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

+ **CRL.M.C. 1705/2011 & Crl. M.B. 891/2011 and
Crl.M.A. No. 8450/2011**

RANBIR SINGH

..... Petitioner

Through: Ms. Puja Gulshan Kumar and Mr.
Gulshan Kumar, Advocates.

versus

STATE

..... Respondent

Through: Mr. Manoj Ohri, APP for the State
with SI Anil Kumar, PS Jahangir Puri,
Delhi.
Mr. Harender Rana, Advocate for
Respondent Nos. 2 and 3.

Coram:

HON'BLE MS. JUSTICE MUKTA GUPTA

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| 1. Whether the Reporters of local papers may
be allowed to see the judgment? | Not Necessary |
| 2. To be referred to Reporter or not? | Yes |
| 3. Whether the judgment should be reported
in the Digest? | Yes |

MUKTA GUPTA, J. (ORAL)

1. By this petition the Petitioner challenges the order on sentence directing him to undergo Simple Imprisonment for a period of six months and to pay a fine of Rs. 5,000/- under Section 304A IPC and in default of

payment of fine to undergo an additional Simple Imprisonment for one month and also the sentence to pay the fine of Rs. 5,000/- under Section 279 IPC and in default of payment of fine to undergo Simple Imprisonment for one additional month in a case where the Petitioner had entered into plea bargaining.

2. Learned counsel for the Petitioner contends that undoubtedly the learned Trial Court has power to direct the sentence for imprisonment of 1/4th of the sentence provided if an accused enters into plea bargaining however, while awarding the sentence of 1/4th of the sentence provided the learned Trial Court is bound to look into the mitigating circumstances. None of the mitigating circumstances were considered while awarding the maximum punishment. Petitioner is the only bread earner and has two minor children and old parents to support. Despite being poor the Petitioner gave an amount to the satisfaction of the Respondent Nos. 2 and 3. He has also placed on record the affidavit of the legal heirs of the deceased to state that the parties have entered into a settlement and no dispute remains between them.

3. Learned APP for the State on the other hand contends that the offences under Section 304A IPC of killing by rash and negligent driving are

on the rise and stern action has to be taken by the learned Trial Courts otherwise it will have no deterrent effect. Even Section 265E Cr. P.C. permits the Court to award a sentence to 1/4th of the punishment provided even on the mutually satisfactory deposition being arrived at between the parties. Moreover the judgment by the trial court is final and no appeal lies against it as prescribed under Section 265G of the Code.

4. I have heard learned counsel for the parties.

5. Briefly the facts of the case are that on 5th August, 2000 the deceased Inder Singh along with his wife Smt. Geeta boarded the bus under DTC operation being driven by the Petitioner. As per the testimony of PW3 Smt. Geeta before the Court when the bus reached Bhalswa Chowk Bus Stand, Outer Ring Road her deceased husband started deboarding from the front door of bus. The Petitioner suddenly drove the bus at a high speed in a rash and negligent manner resulting in her husband falling down from the bus on the road. Despite her raising alarm the Petitioner did not stop the bus and drove it till Karnal by Pass. She came back to the spot and learnt that her husband had been removed to Trauma Centre. The deceased was declared fit for statement at the Trauma Centre and his statement under Section 161 Cr.P.C. was recorded on the 13th August, 2000. In his statement the

deceased stated that on 5th August, 2000 when he was going along with his wife in the bus being driven by the Petitioner on reaching at Bhalswa Chowk Bus stand he started deboarding from the front door. However, the Petitioner suddenly drove the bus due to which he fell down and the tyre of the bus ran over his stomach. As per the postmortem report the cause of death was opined to be due to shock and septicemia consequent upon blunt force/surface impact to the left lower leg.

6. During the trial the Petitioner expressed his desire to go for plea bargaining. The matter was referred for plea bargaining. During the proceedings mutually satisfactory disposition was arrived at by paying compensation to the wife and daughter of the deceased in addition to the compensation of Rs. 8 lakhs awarded by the learned MACT. After entering into the mutually satisfactory disposition the matter was referred to the learned Trial Court who after hearing the parties and in view of the mutually satisfactory disposition awarded maximum punishment to the Petitioner as stated above.

7. As regards the remedy of filing a petition under Article 227 of the Constitution of India read with Section 482 Cr.P.C., Section 265G of the Code of Criminal Procedure, 1973 provides as under:

265G: Finality of the judgment.- The judgment delivered by the Court under Section 265G shall be final and no appeal (except the special leave petition under Article 136 and writ petition under articles 226 and 227 of the Constitution) shall lie in any Court against such judgment.”

8. Hon’ble Supreme Court in *Shalini Shyam Shetty and Another vs. Rajendra Shankar Patil*, (2010) 8 SCC 329 relying on the decision of *Surya Dev Rai vs. Ram Chander Rai & Ors.* held:

44. In paragraph 38, sub-paragraph (4) at page 695 of the report, the following principles have been laid down in *Surya Dev Rai* (supra) and they are set out:

“38 (4) Supervisory jurisdiction under Article 227 of the Constitution is exercised for keeping the subordinate courts within the bounds of their jurisdiction. When a subordinate Court has assumed a jurisdiction which it does not have or has failed to exercise a jurisdiction which it does have or the jurisdiction though available is being exercised by the Court in a manner not permitted by law and failure of justice or grave injustice has occasioned thereby, the High Court may step in to exercise its supervisory jurisdiction.

45. Sub-paras (5), (7) and (8) of para 38 are also on the same lines and extracted below:

“38. (5) Be it a writ of certiorari or the exercise of supervisory jurisdiction, none is available to correct mere errors of fact or of law unless the following requirements are satisfied: (i) the error is manifest and apparent on the face of the proceedings such as when it is based on clear ignorance or utter disregard of the provisions of law, and (ii) a grave injustice or gross failure of justice has occasioned thereby.

(6) xxx xxx

(7) The power to issue a writ of certiorari and the supervisory jurisdiction are to be exercised sparingly and only in appropriate cases where the judicial conscience of the High Court dictates it to act lest a gross failure of justice or grave injustice should occasion. Care, caution and circumspection need to be exercised, when any of the above said two jurisdictions is sought to be invoked during the pendency of any suit or proceedings in a subordinate court and the error though calling for correction is yet capable of being corrected at the conclusion of the proceedings in an appeal or revision preferred there against and entertaining a petition invoking certiorari or supervisory jurisdiction of the High Court would obstruct the smooth flow and/or early disposal of the suit or proceedings. The High Court may feel inclined to intervene where the error is such, as, if not corrected at that very moment, may become incapable of correction at a later stage and refusal to intervene would result in travesty of justice or where such refusal itself would result in prolonging of the lis.

(8) The High Court in exercise of certiorari or supervisory jurisdiction will not covert itself into a Court of Appeal and indulge in re-appreciation or evaluation of evidence or correct errors in drawing inferences or correct errors of mere formal or technical character.

49. On an analysis of the aforesaid decisions of this Court, the following principles on the exercise of High Court's jurisdiction under Article 227 of the Constitution may be formulated:

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(g) Apart from the situations pointed in (e) and (f), High Court can interfere in exercise of its power of superintendence when there has been a patent perversity in the orders of tribunals and Courts subordinate to it or where there has been a gross and manifest failure of justice or the basic principles of natural justice have been flouted.

9. The Hon'ble Division Bench of this Court in *Anur Kumar Jain vs. CBI, 178 (2011) DLT 501* has held:-

32. From the aforesaid pronouncement in the field, there can be no scintilla of doubt that the constitutional remedy under Article 227 of the Constitution of India would be available but the exercise has to be extremely limited. The power of supervisory jurisdiction by the High Court is to be exercised very sparingly and only in appropriate cases where judicial conscience of the writ court commands that it has to act lest there would be gross failure of justice or grave injustice would usher in. If we allow ourselves to say so, care, caution and circumspection have to be the pyramidal structure while exercising the inherent and the supervisory jurisdiction. The exercise of jurisdiction should not be one by which there would be an obstruction in carrying on of a criminal trial to its logical end. There may be cases where the writ court may feel inclined to interdict or intervene where it is felt that if the error is not corrected at the very inception the same would cause immense injustice and correction at a later stage may not be possible and further refusal to intervene would ensue in travesty of justice. The writ court, under no circumstances can assume the role of appellate authority and re-appreciate the evidence.

10. Thus, for this Court to entertain the present petition under Article 227 of the Constitution it has to be seen whether the order of the learned Trial Court suffers from an illegality or gross perversity. Indubitably the learned Trial Court had the power to award maximum sentence of 1/4th of the punishment prescribed to the Petitioner on entering a mutually satisfactory disposition with the victims and the learned Trial Judge has exercised the

same. However, while awarding the maximum sentence the learned Trial Court failed to consider the mitigating factors.

11. No doubt the Petitioner was rash and negligent in his act, however, he was a first time offender which fact has not been considered at all by the learned Trial Court. The Hon'ble Supreme Court in *Dalbir Singh vs. State of Haryana*, 2004 SCC (Crl) 1208 no doubt held that in view of the galloping trend in road accident in India and their devastating consequences visiting the victims and their family the criminal courts cannot treat the nature of offence under Section 304A IPC as attracting the benevolent provisions of Section 4 of Probation of Offenders Act. In *B. Nagabushan vs. State of Karnataka*, 2008 (5) SCC 730 it was held that while considering the quantum of sentence one of the prime consideration should be deterrence. However, the decisions did not lay down that the mitigating factors should not be considered at all. In fact in *B. Nagabhusan (supra)* the Hon'ble Supreme Court upheld the sentence of imprisonment for six months without the benefit of plea bargaining. While awarding the sentence upto 1/4th of the punishment prescribed also in a case of plea bargaining the learned Trial Court was duty bound to consider the mitigating factors.

12. In the present case the mitigating factors in favour of the Petitioner are

that he is the first time offender. He has adequately compensated the victims to their satisfaction. He is also the only bread earner for his two minor children and old aged parents. Though it cannot be said that in view of these mitigating circumstances the Petitioner should not be awarded any imprisonment and should be let of, however, he should not have been awarded the maximum punishment as done by the learned Trial Court. Therefore, in the interest of justice and keeping in view the law that while awarding sentence a balance sheet of aggravating and mitigating circumstances have to be kept in mind, the order on sentence of the Petitioner is modified to the extent that the Petitioner would undergone a sentence of imprisonment for a period of four months for offence punishable under Section 304A IPC and a fine of Rs. 1,000/- for offence punishable under Section 279 IPC and in default of payment of fine to undergo Simple Imprisonment for a period of one week.

13. Petition and applications are disposed of. Order dasti.

(MUKTA GUPTA)
JUDGE

SEPTEMBER 05, 2011
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