.2023 to 20.07.2023. The present petitioner had therefore filed a petition under Section 482 of Cr.P.C., for quashing of complaint case and order of summoning passed by the learned ACMM. It is stated



that the petitioner had, on 26.07.2023, withdrawn the petition with liberty to file a revision petition before the learned Sessions Court. However, the learned Sessions Court, before whom the summoning order was challenged, was also pleased to dismiss the application for setting aside the summoning order.

6. Thereafter, the petitioner had preferred an application seeking return/transfer of the complaint, on account of lack of jurisdiction. Vide order dated 06.12.2023, the said application was dismissed by the learned ACMM, which has led to filing of present petition.

ARGUMENTS ADDRESSED BEFORE THIS COURT

7. **Learned counsel for the petitioner**, while assailing the impugned order dated 06.12.2023, argues that the learned ACMM, without appreciating the submissions of the petitioner, had proceeded to frame notice. It is argued that the intention of the Hon'ble Supreme Court of India, behind setting up of Special Courts, was to expedite cases against legislators due to rising wave of criminalization in the politics in the country, and since the Hon'ble Apex Court appreciated that due to the power that the elected representatives deem to have, Special Courts should try the case expeditiously. It is, however, stated that once a person ceased to be a sitting MP/MLA, and the alleged offences relate to post-period when the person is no longer an MP/MLA, the special court which has been setup for a specific purpose cannot expand jurisdiction to try cases against such persons, who have ceased to be MP/MLA. It is vehemently argued that it cannot be a case of once a legislator, then always a legislator. It is



stated that a person who has occupied the position of MP/MLA, once in their lifetime, and later when they had ceased to be one, any allegation made thereafter against him/her will not lead to the case being tried by the Special Court dealing with trial of cases pertaining to MPs/MLAs.

8. It is also argued that criminal trials are required to be conducted in accordance with the mandatory provisions of procedure as laid down under the Cr.P.C., and the Special Court has jurisdiction to only try cases relating to sitting and former MPs/MLAs but not their future cases, after they cease to be MPs/MLAs. It is stated that neither the notification establishing the Special Courts nor the orders passed by the Hon'ble Supreme Court in the case of **Ashwini Kumar Upadhyay** (*supra*) cover the case as the present one, where it pertains to the period when the accused had ceased to be an MP/MLA.

9. It is submitted that Special Courts have jurisdiction to try cases pertaining to MPs/MLAs, which will include existing MPs/MLAs, or former MPs/MLAs against whom criminal cases were already pending or declared as pending cases at the time of seeking election. The Special Court, thus, has no jurisdiction to try the petitioner, who at the time when the offence has been alleged to have been committed, was no longer an MLA and even as on date, is not one.

10. It is argued that the learned ACMM had failed to appreciate the order of the Hon'ble Apex Court and its intent, and had wrongly interpreted the directions of the Hon'ble Apex Court. It is also argued that the learned ACMM had failed to appreciate principle of law, laid down by the Hon'ble High Court of Andhra Pradesh in its judgment



dated 06.05.2021, in case of *Kolusu Partha Sarathy v. State of Andhra Pradesh* MANU/AP/0528/2021. It is stated that assumption of jurisdiction cannot be merely on the ground that the petitioner once had remained as an MLA/MP. It is, therefore, stated that the order dated 06.12.2023 passed by the learned ACMM be set aside.

11. **Learned Senior Counsel for the respondent**, while seeking to sustain the impugned order, argues that the order passed by the learned ACMM is a reasoned order and does not suffer from any infirmity. It is also stated that the notification, under consideration, was issued on 23.02.2018, pursuant to directions of the Hon'ble Supreme Court of India in case of *Ashwini Kumar Upadhyay (supra)* as mentioned above, and the Hon'ble Supreme Court had sought details from Government of India, regarding the case against the former legislators (MPs/MLAs). It is submitted that *vide* series of orders passed by the Hon'ble Apex Court, directions were issued for disposal of cases pertaining to sitting or former MPs/MLAs and there is no distinction within the category of 'former MP/MLA'. It is argued that since the petitioner herein is a former MLA of Delhi, the Special Courts constituted for the purpose of trying cases relating to MLAs/MPs will have jurisdiction to try the present case. It is, therefore, stated that the present petition be dismissed being devoid of merits.

12. This Court has heard arguments addressed by learned counsel for the petitioner as well as learned Senior Counsel for the respondent, and has gone through the material placed on record.



ISSUES BEFORE THIS COURT

13. The issue raised before this Court, by the petitioner herein, is whether the Special Courts constituted *vide* notification dated 23.02.2018 issued by this Court, pursuant to the order passed by the Hon'ble Apex Court in *Ashwini Kumar Upadhyay (supra)* to try cases of MPs/MLAs, has jurisdiction to try case against the present petitioner, who had allegedly ceased to be an MLA, at the time of committing the alleged offence. The issue also is whether the directions contained in the judgment of Hon'ble Apex Court apply to cases, registered after a person ceases to be an MP/MLA.

ANALYSIS AND FINDINGS

14. This Court has also gone through the records of the case including the orders passed by learned ACMM and learned Sessions Court, and has also examined the directions contained in the case of *Ashwini Kumar Upadhyay (supra)* wherein various directions were issued in the order dated 01.11.2017, and many orders including the last order passed in November, 2023.

15. Having considered and analysed the material on record, this Court is of the opinion that the allegations in the present complaint relate to a period post 16.02.2020, when the petitioner had ceased to be an MLA. Admittedly, the petitioner herein had been elected as an MLA on 14.04.2017, and had ceased to be one on 11.02.2020. It is the case of the petitioner herein that Special Court constituted to deal with cases against MPs/MLAs, pursuant to the notification no.



35/DHC/Gaz./G-1/VI.E.2(a)/2018 dated 23.02.2018 of this Court, have no jurisdiction to try the present complaint case.

i. The Impugned Order

16. At the outset, this Court deems it apposite to take note of the relevant observations made by the learned ACMM in the impugned order dated 06.12.2023, which have been extracted hereunder:

“6. Having heard the submissions and having perused the record, this court is of the considered opinion that the application is sans merits.

7. It is an admitted fact that accused no. 1 and 2 are former Members of Legislative Assembly of Delhi.

8. It is also an admitted fact that this court is a Special Court constituted for dealing with the cases against MPs/MLAs, pursuant to the notification no. 35/DHC/Gaz./G-1NLE.2(a)/2018 dated 23.02.2018 of the Hon’ble High Court of Delhi.

9. The said notification dated 23.02.2018 was issued pursuant to the directions of the Hon'ble Supreme Court of India in the matter titled as Ashwini Kumar Upadhyay vs. Union of India and Anr. (supra) vide orders dated 01.11.2017 and 14.12.2017. In the order dated 01.11.2017, the Hon'ble Supreme Court of India had sought details from the Government of India regarding cases which have been lodged against the present or former legislatures between the period from 2014 and 2017 and further, vide order dated 31.08.2020, the matter was again taken up whereby petitioner had sought amendment of the Writ Petition and in the said order again it was clarified that pendency of the present matter would not come in the expeditious disposal of the case relating to elected representatives (sitting or former).

10. From the aforesaid two orders, it is clear that Special Courts were constituted for dealing with the cases against MPs IMLAs (sitting or former). The Hon'ble Supreme Court of India had nowhere directed that Special Courts



shall try only those offences where accused was the sitting MP or MLA, at the time of commission of offence.

11. The same appears to be the mandate of the Hon'ble Supreme Court in the latest order in the same matter, i.e., Writ No. 699/2016 titled as Ashwani Kumar Upadhyay (supra) dated 09.11.2023.

12. In the opinion of this court, the objective of constituting Special Courts to deal with the cases against MPs/MLAs (sitting or former) was with a view to ensure that there is an expeditious disposal of said cases so that convicted legislatures can be debarred from contesting further elections with a view to get rid of criminals entering the political life.

13. Therefore, whether a sitting legislature commits an offence or an offence is committed by a former legislature, in both eventuality case is required to be dealt with by the Special Court set up for dealing with the cases against MPs/MLAs (sitting or former).

14. In the matter at hand, since the accused no. 1 and 2 are former MLAs, this court does have jurisdiction..."

ii. Examining the Directions issued in Case of Ashwini Kumar Upadhyay by the Hon'ble Apex Court

17. A perusal of the order dated 01.11.2017, passed by the Hon'ble Apex Court in ***Ashwini Kumar Upadhyay (supra)*** reveals that the Hon'ble Apex Court had sought details from the Government of India, as rightly observed by the learned ACMM, regarding cases which are lodged against the present or former legislators, between the period from 2014 and 2017. The relevant portion of order dated 01.11.2017, passed by the Hon'ble Apex Court, reads as under:

“ Shri. A.N.S. Nadkarni, learned Additional Solicitor General, at the very outset, has submitted that the present is not an adversarial litigation and the Union Government would not be averse to setting up of Special



Courts to try criminal cases/offences involving political persons and for utmost expeditious disposal of the same.

While taking the said statement on record we direct the Competent Authority in the Union Government to lay before the Court the following information:

1. How many of 1581 cases involving Members of Legislative Assembly (MLAs) and Members of Parliament (MPs.) [as declared at the time of filing of the nomination papers to the 2014 Elections) have been disposed of within the time frame of one year as envisaged by this Court by order dated 10th March, 2014 passed in Writ Petition (Civil) No.536 of 2011.

2. How many of these cases which have been finally decided have ended in acquittal/conviction of MPs. and MLAs., as may be.

3. Between 2014 and 2017 (as on date) whether any further criminal case (s) has been lodged against any present or former legislator (MP/MLA) and, if so, the detail(s) thereof, including detail (s) with regard to the disposal of such case(s).

4 . Insofar as setting up of Special Courts are concerned, setting up of Special Courts and infrastructure would be dependent on the availability of finances with the States. Without going in to the controversy raised on the aforesaid score , the problem can be resolved by having a Central Scheme for setting up of Courts exclusively to deal with criminal cases involving political persons on the lines of the Fast Track Courts which were set up by the Central Government for a period of five (05) years and extended further which Scheme has now been discontinued.

5. A Scheme to give effect to the above may be laid before the Court on the next date fixed indicating the amount of funds that can be earmarked for setting up of Special Courts where-after the issue of appointment of Judicial Officers, Public Prosecutors, Court staff and other such requirement of man-power and infrastructure (which would depend on the availability of funds from the Central Government) will be dealt with by the Court, if required, by interacting with the representatives of the respective State Governments.



Shri A. N . S . Nandkarni, learned ASG has assured the Court that the above information will be laid before the Court within a period of six weeks from today. We accordingly fix the case for further consideration on 13th December, 2017.

The Election Commission of India is also granted two weeks' time to bring on record an affidavit showing the nature of cases wherein the power under Section 11 of the Representation of the People Act, 1951 has been exercised in the past...”

(Emphasis supplied)

18. Thereafter, the Hon’ble Apex Court had passed certain directions for effective disposal of criminal cases against sitting and former legislators, and the relevant portion of order dated 04.12.2018 reads as under:

“ We appreciate the services of the learned Amicus Curiae in formulating his **suggestions for effective disposal of criminal cases against sitting and former legislators**, a task which this court had undertaken in the present proceedings.

Having considered the matter we are of the view that the suggestions of the learned Amicus Curiae should be tried out with certain modifications and in a limited manner which is indicated below:

1. Instead of designating one Sessions Court and one Magisterial Court in each District we request each High Court to assign/allocate **criminal cases involving former and sitting legislators** to as many Sessions Courts and Magisterial Courts as the each High Court may consider proper, fit and expedient. This, according to us, would be a more effective step instead of concentrating all the **cases involving former and sitting legislators** in a Special Court(s) in the district.
2. The procedural steps indicated by the learned Amicus Curiae, narrated above, will be followed by each of the designated Court to whom work would be allocated in terms of the directions above except that offences



punishable with imprisonment for life/death against **sitting M.Ps./M.L.As. as well as former M.Ps./M.L.As.** would be taken up on first priority followed by sequential order indicated above **without creating any distinction between cases involving sitting legislators and former legislators.**

3. At this stage, we are of the view that the above directions should be made applicable to cases involving former and sitting legislators in the States of Bihar and Kerala. The National Capital Territory of Delhi where the position is somewhat different and the difficulties of distance and territories do not come in the way the trial of cases by the Special Courts (both Sessions Court and Magisterial Court) will continue...”

19. *Vide* order dated 05.03.2020, the Hon’ble Apex Court had directed the High Courts to provide information about the pending cases against MPs/MLAs in a prescribed format, which would include the following: (i) the MP/MLA involved in a case, (ii) whether sitting or former, (iii) date of FIR, (iv) offence alleged, (v) date of filing of charge sheet, (vi) date of framing of charges, (vii) present status, (viii) stay of trial, if any by the High Court, (ix) expected time of completion of trial, (x) name of the court, and (xi) the district in which the case is filed.

20. Thereafter, *vide* another order dated 31.08.2020, the matter was again taken up, when the petitioner had sought amendment of the present writ petition and in the said order, it was clarified that pendency of the case of ***Ashwini Kumar Upadhyay (supra)***, would not come in the expeditious disposal of the case relating to the elected representatives i.e. either sitting or former.

“ We would like to clarify that the pendency of the present matter **shall not come in the way of expeditious**



disposal of the cases relating to the elected representatives (sitting or former).

On the next date of hearing, we will consider giving certain directions to the Hon'ble Chief Justices of different High Courts about monitoring of the cases as well as for taking steps for expeditious disposal thereof which are pending for a long time."

(Emphasis supplied)

21. In this Court's opinion, when the aforesaid orders dated 01.11.2017, 04.12.2018, 05.03.2020 and 31.08.2020 are read together, it becomes clear that the Special Courts were constituted for dealing with cases against the legislators i.e. MPs or MLAs, whether sitting or former.

22. Therefore, the necessary inference that can essentially be drawn up from the above-mentioned reading of the four orders, would lead to a conclusion that the Special Courts were constituted to try offences alleged against sitting or former MPs/MLAs, and the Hon'ble Apex Court nowhere has observed that the Special Courts shall try only those offences where accused was a sitting MP/MLA, at the time of commission of offence.

23. In the aforesaid legal scenario, this Court is of the firm opinion that it cannot go beyond the mandate of the Hon'ble Apex Court, and when the terminology used while passing directions in case of *Ashwini Kumar Upadhyay (supra)* is perused, it becomes clear that the Hon'ble Apex Court clearly refers to 'former MPs/MLAs' without carving out any specific differentiation among 'former MPs/MLAs'. **Consequently, this Court lacks the jurisdiction to interpret the decision in a manner that deviates from the clear**



directions of the Hon'ble Apex Court. In other words, this Court cannot read something, in between the lines, which is neither the intent nor the content, finding or even obiter of the Hon'ble Apex Court.

24. In this regard, it will also be useful to refer to another order passed in *Ashwini Kumar Upadhyay (supra)* on 09.11.2023, *vide* which it has been observed as under:

“14. These cases have a direct bearing on our political democracy. Hence, there is a compelling need to make every effort to ensure that these cases are taken up on priority and decided expeditiously. Confidence and trust of the constituency in their political representative, be it an MP or an MLA, is necessary for an interactive, efficient and effective functioning of a parliamentary democracy. However, such confidence is difficult to expect when figures, as indicated in the above referred table, loom large in our polity.

15. In fact, there are no two views about the compelling need to take up and dispose of the subject cases expeditiously. We have no doubt in our mind that even the political representative, be it MP or an MLA, involved in the prosecution would also seek a quick disposal of these cases. However, the problem lies elsewhere. It seems systemic, perhaps institutional, and takes within its sweep many factors including the method of adversarial litigation that we have adopted. Yet, at every stage of the practice and procedure that we adopt, there is scope for reform. It is in this context that we have earnestly conducted and monitored this case for the last seven years.”

25. A reading of the above order will also reveal that the objective behind constituting the Special Courts to deal with cases filed against MPs/MLAs, sitting or former, was with a view to ensure that cases pending against them are tried expeditiously.



iii. Conclusion

26. Admittedly, the petitioner herein is a former MLA and the argument that he had ceased to be an MLA at the time of commission of alleged offence cannot be a bar to his case being tried by the Special Court, constituted to deal with the criminal cases pending against MPs/MLAs. This Court is also of the opinion that the learned counsel for petitioner has failed to convince this Court, as to how his case, being tried expeditiously, can cause any prejudice to the petitioner.

27. In such circumstances, this Court is of the view that there is no infirmity in the order of the learned ACMM, and the holistic reading of the judgment of the Hon'ble Apex Court points out that the Special Courts can try offences pending against sitting or former MPs/MLAs, and there is no specific bar for trial of a person who had ceased to be an MP/MLA, when he had allegedly committed an offence.

28. Therefore, this Court concurs with the decision of the learned ACMM, whereby it was observed that whether sitting legislator commits an offence or an offence is allegedly committed by a former legislator, a case can be tried by the Special Court, set up for dealing with cases against the MPs/MLAs whether sitting or former.

29. In the circumstances as aforesaid and for the reasons recorded hereinabove, this Court finds no infirmity in the order dated 06.12.2023 passed by the learned ACMM.

30. Accordingly, the present petition alongwith pending application stands dismissed.



31. The judgment be uploaded on the website forthwith.

SWARANA KANTA SHARMA, J

JANUARY 8, 2024

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