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

+ **CRL.L.P. 52/2019**

CBI

.....Petitioner

Through: Mr. Atul Guleria, SPP,  
CBI with Mr. Shubham  
Goyal, Mr. Aryan Rakesh  
& Mr. Pankaj Kumar,  
Advs.

versus

JEET RAM & ORS.

.....Respondents

Through: Mr. Ranbir Chauhan &  
Mr. Rahul Chauhan, Advs.  
for R-2 through V.C.

**CORAM:**

**HON'BLE MR. JUSTICE AMIT MAHAJAN**

**ORDER**

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**03.10.2024**

**CRL.M.A. 736/2019** (for condonation of delay of 131 days in  
filing the appeal & **CRL.M.A. 739/2019** (for condonation of  
delay of 24 days in re-filing the appeal).

1. For the reasons stated in the applications, the same are allowed and the delay of 131 days in filing the appeal and the delay of 24 days in re-filing the appeal is condoned.
2. The applications stand disposed of.

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3. The present petition has been filed for grant of special leave to appeal against the judgment dated 10.04.2018 (hereafter '**impugned judgment**'), passed by the learned Special Judge (PC Act) CBI, East District, Karkardooma Courts, Delhi, in Case No. 6/2016 arising out of RC No.47(A)/2005.

4. By the impugned judgment, the learned Trial Court acquitted the respondents of the charges for offences under Section 120 B read with Sections 420/468/471 of the Indian

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Penal Code, 1860 ('**IPC**') and Section 13 (2) read with Section 13 (1)(d) of the Prevention of Corruption Act, 1988 ('**PC Act**').

5. At the outset, it is pointed out that Respondent Nos. 1 and 3 have expired during the pendency of the present proceedings and the appeal in regard to the said respondents has been abated.

6. The present case came to be registered against the accused persons pursuant to an investigation conducted by the Vigilance Department of MCD wherein it was found that certain erring officials of MCD Shahdara were fraudulently engaging Ebzedars in Ward 68, Trilok Puri, Delhi by projecting the regular safai karamcharis on leave. The investigation has been directed by this Court in W.P. No. 58/2003 that had been filed by regular safai karamcharis against irregular practices of MCD officials in Shahdara (South Zone) pertaining to leave records.

7. It was alleged that the accused Om Prakash (Sanitary Guide in MCD Shahdara) and accused Jeet Ram (Sewer Gang Beldar working in capacity as Sanitary Guide in MCD Shahdara) had hatched a criminal conspiracy and engaged Ebzedars safai karamcharis against regular safai karamcharis by wrongly showing them on leave. During investigation, attendance registers of the concerned Ward, muster rolls, service books of the employees and leave applications of the employees were seized and sent to CFSL. It was found that the specimen of thumb impressions on the leave applications did not match the specimens of the regular safai karamcharis.

8. Insofar as Respondent No.2 was concerned, it was alleged that he had been engaged as an Ebzedar safai karamchari (that is, substitute safai karamchari) in the concerned Ward and he had forged the signatures/ thumb impressions on the alleged leave applications along with co-accused Mam Chand, who was also



engaged as an Ebzedar safai karamchari.

9. The evidence against the Respondent No. 2 was the alleged signatures/ thumb impressions that he had put on the leave application.

10. The learned Trial Court noted that even though charges for offences under the PC Act had been levelled against Respondent No.2, however, he was admittedly not a public servant and his role was thus to be analysed only in respect to the alleged offences under IPC. The learned Trial Court took note of the objection raised by Respondent No.2 and co-accused Mam Chand and noted that the CFSL report could not be used against the said accused persons as their specimen handwriting and fingerprints were not taken with permission of the Court.

11. The learned Special Public Prosecutor for the CBI submits that the Respondent No. 2 was acquitted essentially on the ground that his specimen handwriting and fingerprints were not taken with the permission of the concerned Court.

12. He submits that the learned Trial Court erroneously observed that the report of CFSL could not be relied upon without considering that Respondent No.2 had given the specimens voluntarily in presence of independent witnesses.

13. The learned counsel for Respondent No.2 submits that the impugned judgment has been passed after due appreciation of the facts and evidence on record and the same suffers from no infirmities.

14. He submits that Respondent No.2 had been falsely implicated and made a scape goat in the present case. He submits that there was no evidence to link Respondent No.2 to the crime except the CFSL report and the learned Trial Court rightly held that the same could not be used against Respondent No.2.



15. I have heard the learned counsel and perused the record.

16. It is trite law that this Court must exercise caution and should only interfere in an appeal against acquittal where there are substantial and compelling reasons to do so. At the stage of grant of leave to appeal, the High Court has to see whether a *prima facie* case is made out in favour of the appellant or if such arguable points have been raised which would merit interference.

The Hon'ble Apex Court in the case of ***State of Maharashtra v. Sujay Mangesh Poyarekar*** : (2008) 9 SCC 475 held as under:

*“19. Now, Section 378 of the Code provides for filing of appeal by the State in case of acquittal. Sub-section (3) declares that no appeal “shall be entertained except with the leave of the High Court”. It is, therefore, necessary for the State where it is aggrieved by an order of acquittal recorded by a Court of Session to file an application for leave to appeal as required by sub-section (3) of Section 378 of the Code. It is also true that an appeal can be registered and heard on merits by the High Court only after the High Court grants leave by allowing the application filed under sub-section (3) of Section 378 of the Code.*

*20. In our opinion, however, in deciding the question whether requisite leave should or should not be granted, the High Court must apply its mind, consider whether a prima facie case has been made out or arguable points have been raised and not whether the order of acquittal would or would not be set aside.*

*21. It cannot be laid down as an abstract proposition of law of universal application that each and every petition seeking leave to prefer an appeal against an order of acquittal recorded by a trial court must be allowed by the appellate court and every appeal must be admitted and decided on merits. But it also cannot be overlooked that at that stage, the court would not enter into minute details of the prosecution evidence and refuse leave observing that the judgment of acquittal recorded by the trial court could not be said to be “perverse” and, hence, no leave should be granted.”*

(emphasis supplied)

17. The learned Trial Court has passed a well-reasoned order after appreciating the evidence. It was observed that the prosecution had been unable to prove the charges and the evidence of the handwriting expert could not be looked into as  
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the written specimen was not taken by the IO with the permission of the concerned Court.

18. In the present case, it is not disputed that the specimen handwritings/ signatures/ thumb impressions of Respondent No.2 were not obtained under the directions of the designated Court. While the prosecution is competent to take the specimen of the handwriting/ thumb impressions of an accused / witness, however, it has been held on numerous occasions that to dispel any suspicion as to the *bona fide* of the prosecution and to eliminate the possibility of fabrication, it is desirable that they are taken before the concerned Magistrate. The learned Trial Court also placed reliance on the case of ***Mohd. Aman v. State of Rajasthan : (1997) 10 SCC 44*** in this regard where it was noted that to dispel suspicion of fabrication, it is desirable that the specimens are taken before or under the order of the Magistrate.

19. The learned Trial Court had also rightly appreciated the judgment in the case of ***Rakesh Kumar & Ors. v. State : 2004 (72) DRJ 311***, wherein this Court had placed reliance on the judgment passed by the Hon'ble Apex Court in the case of ***Sukhvinder Singh & Ors. v. State of Punjab : (1994) 5 SCC 152*** and observed that when the specimen handwriting/ thumb impression/ finger impression are obtained by the IO without prior permission of Court, the same could not be used during the trial to connect the accused to the offence and the report of handwriting expert is rendered of no consequence.

20. Moreover, fallibility of such evidence has been widely accepted. That, coupled with non-observation of proper procedure in obtaining samples, casts a doubt over the evidence.

21. Undisputably, no attempt was made to seek any permission for obtaining the relevant specimens. In such circumstances, the

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alleged CFSL report cannot be used against Respondent No.2 and in the absence of any other evidence to link Respondent No.2 to the alleged offence, it cannot be held that the Respondent No. 2 had put his thumb impressions on the leave applications in the name of the regular safai karamcharis.

22. It was also rightly observed that the prosecution had been unable to prove that the regular safai karamcharis were on duty at the time when they were shown to be on leave as the testimonies of the prosecution witnesses showed that the relevant piece of evidence to show presence on duty was the attendance register, however, the same was not proved by the prosecution.

23. As rightly noted, no evidence was adduced to show that Respondent No.2 or the co-accused persons Jeet Ram or Mam Chand had received any share of the defrauded amount.

24. In view of the aforesaid discussion, this Court finds no reasons to interfere with the impugned judgment and grant leave to appeal in the present case.

25. The leave petition is dismissed in the aforesaid terms.

**AMIT MAHAJAN, J**

**OCTOBER 3, 2024**

**“SK”**