



2024:DHC:6651



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

% *Date of Decision: 27th August, 2024*

+ **W.P.(CRL) 2056/2024 & CRL.M.A. 19959/2024**

SANJAY KUMAR TIWARI

.....Petitioner

Through: Mr. Rakesh Tikku, Sr.
Adv. with Mr. Sandeep
Kumar, Mr. Ashish & Mr.
Monu Kumar, Advs.

versus

GOVERNMENT OF NCT OF DELHIRespondent

Through: Ms. Rupali
Bandhopadhyaya, ASC for
the State along with Mr.
Abhijeet Kumar, Adv.

CORAM:

HON'BLE MR. JUSTICE AMIT MAHAJAN

AMIT MAHAJAN, J. (Oral)

1. The present petition is filed under Articles 226 and 227 of the Constitution of India read with Section 482 of the Code of Criminal Procedure, 1971 ('CrPC') seeking setting aside of the judgement of conviction dated 24.09.2019 (hereafter '**impugned judgment**'), passed by the learned Trial Court, in Cr Case No.40916/2016 arising out of FIR No. 207/2007, registered at Police Station Chanakya Puri, for offences under Sections 419/420/511/120-B of the Indian Penal Code, 1860 ('IPC').

2. The learned Trial Court has fixed the matter for argument on sentence. The petitioner is essentially aggrieved alleging that



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the judgment on conviction is *non est* and invalid being antedated.

3. The FIR No. 207/2007 dated 10.10.2007 was registered against the petitioner and the co-accused alleging that the petitioner and his associates had attempted to cheat and extract money from the complainant.

4. Pursuant to the trial, the learned Trial Court, by order dated 24.09.2019, noted that *vide* separate judgment of even date announced in open Court, both the accused (the petitioner and the co-accused) are convicted for offences under Sections 419/420/120-B/511 of the IPC. The matter was put up for arguments on sentence on 04.10.2019.

5. The copy of the judgment was not supplied to the petitioner which led to filing of a writ petition, being, W.P.(Crl.) 2828/2019. The petitioner claimed that even the inspection of the file was not allowed by the learned Trial Court. This Court by order dated 01.10.2019 called for a report from the concerned Magistrate in this regard and by order dated 10.10.2019, also summoned the Trial Court Record.

6. The writ petition was disposed of by this Court by order dated 19.10.2022 noting the submission made by the Additional Standing Counsel for the State that the concerned Trial Court has already pronounced the judgment and order on sentence.

7. It is an admitted fact that though the statement was made by the learned Additional Standing Counsel for the State, however, the order on sentence had not been passed on that date.

8. The learned Trial Court, on 27.09.2023, noted that the



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petitioner and other accused person were held guilty by judgment dated 24.09.2019 but the matter is still pending for arguments on sentence. The learned Trial Court directed the Court Ahlmad to supply the copy of the judgment to the petitioner and other accused person. The matter was then fixed for arguments on sentence.

9. The petitioner filed an application for restoration of W.P.(Crl.) 2828/2019, however, the same was dismissed in default for non-prosecution due to non-appearance of the counsel for the petitioner. Hence, the present writ petition is filed.

10. The learned senior counsel for the petitioner submits that there is gross violation of the provisions of Section 353 of the CrPC since the judgment on conviction dated 24.09.2019 was neither delivered to the petitioner at the time of pronouncement nor was read in open Court since the judgment was evidently not ready on 24.09.2024.

11. The learned Additional Standing Counsel for the State submits that in terms of Section 353(7) of the CrPC, the judgment delivered by the criminal Court shall not be deemed to be invalid for the reason of it not being delivered or for the reason of omission to serve or any defect in serving on the parties.

12. I agree with the submission made by the learned Additional Standing Counsel for the State that mere omission to strictly comply with Section 353(1) of the CrPC will not render the judgment invalid.

13. At times, there can be circumstances due to which the



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judgment is not uploaded on the same day for some technical reasons or not made available for a day or two. Unless the prejudice is shown, the accused cannot seek declaration that the judgment be declared invalid.

14. However, the facts of the present case are glaring. It is an admitted case that some purported judgment was pronounced on 24.09.2019 and the same was, admittedly, not available.

15. Pursuant to the order dated 01.10.2019 passed by this Court in W.P.(Crl.) 2828/2019, the report was filed by the concerned Court stating that the judgment pronounced on 24.09.2019 was kept as a soft copy in a pen drive, however, the pen drive had been mis-placed.

16. The learned Magistrate further stated that the judgment had been prepared again. The learned Magistrate also complained that there is huge pendency of more than 4,000 cases and only one stenographer is available who also keeps complaining of chronic pain in his right arm. Thus, the learned Magistrate admitted that the judgment was prepared again after 24.09.2019.

17. From the available facts, it is thus clear that the judgment which was purportedly pronounced on 24.09.2019 is not available, and the impugned judgment which was prepared later, was never pronounced.

18. Thus, the matter is now fixed for arguments on sentence on a judgment of conviction which was admittedly never pronounced and was prepared by the learned Magistrate after the judgment which was purportedly pronounced on 24.09.2019 had



been lost.

19. The omissions, as noted above, in the opinion of this Court, will not be saved by the provisions of Section 353(7) of the CrPC. The judgment prepared later, a copy of which was handed over to the petitioner, is not a judgment in the eyes of law.

20. In terms of Section 353 of the CrPC, the judgment in every trial in a criminal Court is mandatorily required to be pronounced in open Court by the Presiding Officer.

21. It is true that the same will not be rendered invalid for the reason of any omission or defect to serve the same or for reason of the same having been pronounced in the absence of a party.

22. However, as noted above, the judgment which was pronounced is admittedly not available and the judgment whose copy was handed over was never pronounced.

23. Therefore, as per the report given by the concerned Magistrate, it cannot be denied that the judgment, whose copy was handed over to the petitioner, was not the one which was pronounced on 24.09.2019 and was, admittedly, not ready on 24.09.2019.

24. In such circumstances, the impugned judgment cannot be called as a judgment dated 24.09.2019 since it was not the one purportedly pronounced on 24.09.2019. As noted above, the judgment purportedly pronounced on 24.09.2019 is lost and is admittedly not available and the impugned judgment having been prepared after 24.09.2019 cannot be called a judgment dated 24.09.2019. The same is also not a judgment under



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Section 353 of the CrPC having not been pronounced ever.

25. In view of the above, the impugned judgment is set aside and the matter is remanded back to the concerned Trial Court to hear the final arguments afresh and pass a judgment in accordance with law.

26. The present petition is allowed in the aforesaid terms.

AMIT MAHAJAN, J

AUGUST 27, 2024

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