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IN THE HIGH COURT OF DELHI AT NEW DELHI

DECIDED ON: 02.09.2011

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CRL.L.P. 268/2011

STATE (NCT OF DELHI)

..... Petitioner

Through : Sh. Saleem Ahmed, ASC with SI Rajbir Singh, Police
Station Lahori Gate.

versus

RAM RAJ & ANR

..... Respondents

Through : Nemo.

CORAM:

MR. JUSTICE S. RAVINDRA BHAT

MR. JUSTICE G.P. MITTAL

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

MR. JUSTICE S.RAVINDRA BHAT (OPEN COURT)

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Crl. M.A. 7527/2011 (U/S 5 of the Limitation Act) in Crl. L.P. 268/2011

For the reasons mentioned in the application, the application is allowed. Crl. M.A. 7527/2011 stands disposed of accordingly.

Crl. L.P. 268/2011

1. The State by this petition seeks leave to appeal against a judgment and order of the learned ASJ dated 12.01.2011, acquitting the respondents for the offences they were charged with, i.e. Sections 452/395/397/120-B.
2. The prosecution story was that on 29.05.2003, a robbery was committed in the office of

one Shyam Lal at No. 202, Gali Kinariwali, Naya Bans, Delhi. The complainant Shyam Lal initially reported loss of ₹ 2 lakhs. He, however, recorded a supplementary statement, alleging that ₹ 1 crore had been looted. The prosecution further alleged that Sarika, PW-1, who worked as Shyamlal's accountant, was the solitary eyewitness to the incident, which occurred around 12.30 pm when she was counting the cash. She stated that at that time someone knocked the door; upon her opening it, three persons armed with knife pushed her inside. She further claimed that she was pushed, gagged and tied with her *dupatta* to a chair. The assailants, according to PW-1, shut the door and proceeded to loot the cash which was on the table and stuffed it in a "bori". It is also claimed that the attackers had disconnected the landline. In cross-examination, PW-1 admitted that she did not know the assailants or the accused earlier. She admitted having been shown the photographs of the suspects 2-3 days after the occurrence.

3. The prosecution, after conducting investigation, filed a chargesheet against the present respondents, who entered the plea of not guilty and claimed trial. After considering the evidence and the testimonies of witnesses and the materials placed on record, the Trial Court concluded that the prosecution was unable to substantiate its allegations and, therefore, acquitted the respondents of all charges.

4. It is urged by learned APP that the reasons which persuaded the Trial Court to acquit the respondents are *ex-facie* erroneous. It is submitted that the Trial Court's reasoning regarding omission to inform could not be an adverse circumstance. Elaborating on this, the APP submitted that Shyam Lal died during the course of the trial proceedings. It is next submitted that the prosecution had urged that the two respondents who had been apprehended and detained earlier during the investigations, managed to escape at that time. The prosecution had alleged during the trial that at that instance, the accused had possession of ₹ 24,80,000/- and were apprehended near P.S. Anand Vihar. The prosecution further alleged that the accused were taken to a residence in Sahibabad, which they had looted, according to the disclosure made by them. At that point of time, however, it was discerned that there was in fact no robbery. Furthermore, the accused escaped.

5. Learned APP emphasized that the Trial Court fell into error in not considering that ₹ 24,00,000/- was too large an amount to be "planted" and, therefore, ought to have been believed.

6. We have considered the submissions and also we had the benefit of considering the Trial Court records.

7. As far as the ocular testimony is concerned, PW-1 had admitted never having seen the accused and that she was shown the photographs of the alleged culprits 2-3 days after the occurrence. However, this conflicted with the prosecution story – testified by the police witnesses, who claimed that PW-1 Sarika had not been shown the photograph, as deposed by her. This, in the opinion of the Trial Court, was a material contradiction. The Trial Court also noted that no recovery had been made by the police, connecting the accused with the crime. Pertinently, the Court observed as follows vis-à-vis the prosecution story about the detention of the accused on a previous instance and their subsequent escape and their further arrest at a still later point of time:

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31. *It remains undisputed on record that no recovery was effected in the present case from any of the accused persons. The recovery allegedly effected at PP ISBT, Anand Vihar by itself is in doubt. None of the police official who had effected the recovery had claimed that any recovery/seizure memo was prepared. SHO of the Police Station was not informed of the recovery immediately after the recovery was effected. It should not be lost sight of that the alleged recovery was of Rs.24,80,000/- which was not a meager amount. The SHO had specifically claimed during course of his testimony that he was not informed about the recovery but was only informed after the culprits had escaped from police custody. All the proceedings of PS ISBT, Anand Vihar remained shrouded in doubt. Admittedly, there is no document whatsoever to show that the accused Ram Raj and his accomplice had been apprehended on 14.6.03 or had escaped from police custody. There is nothing on record to show that any case was subsequently registered against him in respect of his having escaped from custody on the said date. As already mentioned herein above, all this puts the story in doubt.*

32 *The prosecution story apparently has not come out clear even in respect of the amount which had been looted. While the original complainant Sham Lal Gupta had stated in the FIR that the looted amount was Rs.2 Lacs, as per IO SI Tilak Chand, Sham Lal subsequently met him and claimed that the looted amount was Rs.1 Crore. Obviously, neither the investigating agency nor prosecution has pressed any charge against accuseds in respect of looted amount being Rs.1 Crore.*

33 *It would not be out of place to point out that the said Sham Lal who infact was author of FIR and the actual complainant was neither cited nor examined by the prosecution in the present case. Infact, no explanation whatsoever has come forward on behalf of the prosecution for not examining this witness.*

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8. The Trial Court also noticed that PW-1 Sarika, who claimed to have been injured, was not medically examined. Having regard to these discrepancies and contradictions, the Trial Court acquitted the respondents.

9. It has been reiterated time and again that the High Court does not sit in appeal while considering a petition for leave to appeal. It has to be convinced that the Trial Court's reasoning or approach points to substantial or compelling reasons which ought to persuade it to grant leave. In the absence of such compelling or substantial reasons, which extend to gross misappreciation of facts or grave misapplication of law, the High Court would not interfere with the findings of acquittal of accused in criminal cases. Applying these standards and the discrepancies in the testimony of PWs-1, 10 and 11 as to whether she was shown the photograph of respondents; the falsity of the prosecution about the respondents having been detained earlier with a substantial sum of money, i.e. ₹ 24 lakhs which was not even recorded in the First Information Report (FIR) or intimated to the concerned Police Station, we are of the opinion that the Trial Court's findings are based on sound reasoning. The prosecution has been unable to point to any substantial or compelling reasons which merit scrutiny by this Court in an appeal. For these reasons, the petition has to fail; Crl. L.P. 268/2011 is accordingly dismissed.

**S. RAVINDRA BHAT
(JUDGE)**

**G.P.MITTAL
(JUDGE)**

SEPTEMBER 02, 2011
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