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CHANDER BHAN SINGH

v.

CENTRAL BUREAU OF INVESTIGATION AND OTHERS

(Criminal Appeal No. 30 of 2019)

B

JANUARY 08, 2019

[N. V. RAMANA AND

MOHAN M. SHANTANAGOUDAR, JJ.]

Code of Criminal Procedure, 1973 – s.397 – Revision – Appellant-complainant filed a writ petition in 2002 seeking registration of criminal case – His allegation was that his son was wrongfully killed by the police – CBI filed a closure report – Magistrate did not accept the closure report and took cognizance against 13 police officers-accused – Accused and the Government of NCT filed separate petitions under s.482, Cr.P.C. – High Court allowed the petitions and directed the Magistrate to reconsider the point of cognizance and take a fresh decision on the closure report filed by the CBI – Magistrate reheard the matter and accepted the closure report – Appellant challenged the said order by way of revision petition under s.397, Cr.P.C. – After keeping matter pending for 2 years, High Court dismissed the revision petition of appellant with liberty to approach Sessions Judge – Appeal before Supreme Court – Held: This case took place long back in the year 2002 and almost sixteen years have elapsed – It is ingrained in our criminal justice system that speedy justice should be provided to the litigant as a matter of a constitutional right – This is not appropriate case for this Court to decide on the question of law considering the peculiar facts and circumstances involved – The question of law is left open and order of the High Court in revision petition is set aside and the case before the High Court is restored – High Court to hear the matter on merits and pass an appropriate order thereafter without any further delay – Delay/Laches – Revision.

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CRIMINAL APPELLATE JURISDICTION: Criminal Appeal No. 30 of 2019.

From the Judgment and Order dated 28.10.2014 of the High Court of Delhi at New Delhi in Crl. Rev. P. No. 557 of 2012.

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K. K. Rai, Sr. Adv., Tarkeshwar Nath, Chandrashekhar A. Chakalabbi, S. K. Pandey, Anshul Rai, Mukesh Hooda, Rajiv Choudhary, Onkar Nath, Rameshwar Prasad Goyal, Advs. for the Appellant. A

Siddharth Luthra, Sr. Adv., Pramod Dubey, Vivek Jain, Ms. Suchitra Kumbhat, P. K. Dubey, Ms. Smriti Sinha, Ms. Supriya Juneja, Aditya Singla, Ms. Varsha Poddar, Ms. M. Jaggi, Anoopam Prasad, Gautam Narayan, Ms. Asmita Singh, Santosh Kumar, P. K. Dey, Rishabh Jain, Mukesh Kumar Maroria, Mrs. Priya Puri, Ranjay Dubey, Ms. Vineeta M., Adv. Ms. Ranjana Narayan, T. A. Khan, B. V. Balaram Das, Advs. for the Respondents. B

The following Order of the Court was passed:

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O R D E R

1. Leave granted.

2. This criminal appeal was filed against the impugned order dated 28.10.2014, passed by the High Court of Delhi, wherein the said Court had dismissed the Revision Petition against the order rejecting the cognizance, by the learned Chief Metropolitan Magistrate. D

3. It may be relevant to note the chequered history of this case spanning almost sixteen years. On 17.01.2002, the Appellant/Complainant filed a Criminal Writ Petition No. 70/2002, before the Delhi High Court against the State, Deputy Commissioner of Police and others seeking registration of a criminal complaint. The Appellant/Complainant alleged that his son had been wrongfully killed by the police on 11.01.2002. The High Court of Delhi, *vide* order dated 30.01.2002, directed the Central Bureau of Investigation (“CBI”) to register a complaint and investigate. CBI registered a complaint being RC No. 2(s)/2002/SIC-IV/ND under Sections 218, 302, 201 read with 34 of IPC. E F

4. The CBI, after completion of investigation, filed a Closure Report under Section 173, Cr.P.C. on the ground that the Lt. Governor, NCT Delhi did not find it to be a fit case to convey sanction for prosecution. The Chief Metropolitan Magistrate, Delhi, by order dated 06.08.2008, did not accept the Closure Report filed by the CBI, and on considering the material before it, took cognizance against thirteen police officers (“**accused**”). The accused were summoned, and the matter was committed to the Court of Sessions. G

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A 5. Meanwhile, one of the accused filed Criminal Revision Petition No. 8 of 2009 challenging the order dated 06.08.2008, passed by the Magistrate, before the Additional Sessions Judge. The Criminal Revision Petition was dismissed *vide* order dated 14.05.2009. Thereafter, the accused, as well as the Government of NCT Delhi, filed separate petitions under Section 482, Criminal Procedure Code before the Delhi High Court against the order dated 06.08.2008 of the Magistrate and the order dated 14.05.2009 passed by the Additional Sessions Judge in the Criminal Revision Petition. By a common judgment dated 22.09.2011, the High Court allowed the above petitions, and directed the Magistrate to reconsider the point of cognizance and to take a fresh decision on the Closure Report filed by the CBI.

D 6. The Appellant/Complainant challenged the above decision of the Delhi High Court through Special Leave Petition (Crl.) No. 87-90 of 2012 before this Court, wherein the petition was dismissed *vide* order dated 12.12.2011 and upheld the order of the High Court with a direction to the Magistrate to decide the matter expeditiously.

E 7. The Magistrate reheard all the parties and by order dated 24.05.2012 accepted the Closure Report of the CBI. The Appellant/Complainant challenged the order before the High Court of Delhi by way of a Criminal Revision Petition under Section 397, Cr.P.C on 12.09.2012. After keeping the aforesaid matter pending for more than two years, the High Court, by order dated 28.10.2014, dismissed the petition of the Appellant/Complainant, with liberty to approach the Sessions Judge. The High Court, observed as follows:

F “...this Court had noted that since the order had been passed by the Magistrate, the next hierarchal Court is the Sessions Judge and **although admittedly there are concurrent powers vested with both the Courts** i.e. the High Court and the Sessions Court to entertain a revision petition but there being no special circumstance to bypass the forum of the Sessions Judge, **this Court is of the view that it would be appropriate if the petitioner first approaches the lower forum i.e. the Sessions Court and unless and until there is an exceptional circumstance, he may approach the High Court only thereafter.**”

(*Emphasis supplied*)

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8. Initially, when this matter was placed before this Court, learned senior counsels appearing on behalf of the parties had argued at length and had taken us through various legal provisions and case laws pertaining to the issue of concurrent revisionary jurisdiction under the new Code. Moreover, the learned counsels had also sought a reference to a larger bench to, once and for all, decide and settle the question regarding choice of jurisdiction under Section 397 of Cr.P.C.

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9. Having considered the fact that this case had taken place as long back as in the year 2002 and almost sixteen years have elapsed, and that it is ingrained in our criminal justice system that we seek to provide speedy justice as a matter of a constitutional right, we do not consider this case to be an appropriate one to decide on the question of law considering the peculiar facts and circumstances involved.

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10. Having said so, we leave the question of law open, set aside the order of the High Court dated 28.10.2014, in Criminal revision petition No. 557 of 2012 and restore the case before the High Court. Further, we request the aforesaid Court to hear the matter on merits and pass an appropriate order thereafter without any further delay. If any party is aggrieved with the order passed by the High Court, we grant liberty to them to approach this Court again.

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11. Before parting with the matter, we make it clear that we have not expressed any opinion on the merits of the case and the High Court is requested to consider all the points involved in the matter independently and in accordance with law.

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12. The appeal is disposed of in the aforesaid terms.