

\* **IN THE HIGH COURT OF DELHI AT NEW DELHI**  
+ **Crl.M.A.Nos.16833-34/2010 & Crl.L.P No.400/2010**

% **Date of Decision: 22.11.2010**

The Govt. of NCT of Delhi ..... Appellant  
Through Mr.Vikas Pahwa, Additional Standing  
Counsel (Criminal)

Versus

Sh.Rama Shankar Pandey & Another ..... Respondents  
Through Nemo.

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

- |    |                                                                       |     |
|----|-----------------------------------------------------------------------|-----|
| 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.16833/2010**

Allowed subject to just all exceptions.

**CRL.M.A.No.16834/2010**

This is an application by the petitioner seeking condonation of delay in filing the petition for leave to appeal.

The applicant has contended that certified copy of the order dated 5<sup>th</sup> March, 2010 acquitting the respondents of the charges against them was provided on 20<sup>th</sup> April, 2010 and the comments were given by the

learned Additional Public Prosecutor on 19<sup>th</sup> May, 2010. The applicants have given other details of the other officials who dealt with the matter and the various steps taken to decide to file petition seeking leave to appeal resulting into a delay of 142 days.

The applicants have also relied on a Collector Land Acquisition v. Katiji, (1987) 2 SCC 107 and State of Nagaland Vs. Lipok Ao, 2005 (3) SCC 752 holding that sufficient cause should be considered with pragmatism in justice oriented approach rather than a technical defection of sufficient causes for explaining every days delay having regard to considerable delay of procedural red tape in the decision making process of the government, certain amount of latitude is permissible and should be given. The applicant has contended that the State Government is the impersonal machinery working through its officers or servants- hence it cannot be put on the same footing as an individual.

Considering the facts and circumstances and the law cited by the applicant, the applicant has been able to make out sufficient cause for condonation of delay of 142 days in filing the petition seeking leave to appeal.

The application is therefore, allowed and the delay in filing the petition seeking leave to appeal is condoned.

**Crl.L.P.No.400/2010**

The petitioner has sought leave to appeal against the judgment dated 5<sup>th</sup> March, 2010 acquitting the respondents, Sh.Rama Shankar Pandey and Sh.Har Prasad @ Harish of the charges under Sections 307/452 of Indian Penal Code in Sessions Case No.54 of 2008, titled as 'State v. Santosh Yadav and others' arising from the FIR No.363 of 2004, under Sections 307/452/120 B of Indian Penal Code, P.S.Krishna Nagar.

The case of the prosecution before the Trial Court was that on 21<sup>st</sup> August, 2004 a DD No.22 was received regarding firing on a person at House No.C-145, Gali No.12, Kanti Nagar Extension. The injured was removed to the hospital in the PCR. Later on, the complaint was made by Smt. Sridevi, PW-2 who had reached the spot with her husband, namely Sh. Sumer Chand, PW-3. Pursuant to the complaint of Smt. Sridevi, Santosh Yadav, Har Prasad @ Harish and Rama Shankar Pandey were arrested. The accused, Har Prasad @ Harish, Santosh Yadav and Rama Shankar were also arrested in another FIR No.370 of 2004 of the same Police Station, under Section 399/ 402 of Indian Penal Code.

The case of the prosecution was that on the basis of the disclosure statement, another accused Rajesh was also arrested, however, he was discharged later on. Against the respondents and

Santosh Yadav, charge sheet was filed for the offences punishable under Section 307/452/120 B of Indian Penal Code. Santosh Yadav was declared as proclaimed defender, however, the respondents Har Prasad @ Haish and Rama Shankar Pandey pleaded not guilty and claimed trial. During trial, prosecution examined 13 witnesses and the statement of the respondents under Section 313 of the Criminal Procedure Code was also recorded. Both the respondents denied the evidence against them and asserted that they have been falsely implicated and also led the defense evidence. In the defense evidence accused Rama Shankar Pandey examined himself as DW-1 and also produced a copy of the FIR Nos.370 of 2004 to 372 of 2004 from the Court of Sh.Sanjay Sharma, Learned ASJ as Ex.DW-1/A.

The trial court took into consideration the plea by the respondents that they were falsely implicated by investigating officer PW-11 ASI Sh. Abdul Subhan who had also arrested them along with others on 24<sup>th</sup> August, 2004 in another FIR No.370 of 2004 of the same police station in order to solve the present case and he wrote false disclosure statement and implicated them in the case.

While acquitting the respondents, the trial court has taken into consideration the detailed order dated 11<sup>th</sup> July, 2005 discharging another accused Rajesh who had deposed in his statement that the two persons asked him some address when he was near Kanti Nagar Police Station. In this context these persons somehow got enraged and one of

them asked the other to kill him which necessitated Rajesh to run from there. He therefore, ran towards Gali No.12, Kanti Nagar Extension where he found one door of the house opened and so he entered into that house. Those two persons however, followed him in the house. According to Rajesh, one lady was present in that room and when she raised alarm one of the two boys fired at him resulting into him becoming unconscious where after both the accused fled from there.

The court discharged Rajesh by a detailed order dated 11<sup>th</sup> July, 2005 which order was not challenged. The version given by the Rajesh was in directly contrary to the case of the prosecution.

The version of the prosecution was that the respondents had gone to the house of the complainant, Smt. Sridevi PW-2 to rob her and with this motive they had fired upon her but by chance Rajesh who was their accomplice received the bullet injury and therefore, they left him there and ran away from the spot. Despite the order dated 11<sup>th</sup> July, 2005 discharging Rajesh and disbelieving the prosecution version, the said order was not challenged and it became final.

The trial court has also noticed various contradictions in the statement of Smt. Sridevi PW-2 and in the statements of PW-3 and PW-4. The trial court has also relied on (2002) Vol.-I, SCR 1011, 'Allah Rakha K.Mansoori v. State of Gujarat' and 1997 SCC (Cri) 118, titled Meharban v. State of M.P. defining minor contradictions and the

testimonies which are result of parrot like statements and the improvement and the exaggeration which are made by the witnesses in the witness box.

The trial court also relied on the fact that though Smt. Sridevi on the basis of her testimony had a fleeting glimpse of the accused and they were not known to her earlier, however, both the accused were not put to test identification parade. The trial court did not give any benefit to the petitioner on account of producing the respondents/accused in another case FIR No.370 of 2004 where they were identified by the complainant and thus holding that both the accused were to be put to the test identification parade to establish their identification as per perpetrators of the crime and in the circumstances, the identification of the respondents in the Court during trial will not be of much value. The trial court thus, held that the prosecution has failed to prove the identification of both the accused beyond reasonable doubt as the assailants who attacked the complainant PW-2 on 21<sup>st</sup> August, 2004 and acquitted them of the offence punishable under Section 307/452 read with Section 120 B of Indian Penal Code.

This is settled law that in reversing the finding of acquittal the High Court has to keep in view the fact that the presumption of innocence is still available in favor of the accused which is rather fortified and strengthened by the order of acquittal passed in his favour. 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 favours 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 favourable 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 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 court has heard the learned Additional Public Prosecutor in detail and has also gone through the testimonies of the witnesses recorded before the trial court as well as document from the record of the Trial Court.

The learned counsel for the petitioner is unable to satisfy this court that the discrepancies or inconsistencies in the statement of PW-2 and PW-3 are minor. PW-2 Smt. Sridevi has deposed that she was alone in the house and her son and husband was gone outside for work and the gate of the house was open and one person came running from the outside and two unknown person followed him. When she objected and asked for reasons to entering her house one of them closed her mouth by putting his palm and the other two persons fired at her which missed and hit the third person. Seeing the person bleeding in her home she got perplexed and confused. She also deposed that she heard one person calling other person as Pandey to go out as Rajesh had

suffered bullet injury. She deposed that on hearing her shrieks her neighbour Pappu and landlord Ganga Ram arrived. She was almost unconscious at that time so water was sprinkled on her face. Her neighbour Pappu had gone to the godown where her husband was working and her husband took her to private doctor and she was in the godown for 2-3 hours before returning to her house with her husband when she found her other neighbour as well as police at the spot. She further deposed that on 25<sup>th</sup> August, 2004 she came to know about the arrest of the some offenders and so they were called to the police station and taken to the court complex at Karkardooma where she identified the respondents. Her husband PW-3 Sumder Chand had rather deposed differently that on 25<sup>th</sup> August, 2004 he had gone with his wife to the Karkardooma Court where he identified Santosh Yadav and Rama Shankar Pandey who had allegedly worked with him and both of them knew that he had cash in his house. Some of the contradictions in the statements of witnesses are whereas PW-2 had stated that PW-4 had taken her to godown where PW-3 was working, however, in the cross-examination she stated that the neighbour Pappu had gone to the godown to call her husband from the place of his working at Azad Nagar and her husband had come from his working place. Learned Additional Public Prosecutor is unable to explain these contradictions which cannot be termed minor in the facts and circumstances. In any case it cannot be held that the inferences of the trial Court are not

sustainable in the facts and circumstances and the Learned Additional Public Prosecutor is unable to show any perversity in the observations and findings of the trial Court.

The learned Additional Public Prosecutor has also not been able to show as to why the accused were shown to the complainant even though they were to appear in some other case at Karkardooma Court. If the accused were shown to the complainant as they were not produced with muffled face, they were entitled to decline test identification parade and in the circumstances, their identification in the court will not carry much value. In the facts and circumstances, the inferences of the trial court that the petitioner has failed to prove identification of both the accused persons beyond reasonable doubt cannot be held to be unsustainable or perverse.

Though the evidence of Test Identification Parade only has corroborative value as substantive piece of evidence is the identification in the Court, however, where suspect is already shown to the witnesses before the Test Identification Parade, his identification in the Court becomes valueless and the accused cannot be convicted on the basis of such identification. The Supreme Court in 1998 SCC (CrL.) 1276, Shaikh Umar Ahmed Shaikh and Anr v. State of Maharashtra on account of strong probability in that case that the suspects were shown to the witnesses had held that their identification in the Court by the witnesses was meaningless. The Supreme Court had further held that

the statement of witnesses it the Court identifying the accused in the Court lost all its value and could not be made the basis for recording the conviction against the accused and had set aside the convictions which were passed on such unreliable evidence. In this case on strong probability that the suspect were shown their subsequent identification was held to be valueless. The Supreme Court in another case, (1998) SCC (Cri.) 201, Ganpat Singh and Anr v. State of Rajasthan had also held that where the accused were shown to the sole witnesses in the police station who later identified them in the Test Identification Parade, the evidence of such persons in the Court after considerable time was held to be nor reliable and could not be the basis for conviction. In the circumstances the inference of the Trial Court cannot be held to be not sustainable or perverse or illegal in any manner.

No other grounds has been raised on behalf of the petitioner by learned Additional Public Prosecutor seeking leave to appeal against the order of the trial Court acquitting the respondents of the charges made against them.

In the facts and circumstances, the petitioner has failed to make out any ground which will entitle the petitioner for leave to appeal. This court concurs with the inferences drawn by the trial court. Even if, any other view is possible in the facts and circumstances, the High Court will not substitute its view with that of trial court which is also based on noticing the demeanour of the witnesses.

Taking into consideration the totality of the facts and circumstances, there are no grounds to interfere with judgment of the trial court acquitting the respondents. The petition seeking leave to appeal is therefore, without any merit and it is dismissed.

***ANIL KUMAR, J.***

***S.L.BHAYANA, J.***

**NOVEMBER 22, 2010**

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