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

+ **CRL.L.P. 768/2015**

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Date of Judgment: 4th May, 2016

STATE

..... Appellant

Through: Ms. Anita Abraham, APP for State.
SI Sukhvinder Singh, P.S. Bharat
Nagar

SHRAVAN RUSTAGI

..... Respondent

Through: Mr. Mohit Mathur, Senior Advocate
with Mr. Ashok Soni, Advocate.

CORAM:

HON'BLE MR. JUSTICE G. S. SISTANI

HON'BLE MS. JUSTICE SANGITA DHINGRA SEHGAL

SANGITA DHINGRA SEHGAL, J.

Crl. M. A. 18126/2015

1. This is an application under Section 5 of the Limitation Act read with Section 482 of Code of Criminal Procedure seeking condonation of 100 days delay in filing the present leave petition.
2. Heard. For the reasons stated in the application and in the interest of justice, delay is condoned.
3. Application stands disposed of.

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4. The present Criminal Leave Petition has been filed under Section 378 (4) of the Code of Criminal Procedure by the State against the impugned judgment dated 27.05.2015 in Sessions Case No. 73/2012

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whereby the learned Additional Sessions Judge-II (North West), Rohini Courts, New Delhi, has acquitted the accused of all the charges levelled against him under Section 498A/304B of the Indian Penal Code and alternatively under Section 302 of the Indian Penal Code.

5. The brief facts of the case as noted by the learned trial court are as under:

"On 15.02.2012, Chhavi tried to commit suicide by hanging and expired on 16.02.2012 (Chhavi is hereinafter referred to as the "deceased"). On 17.02.2012, father of the deceased Om Prakash Gupta made a statement to the SDM that on 02.04.2008, the deceased married Shravan Rustagi (the accused) according to Hindu Rites and Ceremonies and used to reside along with her husband at B-121, MIG Flats Phase-IV, Ashok Vihar, Delhi. They used to quarrel very often and the accused in anger used to beat her daughter and also tried to grab her neck occasionally. On 15.02.2012, the deceased called him several time and informed about some dispute had taken place between her and the accused in a party which they attended together, due to which she was mentally harassed and therefore, did not want to live along with her husband and had booked a ticket for Bhatinda on 19.02.2012. On 15.02.2012 at about 10:15 p.m., the accused called him and informed that his daughter had locked herself in a room and she might do something and in the morning, she might be found dead. That night at about 11:00 p.m., father in law of the deceased telephoned him and informed that her daughter had committed suicide. In the said complaint, it was stated that the husband/the accused and in laws of her daughter never harassed her for the demand of dowry. However, her daughter could not commit suicide on petty things and therefore, he requested to conduct an inquiry to ascertain the truth.

Thereafter, on 18.02.2012, he made another statement to the SDM stating that at the time of making the statement dated 17.02.2012, he was under the influence of Dr. Suresh, father of the accused. When he met his relatives and known persons and visualized the entire incident, he was confident that his daughter was murdered and the accused and her parents are responsible for the same. It is stated that once the accused and the deceased were at Bangalore, the accused used to beat her daughter and her medical test was got done and a complaint at Women's Cell Bangalore was made. On one occasion, he deposited 1,30,000/- in the account of the accused, but, the accused returned the said amount after few months because of her daughter. Accused and his parent also demanded money from him. Based upon the statement dated 18.02.2012, FIR was registered. During investigation, the accused was apprehended, arrested and released on bail. After completing the investigation, the charge sheet was filed in the court."

6. After investigation, charges under Section 498A/304B of the Indian Penal Code were framed against the accused. In the alternative, the charge under Section 302 of the Indian Penal Code was also framed against the accused. The accused pleaded not guilty and claimed trial.
7. In order to bring home the guilt of the accused, the prosecution examined 21 witnesses in all. Thereafter, the statement of the accused was recorded under Section 313 of the Code of Criminal Procedure wherein he pleaded his innocence by denying all the incriminating circumstances and claimed to be falsely implicated. The accused examined 6 defence witnesses to substantiate his defence.
8. Ms. Anita Abraham, Additional Public Prosecutor appearing for the State, while assailing the judgment of the trial court, contended that

the acquittal of the respondent on the grounds relied upon by the trial court were perverse based on surmises and conjectures and on erroneous appreciation of evidence resulting in flagrant miscarriage of justice and that the impugned judgment cannot be sustained in law. The learned counsel vehemently argued that the trial court had turned a blind eye to the nature and number of the injuries sustained by the deceased. She further contended that the discrepancies in the statements of prosecution witnesses were minor which do not go to the root of the matter and occurred due to lapse in time.

9. On the contrary, Mr. Mohit Mathur learned senior counsel appearing on behalf of the respondent contends that the trial court has rightly appreciated all the evidence on record and the prosecution has failed to prove its case against the respondent. Further, he submitted that there is no ground for setting aside the said judgment passed by the trial court.
10. Before delving into the merits of the case, we deem it appropriate to discuss the relevant provision involved in the present case i.e. Section 304B of the Indian Penal Code which reads as under:

304-B - (1) Where the death of a woman is caused by any burns or bodily injury or occurs otherwise than under normal circumstances within seven years of her marriage and it is shown that soon before her death she was subjected to cruelty or harassment by her husband or any relative of her husband for, or in connection with, any demand for dowry, such death shall be called "dowry death", and such husband or relative shall be deemed to have caused her death.

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Explanation - For the purposes of this Sub-section, "dowry" shall have the same meaning as in Section 2 of the Dowry Prohibition Act, 1961 (28 of 1961).

(2) Whoever commits dowry death shall be punished with imprisonment for a term which shall not be less than seven years but which may extend to imprisonment for life.

11. In **Raman Kumar Vs. State of Punjab : (2009) 16 SCC 35**, the Hon'ble Supreme Court observed as under:

"13. The provision has application when death of a woman is caused by any burns or bodily injury or occurs otherwise than under normal circumstances within seven years of her marriage and it is shown that soon before her death she was subjected to cruelty or harassment by her husband or any relatives of her husband for, or in connection with any demand for dowry. In order to attract application of Section 304B IPC, the essential ingredients are as follows:

(i) The death of a woman should be caused by burns or bodily injury or otherwise than under a normal circumstance.

(ii) Such a death should have occurred within seven years of her marriage.

(iii) She must have been subjected to cruelty or harassment by her husband or any relative of her husband.

(iv) Such cruelty or harassment should be for or in connection with demand of dowry.

(v) Such cruelty or harassment is shown to have been meted out to the woman soon before her death.

As per the definition of "dowry death" in Section 304B IPC and the wording in the presumptive Section 113B of the Evidence Act, one of the essential ingredients, amongst others, in both the provisions is that the woman concerned must have been "soon before her death"

subjected to cruelty or harassment "for or in connection with the demand for dowry". Presumption under Section 113B is a presumption of law. On proof of the essentials mentioned therein, it becomes obligatory on the court to raise a presumption that the accused caused the dowry death. The presumption shall be raised only on proof of the following essentials:

- (1) The question before the court must be whether the accused has committed the dowry death of a woman, (This means that the presumption can be raised only if the accused is being tried for the offence under Section 304B IPC.)
- (2) The woman was subjected to cruelty or harassment by her husband or his relatives.
- (3) Such cruelty or harassment was for, or in connection with any demand of dowry.
- (4) Such cruelty or harassment was soon before her death.

16. A conjoint reading of Section 113B of the Evidence Act and Section 304B IPC shows that there must be material to show that soon before her death the victim was subjected to cruelty or harassment. The prosecution has to rule out the possibility of a natural or accidental death so as to bring it within the purview of the "death occurring otherwise than in normal circumstances". The expression "soon before" is very relevant where Section 113B of the Evidence Act and Section 304B IPC are pressed into service. The prosecution is obliged to show that soon before the occurrence there was cruelty or harassment and only in that case presumption operates. Evidence in that regard has to be led in by the prosecution. "Soon before" is a relative term and it would depend upon the circumstances of each case and no straitjacket formula can be laid down as to what would constitute a period of soon before the occurrence. It would be hazardous to indicate any fixed period, and that brings in the importance of a proximity test both for the

proof of an offence of dowry death as well as for raising a presumption under Section 113B of the Evidence Act. The expression "soon before her death" used in the substantive Section 304B IPC and Section 113B of the Evidence Act is present, with the idea of proximity test. No definite period has been indicated and the expression "soon before" is not defined. A reference to the expression "soon before" used in Section 114 Illustration (a) of the Evidence Act is relevant. It lays down that a court may presume that a man who is in the possession of goods soon after the theft, is either the thief who has received the goods knowing them to be stolen, unless he can account for his possession. The determination of the period which can come within the term "soon before" is left to be determined by the courts, depending upon facts and circumstances of each case. Suffice, however, to indicate that the expression "soon before" would normally imply that the interval should not be much between the cruelty or harassment concerned and the death in question. There must be existence of a proximate and live link between the effect of cruelty based on dowry demand and the death concerned. If the alleged incident of cruelty is remote in time and has become stale enough not to disturb the mental equilibrium of the woman concerned, it would be of no consequence."

12. In *Amar Singh v. State of Rajasthan* : (2010) 9 SCC 64, the Hon'ble Supreme Court observed as under:

"29...What is punishable Under Section 498-A or Section 304-B Indian Penal Code is the act of cruelty or harassment by the husband or the relative of the husband on the woman. It will be also clear from Section 113-B of the Evidence Act that only when it is shown that soon before her death a woman has been subjected by any person to cruelty or harassment for, or in connection with, any demand for dowry, the court shall presume that

such person had caused the dowry death within the meaning of Section 304-B Indian Penal Code. The act of subjecting a woman to cruelty or harassment for, or in connection with, any demand for dowry by the accused, therefore, must be established by the prosecution for the court to presume that the accused has caused the dowry death."

13. The law above discussed cogently states that where the death of a woman is caused by any burns or bodily injury or occurs otherwise than under normal circumstances within 7 years of her marriage and it is shown that soon before her death she was subjected to cruelty or harassment by her husband or any relative for or in connection with any demand of dowry, such death shall be punishable under Section 304B of the Indian Penal Code.
14. To prove the accusation against a person for the offence of dowry death, the prosecution is obliged to prove that:
 - (a) the death of a woman was caused by burns or bodily injury or had occurred otherwise than under normal circumstances;
 - (b) such death should have occurred within 7 years of her marriage;
 - (c) the deceased was subjected to cruelty or harassment by her husband or by any relative of her husband;
 - (d) such cruelty or harassment should be for or in connection with the demand of dowry; and
 - (e) the deceased should have been subjected to such cruelty or harassment soon before her death.

15. Admittedly, the marriage of the respondent and the deceased was solemnized on 02.04.2008. The deceased was found hanging on 15.02.2012 whereas the death of the deceased took place on 16.02.2012 i.e. within seven years of marriage. Hence, two ingredients of Section 304B of the Indian Penal Code are satisfied as it is not in dispute that firstly the death of the deceased was within seven years of her marriage and secondly was otherwise than under normal circumstances.
16. Now, the questions we need to ponder upon are as to:
1. Whether the deceased was subjected to harassment or cruelty at the instance of her husband or any relative of her husband?
 2. If answer to the first question appears to be in affirmative, whether that harassment or cruelty was in connection with the demand of dowry?
 3. Such cruelty or harassment should have been subjected to soon before death.
17. The answer to the first two questions appears to be inextricably linked with the third question. Undoubtedly, there is no eye witness to the occurrence. The entire case of the prosecution rests upon the testimonies of PW6 Dr. R. Bhanumurthy (who conducted MLC of the deceased), PW10 Om Prakash Gupta (father of the deceased), PW11 Sudha Gupta (maternal aunt of the deceased) and PW12 Sumit Rustagi (cousin of the deceased).

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18. In order to prove that the deceased was subjected to harassment and cruelty in connection with the demand of dowry "soon before her death" the testimony of PW-10 (father of the deceased) assumes importance. In his initial statement recorded by a police official on 16.02.2012, he did not level any allegations against the accused. Thereafter, on the morning of 17.02.2012, SDM recorded his statement wherein, again no allegations were raised against the respondent or his parents. However, on 18.02.2012, the SDM at the request of PW-10 again recorded his statement. PW-10 stated that he gave the first statement under the influence of father of the respondent, on the pretext that the last rites of her daughter had to be performed by her husband (respondent), otherwise, her soul would not rest in peace. Accordingly, he did not make any allegations of dowry against the respondent and his parents. Later, he came to know that father of the respondent misled them about the medical condition of her daughter. PW-10 gave his written statement in his handwriting to the SDM and clarified that the previous statement was under the influence of Dr. Suresh (father of the respondent). PW-14 (mother of the deceased) supported the same statement and signed the same.

19. PW10 Om Prakash Gupta (father of the deceased) in his testimony before the trial court deposed as under:

"In the month of March 2011 accused Sharvan demanded Rs Five lacs from me as dowry as demanded earlier. I paid Rs. 1,30,000/- to accused Sharvan. Accused Sharvan again harassed Chhavi but Chhavi told him that I (witness) was going to make complaint against him so he did not make further demand. He also returned

Rs. 1,32,500/- to me and he demanded Rs.2,500/- from me and I paid the same. Accused Sharvan continuously demanding Rs. Five Lacs and car from me as dowry."

20. PW-10 Om Prakash Gupta in his cross-examination stated as under:

"It is correct that after the marriage Sharvan and Chhavi had gone to Mauritius for their honeymoon. I do not know whether accused Sharvan had taken a package of Rs. 65,000/- each.

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It is correct that Chavvi and Sharvan had often travelled Nationally and Internationally.

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At the time when the marriage of the accused with my daughter took place, we told that accused Sharvan was drawing a package of Rs. 18 Lacs per annum."

21. PW-10 further admitted that at the time of marriage, the respondent owned a Santro Car but showed his ignorance whether he had a motorcycle in Delhi as well as in Bangalore. He showed his ignorance whether the respondent purchased Alto car in the year 2008 for the deceased. He admitted that the respondent purchased a Beat car. PW10 admitted that despite the fact that the deceased was hospitalized neither he nor his wife ever visited Bangalore.
22. After perusal of the record, we find it surprising to see the shift in the stand of PW-10 from no demand of any kind at all to the exact opposite without giving any particular proof of the demand of the Honda City car. Further, PW10 showed his ignorance towards the National and International trips after marriage or any expensive gift given by the respondent to the deceased. Hence, we can draw an

inference by the material placed on record that the respondent was financially stable earning a handsome salary and he, along with the deceased, was leading a lavish life. They both took many trips within India and abroad and had sufficient number of vehicles.

23. Furthermore, PW-10 was absolutely silent about the fact that the quarrel took place due to the demand of a Honda City car, he again made an improvement in his statement to that effect. Furthermore, the fact that he made four statements i.e. on 16.02.2012 to the police, on 17.02.2012 to the SDM, on 18.02.2012 again to the SDM and on 23.02.2012 another statement under Section 161 of the Code of Criminal Procedure, raises serious doubts as to the reliability and credibility of PW10 as a witness.
24. It is in evidence that in March 2011, the respondent had demanded Rs. Five lacs as dowry from the parents of the deceased, however he could only pay Rs. 1,30,000/-. But it has been proved that the respondent returned Rs. 1,32,500/- after a few months. There is no material that proves that it was demanded as dowry. Moreover, an extra amount of Rs. 2,500/- was paid along with the principal amount, which appears to be towards interest. Hence, we cannot hold that such amount was paid as dowry to the respondent.
25. It is also to be noted that PW10, PW11, PW12, PW14 and PW19, all being the near and dear ones of the deceased, in spite of being aware of all the cruelties and atrocities which the deceased went through, never filed a police complaint to that effect. There is no evidence on record to prove that any complaint to the police against the respondent

or his parents was ever filed by them. It is highly improbable that either of the family members did not even bother to disclose the said acts to the police before the death of the deceased but only immediately after the death of the deceased.

26. Reliance has been placed on the letter dated 25.10.2008 which the deceased had written, which reveals that the attitude of the deceased was rude and non cooperative towards the respondent and his family members. It also reveals that she was hot tempered and admitted that she would control her adamant and aggressive nature and would not use vulgar and abusive language against the respondent and his family members. She stated that she would stop consuming liquor in future. She also stated that she had an affair in the past and promised to mend her ways. She specifically mentioned that there was no demand of dowry from the respondent and his parent at any stage. Although, it is the case of PW-10 that signatures of the deceased were obtained by the parents of the respondent, it is hard to believe that a qualified person like the deceased would sign a document without going through its contents, that too in the presence of the PW-10 himself and another mediator. There is no material on record which shows that the parent of the deceased protested against the deceased signing the said letter, especially when he was aware of the atrocities faced by the deceased. Hence, we are inclined to infer that the letter was signed voluntarily and in presence of witnesses.

27. Further, DW4 Dr. Swarn Singhla, a Gynecologist deposed before the court that the deceased visited her on many occasions for counseling to get rid of her drinking habit.
28. Another point to be noted here is that according PW-12 Sumit Rastogi, one day he received a call from the deceased who informed him that her husband had beaten her and he immediately took her to a private medical practitioner for treatment where he saw bruises on her neck and cheek. In his cross-examination, he deposed as under:

"I had also told to the police that initially I took Chhavi to a private practitioner whose name I do not remember and from there I had taken her to Women Cell, Bangalore. I had also told to the police that Women Cell official had asked us to bring a wound certificate from a Government Hospital so I took Chhavi to a Government hospital.

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I had told to the official of Delhi Police about the office of Bangalore where we had lodged the above said complaint.

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Chhavi had called on my mobile phone on 07.02.2009. On the next day i.e. on 08.02.2009 I had taken her to a Private Practitioner. We had visited Women Cell on the same day but we had gone to Government Hospital on 10.02.2009"

29. Firstly, no reason has been assigned for getting the treatment done at the Government Hospital after a delay of 3 days, which was only at a distance of 8-10 kms from her residence. Secondly, no record of any complaint to the CAW, Bangalore or notice served upon the Lady Curzon Hospital Bangalore has

been placed on record before this Court. The prosecution has not been able to prove that any complaint was ever made to CAW, Bangalore for the alleged beating on 07.02.2009. On the basis of the above, we are, therefore, inclined to draw an adverse inference from the above circumstances.

30. As far as the medical evidence is concerned, PW6 Dr. R. Bhanumurthy, who prepared MLC of the deceased in his cross-examination stated as under:

"None of the above said exhibited documents were prepared in my presence. It is correct that abrasions can be caused by nail. It is correct that the injuries elaborated in the wound certificate were not fresh and were old. It is correct that the multiple nail marks can be caused by self inflicted wounds. It is wrong to suggest that I have never worked with Dr. S.T. Sridhar or that I have never seen him while writing and signing and therefore I cannot recognize his signatures and handwriting or that I am deposing falsely."

31. After carefully examining the impugned judgment, the testimonies of material witnesses and the documents placed on record along with the arguments advanced by the counsel for the parties, we are of the view that as per the testimonies of PW-10, PW-14 (parents of the deceased) and PW-12 (cousin of the deceased) and their conduct, it is not probable to rely on their statements without any corroboration. The fact that no police complaint was ever made by any of the person aware of the cruelties faced by the deceased points towards conduct of the interested witnesses and raises serious doubts as to the genuineness of the case. As per the statement of PW-6 Dr. R. Bhanumurthy, it is

made clear that the injuries found on the body of the deceased could have also been self inflicted wounds. Furthermore, the letter dated 25.10.2008 and the deposition of DW4 Dr. Swarn Singhla establishes the fact that deceased was hot tempered and that her behavior towards the respondent and his parents was aggressive and not appropriate.

32. In ***Tota Singh and Anr. Vs. State of Punjab*** reported in ***AIR 1987 SC 108***, the Hon'ble Supreme Court made the following observation:

"6. Where two views are possible on an appraisal of the evidence adduced in the case and the Court below has taken a view which is a plausible one, the Appellate Court cannot legally interfere with an order of acquittal even if it is of the opinion that the view taken by the Court below on its consideration of the evidence is erroneous."

33. In a recent case of ***Upendra Pradhay Vs. State of Orissa : (2015) 5 SCALE 634***, the Apex Court has observed that :

*"10. We are of the view that in case there are two views which can be culled out from the perusal of evidence and application of law, the view which favours the accused should be taken. It has been recognized as a human right by this Court. In ***Narendra Singh and Anr. v. State of M.P. : (2004) 10 SCC 699***, this Court has recognized presumption of innocence as a human right and has gone on to say that:*

30. It is now well settled that benefit of doubt belonged to the accused. It is further trite that suspicion, however grave may be, cannot take place of a proof. It is equally well settled that there is a long distance between 'may be' and 'must be'.

33. We, thus, having regard to the post-mortem report, are of the opinion that the cause of death of Bimla Bai although is shrouded in mystery but

benefit thereof must go to the Appellants as in the event of there being two possible views, the one supporting the accused should be upheld. (Emphasis Supplied)"

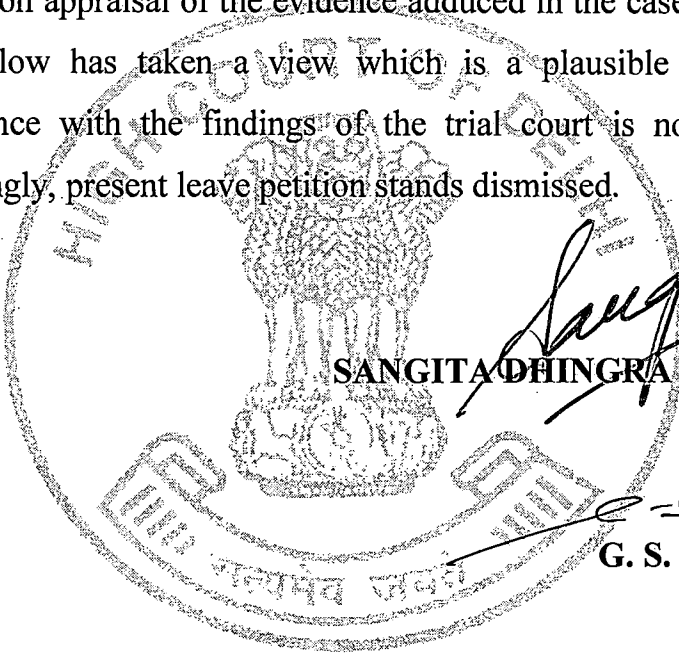
11. The decision taken by this Court in the aforementioned case, has been further reiterated in **State of Rajasthan v. Raja Ram : (2003) 8 SCC 180**, wherein this Court observed thus:

"Generally the order of acquittal shall not be interfered with because the presumption of innocence of the accused is further strengthened by acquittal. 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. In a case where admissible evidence is ignored, a duty is cast upon the appellate court to reappreciate the evidence in a case where the accused has been acquitted, or the purpose of ascertaining as to whether any of the accused committed any offence or not. (see Bhagwan Singh v. State of M.P.) The principle to be followed by the appellate court considering the appeal against the judgment of acquittal is to interfere only when there are compelling and substantial reasons for doing so. If the impugned judgment is clearly unreasonable, it is a compelling reason for interference. (Emphasis supplied)."

34. Therefore, it is well settled that where two views are reasonably possible on the basis of the evidence on record, the one that favours the accused must be accepted. In any event in a case of acquittal, if the

view of the trial court is a possible reasonable view as per the evidence on record, interference by the High Court may not be justified.

35. Keeping in view the aforesaid settled law as discussed above, we are of the view that in the instant case, the ingredients of Section 304-B/498-A/302 of the Indian Penal Code are not established beyond all reasonable doubts against the respondent. We hold that two views are possible on appraisal of the evidence adduced in the case and the trial court below has taken a view which is a plausible one. Hence, interference with the findings of the trial court is not warranted. Accordingly, present leave petition stands dismissed.



Sangita
SANGITA DHINGRA SEHGAL, J.

G. S. Sistani
G. S. SISTANI, J.

MAY 4, 2016
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