

(2019) 04 DEL CK 0022

In the Delhi High Court

Case No : Criminal Miscellaneous Case No.1692 Of 2018

Deepa Arya

APPELLANT

Vs

State (Nct Of Delhi) & Anr

RESPONDENT

Date of Decision : 04-04-2019

Acts Referred:

Citation : (2019) 04 DEL CK 0022

Hon'ble Judges : Sanjeev Sachdeva, J

Bench : Single Bench

Advocate : Mehmood Pracha, Prashant Sharma, Prateek Gupta, R.H.A. Sikander, Rahul Mehra, Hiren Sharma, Neela Gohkhale, Vipin Anand, Ham Paridi, Suresh Prasad, Sliradda Agrawal

Judgement

Sanjeev Sachdeva, J

Crl.M.A.49067/2018 (by Respondent No. 2 for recall of order dated 10.04.2018)

1. Reply to the application has been filed by the petitioner. The same is taken on record.

2. The applicant/respondent No.2 has filed this application seeking recall of order dated 10.04.2018. It is contended that by order dated 10.04.2018, this Court had directed expunction of observations made in paragraphs 18 and 19 of the Trial Court order dated 26.03.2018, impugned in the main petition, whereby the Trial Court observed that Investigating Officer has stated that there was no incriminating evidence against the applicant - respondent No.2 Gaurav Goyal.

3. Learned counsel for the applicant submits that the order dated 10.04.2018 was passed without service of notice on the present applicant. She submits that the applicant had filed a special leave petition before the Supreme Court of India impugning order dated 10.04.2018 being S.L.P.(Crl.) No. 41052 of 2018 and the Supreme Court, by order dated 20.11.2018, had given an opportunity to the petitioner to approach this Court to file an appropriate application and if any such

application was made, this Court was directed to consider the entirety of the matter and also whether expunging of those two paragraphs was warranted or not.

4. Learned counsel appearing for the petitioner submits that order dated 10.04.2018 was passed without service as Respondent No. 2 was evading service. He however submits that if the matter was being reconsidered then the entire petition of the petitioner should be reconsidered and not only the issue with regard to expunction of the observation of the trial court with regard to the statement of the IOs recorded in the said two paragraphs.

5. In view of the above observations, the application is allowed. Order dated 10.04.2018 is recalled. Petition is restored to its original number.

CRL.M.C. 1692/2018

1. Petitioner seeks to impugn order dated 26.03.2018, whereby, bail has been granted to the respondent No.2 - Gaurav Goyal. It is contended in the petition that the learned Court had not considered the seriousness and gravity of the allegations made against the respondent No.2 in the FIR and granted him bail on erroneous and arbitrary grounds. It is further contended that the impugned order did not adhere to the contents of the status report filed by the Investigating Officer on the subject FIR.

2. Further, it is contended that the status report dated 26.03.2018, filed by the concerned Investigating Officer, nowhere stated that there is no incriminating evidence against the respondent No.2 - Gaurav Goyal with regard to three FIRs registered on the complaint of advocates at a local police station.

3. Learned counsel appearing for the applicant submits that though the status report did not specifically state that there is no incriminating evidence, however, the order of the Trial Court indicates that the entire material was considered and no incriminating evidence was found by the Trial Court.

4. Further, it is contended that, as noticed by the Trial Court, the statement was made by the Investigating Officers, who were present in Court that no incriminating material was found against him.

5. Mr. Rahul Mehra, learned senior standing counsel appearing for the State submits that the status reports filed before the Trial Court clearly indicated that the matter was under investigation by the Special Investigation Team and further he, under instructions, submits that no statement was given by the Investigating Officers to the effect that there was no incriminating material against respondent No. 2.

6. The Investigating Officers are also present in Court today and they submit that no such statement was made before the Trial Court.

7. One of the controversies being raised is as to whether the Investigating Officers, who were present before the Trial Court, had made a statement before

the Trial Court with regard to the material which was collected during investigation of the three FIRs, which were not subject matter of the proceedings before the Trial Court.

8. Much water has flown under the bridge since the impugned order dated 26.03.2018 was passed by the Trial Court granting bail to respondent No.2.

9. By order dated 06.04.2018, Trial Court cancelled the bail granted to the respondent No.2 - Mr. Gaurav Goyal on the ground that he was not cooperating with the investigation and was reported to have absconded.

10. Further, it may be observed that in Writ Petition (Crl.) 52/2019, filed by respondent No.2 before the Supreme Court of India, by order dated 01.03.2019, respondent No.2 - Mr. Gaurav Goyal was directed to surrender and he duly surrendered. Subsequently, by order dated 15.03.2019, Supreme Court in the said Writ Petition directed release of the respondent No.2 - Mr. Gaurav Goyal on bail on conditions similar to the conditions which were imposed by the Trial Court by the impugned order dated 26.03.2018.

11. Since the bail granted to the respondent No.2 - Mr. Gaurav Goyal, by the impugned order dated 26.03.2018, was subsequently cancelled by order dated 06.04.2018 and now he has been admitted to bail by the Supreme Court by order dated 15.03.2019, nothing would survive in the present petition.

12. The controversy as to whether the statement attributed to the Investigation Officers, as referred to in paragraphs 18 and 19, was made before the Trial Court or not or as to whether there is any incriminating material or not, in my view, does not require any adjudication, at this stage, as the same would be a matter of record and not something which an Investigation Officer can state before the Court de hors the record. Even otherwise as noticed above the scope of this petition was limited to cancellation of bail granted to the respondent No. 2 by the impugned order dated 26.03.2018 and subsequently, by order dated 06.04.2018 bail was cancelled by the trial court and now bail has been granted by the Supreme Court.

13. In view of the above nothing survives in the petition. Petition is, accordingly, disposed of as infructuous.

14. After the petition was disposed of, learned counsel appearing for the respondent No.2, under instructions from the father of the respondent No.2, who is also one of the accused in the subject FIR, submits that they would like to be referred to mediation so that the entire dispute between the parties could be resolved and family ties could be restored.

15. Petitioner, who is present in Court in person, submits that efforts were made by family members, however, no result could be achieved. However, she submits that she has no objection to being referred to mediation.

16. Accordingly, Parties are referred to Delhi High Court Mediation Centre. With

the consent of parties, Ms. Sadhana Ramachandran, Advocate is appointed as a mediator to mediate between the parties. Parties shall appear before the Centre on 11.04.2019 at 2:30 pm. Learned Mediator would be at liberty to join other family members in mediation who are also in dispute.

17. List before the court for directions on 20.05.2019.

18. Order Dasti under signatures of the Court Master.