

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ **Crl. M.A. No. 13852/2010 & Crl. LP No. 299/2010**

% **Date of Decision:12.11.2010**

Govt. of NCT, Delhi Petitioner

Through Mr. Jaideep Malik, APP

Versus

Dinesh Kumar Respondent

Through Nemo

CORAM:
HON'BLE MR. JUSTICE ANIL KUMAR
HON'BLE MR.JUSTICE S.L.BHAYANA

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| 1. | Whether reporters of Local papers may be allowed to see the judgment? | YES |
| 2. | To be referred to the reporter or not? | NO |
| 3. | Whether the judgment should be reported in the Digest? | NO |

ANIL KUMAR, J.

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Crl. M.A. No. 13852/2010

This is an application by the petitioner/applicant seeking condonation of delay in filing the petition for leave to appeal on the ground that the certified copy of the impugned judgment dated 30th October, 2009 was applied and was received by the petitioner on 3rd December, 2009 and thereafter the matter was considered by different

officials and it took some time because of which the petitioner for leave to appeal could not be filed within time.

The applicant has given the details as to who had considered the file to decide whether a petition for leave to appeal was to be filed or not. The petitioner has also relied on the decision of the Supreme Court in the State of Nagaland Vs. Lipok Ao, (2005) 3 SCC 752 and on Collector Land Acquisition Vs. Katiji 1987 (2) SCC 107 in support of their plea for condonation of delay in filing the petition for leave to appeal. The petitioner/applicant, in the circumstances, has contended that there is sufficient cause for condoning the delay of 193 days in filing the petition for leave to appeal in law and in the facts and circumstances.

Considering the averments made in the application and the precedent relied on by the petitioner, it is apparent that the petitioner has been able to make out sufficient cause for condonation of delay in filing the petition for leave to appeal.

Consequently, the application under Section-5 of the Limitation Act, read with section-482 of the Crl. Procedure Code seeking condonation of delay in filing the petition for leave to appeal is allowed and delay is condoned.

Crl. LP No. 299/2010

The petitioner has sought leave to appeal against the order dated 30th October, 2009 passed by the Sessions Court in Sessions Case No. 88/2008 titled as State Vs. Bhola Bhagat and Dinesh arising out of FIR 192/2008 under Section 363/367/370/34 of IPC, however, acquitting the accused Bhola Bhagat and other accused of the offence punishable under Section 367/370/34 of the IPC on the ground that there is no evidence on record that the child Anima was disposed of or that she was subjected to slavery and the accused had kidnapped her or had purchased her for the purpose of slavery, however, convicted accused Bhola Bhagat under section 363 of Indian Penal Code.

The case as was put up by the prosecution is that an FIR No. 192/2008 was registered against accused Bhola Bhagat for committing an offence under Section 363 of IPC on the basis of complaint made by Smt. Runia Urao, alleging that her ten year old daughter named Aneema was kidnapped by him.

On the basis of the investigation and the disclosure statement, made by the accused Bhola Bhagat, respondent/accused Dinesh was also interrogated, who was in Rohini Jail at that time, in another case. After investigation both the persons were charged for commission of offence punishable under Section 367/370/34 of IPC on 10th December,

2008. Both the accused pleaded not guilty and claimed trial. During the trial, prosecution examined 13 witnesses. The accused were also examined under Section 313 of the Crl. Procedure Code.

From the evidence on record, the Trial court inferred that the daughter of the complainant Smt. Runia Urao, namely, Aneema was taken by the accused Bhola Bhagat without her and her husband's consent and had brought her to Delhi from the village. The whereabouts of the daughter of the complainant could not be ascertained and she has not been recovered so far.

The accused Bhola Bhagat had stated that he had handed over the girl to accused Dinesh. Though, he had stated that he had sold the girl for Rs.20,000/- to Dinesh Kumar, owner of Virsa Bhagwan Placement Agency. However, no evidence has been led to establish that Dinesh had purchased the girl for Rs.20,000/- from Bhola Bhagat. Rather the accused Dinesh had led the police to different places at Delhi but the girl Aneema could not be traced. Though, on search of the house of Dinesh, photocopy of acceptance form of the girl Aneema which was Ex. P-7/A was recovered. However, the Trial Court has inferred that on the basis of the photocopy of the acceptance form, it cannot be held that the accused Dinesh had purchased the girl and had put her to slavery in view of the statement of other witnesses who had

deposed that the girl worked as maid for a few days and later on she had left the service.

The Trial Court has also noticed that though the girl was taken by accused Bhola Bhagat in 2005, however, the FIR was registered against him on account of intervention of Bachpan Bachao Andolan in 2008. In the circumstances, the Trial Court has convicted Bhola Bhagat for the offence punishable under Section 363 of Indian Penal Code.

The Trial Court has also noticed that though the kidnapped child has not been recovered but that will not entitle the accused Bhola Bhagat of any benefit and it cannot be held that he had not kidnapped the said girl. According to the prosecution/petitioner Bhola Bhagat has not challenged his conviction under Section 363 of Indian Penal Code as no appeal has been filed on his behalf.

While acquitting respondent/accused Dinesh, it has been noted that even the case of the complainant is not that accused Dinesh has anything to do with the kidnapping of her daughter from her village. Rather it has been established that the girl was sent as maid to the residence of Sh. Money Vij (PW-3) and Pawan Arora (PW-4) and she worked there for some time and later on she left the work.

The Trial Court on account of not finding any evidence against the accused/ Dinesh that he subjected her to slavery or that he had purchased the girl from Bhola Bhagat or disposed her as a slave had held that the evidence produced by the prosecution does not prove that Dinesh had disposed of the girl as a slave or had purchased her for consideration and thus acquitted the accused of the commission of offence punishable under Section 367/370/34 of the Indian Penal Code. The petitioner has challenged the acquittal of accused Dinesh and has not even challenged the acquittal of accused Bhola Bhagat u/s 367/370/34 of Indian Penal Code, though the accused Bhola Bhagat has been convicted u/s 363 of Indian Penal Code.

This cannot be disputed that the High Court has the power to reconsider the whole issue, reappraise the evidence and come to its own conclusion and findings in place of the findings recorded by the trial Court, if the findings are against the evidence or record or unsustainable or perverse. However, before reversing the finding of acquittal the High Court must consider each ground on which the order of acquittal is based and should record its own reasons for not accepting those grounds and not subscribing to the view of the trial Court that the accused is entitled to acquittal.

This is also settled law even if on fresh scrutiny and reappraisal of the evidence and perusal of the material on record, if the High Court is of the opinion that another view is possible or which can be reasonably taken, then the view which favors the accused should be adopted and the view taken by the trial Court which had an advantage of looking at the demeanour of witnesses and observing their conduct in the Court is not to be substituted by another view which may be reasonably possible in the opinion of the High Court. Reliance for this can be placed on 2009(1) JCC 482=AIR 2009 SC 1242, Prem Kanwar v. State of Rajasthan; 2008 (3) JCC 1806, Syed Peda Aowlia v. the Public Prosecutor, High Court of A.P, Hyderabad; Bhagwan Singh and Ors v. State of Madhya Pradesh, 2002 (2) Supreme 567; AIR 1973 SC 2622 Shivaji Sababrao Babade & Anr v. State of Maharashtra; Ramesh Babu Lal Doshi v. State of Gujarat, (1996) 4 Supreme 167; Jaswant Singh v. State of Haryana, 2000 (1) JCC (SC) 140. The Courts have held that the golden thread which runs through the web of administration of justice in criminal cases is that if two views are possible on the evidence adduced in the case, one pointing to the guilt of the accused and the other to his innocence, the view which is favorable to the accused should be adopted. The paramount consideration of the Court is to ensure that miscarriage of justice is prevented. A miscarriage of justice which may arise from acquittal of the guilty is no less than from the conviction of an innocent.

The learned counsel for the petitioner has candidly admitted that in the statements of any of the witnesses, it has not even been deposed that Bhola Bhagat had sold the girl to Dinesh or Dinesh had purchased the girl from Bhola or had used her as a slave. On perusal of the Trial Court record and the evidence of mother of the girl Smt. Runia as PW-9, it is apparent that there is no allegation against the accused Dinesh that he had purchased the girl or that Bhola had abducted her daughter with the intention to sell her off to the accused Dinesh. Though she had stated in her cross-examination that accused is also from her village and his father is known to her as Mala, however, she did not depose that Dinesh had taken the girl from Bhola Bhagat as a slave or for consideration or that he had sold her off further.

Though, Head Constable Arun Kumar, PW-10 in his statement and cross-examination had deposed that the accused Dinesh did not deliberately got the girl recovered as otherwise he would have got involved in the case, however, the said witness admitted that he did not mention the number of houses in his statement. If the accused Dinesh had told him that he is not getting the girl recovered as otherwise he will get involved in the case, the Head Constable should have disclosed this to his superior officer or should have got it recorded somewhere, which was not done by him. In the circumstances, on the basis of testimony of even PW-10, the accused cannot be inculpated. This is also not disputed that pursuant to the disclosure statement, the

kidnapped girl had not been recovered though he had led the police to different places at Delhi. Dinesh, in his statement under Section 313, alleged that he was not running any placement agency and he was only a servant in the placement agency, namely, Shobha Placement, Ekta Enclave, Peera Garhi Chowk. Even the owner of the house bearing No. C-85 and D-87, Ekta Enclave, Peera Garhi, Delhi, though deposed that the accused had taken the premises as a tenant in July, 2005, however, as he could not produce any ID proof, therefore, he got the house vacated from him after 20-25 days.

The owner of the house Sh. Islamuddin Kesari only made an oral statement about accused taking the premises on rent but did not produce any document to show that the premises was in fact let out by him even for a short period in July, 2005 to the accused Dinesh/respondent. No reason for not producing any documents to show letting out the premises had also been disclosed.

On perusal of the testimonies of the other witnesses also, this Court is unable to find any cogent evidence against the accused on the basis of which it can be inferred that the girl Aneema, which was kidnapped by Bhola Bhagat was sold off to the accused Dinesh or that she was treated as a slave. On the basis of the statements of the mother and other witnesses, it also cannot be inferred that the accused Dinesh had kidnapped the girl along with Bhola Bhagat from the

village. There is no evidence on record to infer that the girl was kidnapped by the accused Dinesh in conspiracy with Bhola Bhagat.

The learned counsel for the State is also unable to point out any cogent evidence on the basis of which it can be inferred that Dinesh along with Bhola Bhagat with common intention had kidnapped Kumari Aneema with the object that she may be subjected to slavery and was disposed of.

In the circumstances, the petitioner has failed to make out a case of kidnapping and selling and subjecting the kidnapped child to the slavery or disposing of the kidnapped child against the accused/Dinesh. The accused/Bhola Bhagat has already been convicted for kidnapping the child Ameena under section 363 of Indian Penal Code. Thus, there are no grounds to grant leave to appeal to the petitioner and the decision of the Trial Court dated 30th October, 2009 cannot be faulted.

The learned counsel for the State Mr. Malik is also unable to point out any illegality or perversity in the said order, which would require any interference by this Court by reversing the inferences drawn by the trial Court.

The petition for leave to appeal, in the facts and circumstances, is without any merit and therefore, the prayer of the petitioner to grant leave to appeal is declined and the petition is dismissed.

ANIL KUMAR, J.

S.L. BHAYANA, J.

NOVEMBER 12, 2010

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