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

CNR No. DLHC010303952021

+ **CRL.L.P. 115/2021**

STATE

.....Petitioner

Through: Mr. Naresh Kumar Chahar, APP for
State.

versus

ASHOK KUMAR

.....Respondent

Through: None.

CORAM:

HON'BLE MR. JUSTICE PURUSHAINDRA KUMAR KAURAV

ORDER

% **31.08.2026**

The matter was listed for 27.08.2026 and is taken up today as 27.08.2026 was declared a holiday.

1. This application under Section 378 of the Code of Criminal Procedure, 1973 has been preferred by the State seeking leave to appeal against the judgment of acquittal dated 21.01.2020 passed by the learned Metropolitan Magistrate-03, Rohini Courts, North District, Rohini, Delhi in Case No. 5293728/19 arising out of FIR No. 119/2015, registered at Police Station K.N. Katju Marg, Delhi, for the offences punishable under Sections 506 and 509 of the Indian Penal Code, 1860 ('IPC').

2. Mr. Naresh Kumar Chahar, learned APP appearing on behalf of the State, submits that in view of the unequivocal and consistent testimony of



PW-1, i.e. the complainant, duly corroborated by the testimony of PW-2 and the other evidence available on record, the offences in question are made out against the respondent. He submits that the learned Trial Court failed to appreciate the evidence in its proper perspective and, therefore, the judgment of acquittal is illegal and improper. He, therefore, prays that leave to appeal be granted.

3. I have considered the submissions made by learned APP for the petitioner-State and perused the record.

4. The facts of the case would indicate that on 26.01.2015, at about 09:30 p.m., the complainant reported an incident involving the accused, wherein he allegedly extended threats to the complainant and her family and used abusive and insulting language. On receipt of the information, the police reached the spot, whereupon the complaint of the complainant was recorded and FIR No.119/2015 came to be registered at PS K.N. Katju Marg under Sections 506/509 IPC. After completion of investigation, chargesheet was filed and the accused was proceeded against for the aforesaid offences.

5. During trial, the prosecution examined six witnesses and relied upon the documentary and electronic evidence brought on record. The accused, in his defence, examined two witnesses and claimed false implication. *Vide* the impugned judgment dated 21.01.2020, the learned Trial Court acquitted the accused, principally on account of alleged contradictions in the testimony of the prosecution witnesses and doubts regarding the electronic evidence relied upon by the prosecution. The learned Trial Court consequently held that the prosecution had failed to prove the charges beyond reasonable doubt and extended the benefit of doubt to the accused.

6. It is well settled that while an appellate court possesses wide powers



in an appeal against acquittal, such powers are to be exercised with circumspection, bearing in mind the double presumption of innocence attaching in favour of an accused who has secured an acquittal at trial. In ***Chandrappa v. State of Karnataka***,¹ the Supreme Court laid down the following principles:

“42. From the above decisions, in our considered view, the following general principles regarding powers of the appellate court while dealing with an appeal against an order of acquittal emerge:

(1) An appellate court has full power to review, reappreciate and reconsider the evidence upon which the order of acquittal is founded.

(2) The Code of Criminal Procedure, 1973 puts no limitation, restriction or condition on exercise of such power and an appellate court on the evidence before it may reach its own conclusions, both on questions of fact and of law.

(3) Various expressions, such as, ‘substantial and compelling reasons’, ‘good and sufficient grounds’, ‘very strong circumstances’, ‘distorted conclusions’, ‘glaring mistakes’, etc. are not intended to curtail extensive powers of an appellate court in an appeal against acquittal. Such phraseologies are more in the nature of ‘flourishes of language’ to emphasise the reluctance of an appellate court to interfere with acquittal than to curtail the power of the court to review the evidence and to come to its own conclusion.

(4) An appellate court, however, must bear in mind that in case of acquittal, there is double presumption in favour of the accused. Firstly, the presumption of innocence is available to him under the fundamental principle of criminal jurisprudence that every person shall be presumed to be innocent unless he is proved guilty by a competent court of law. Secondly, the accused having secured his acquittal, the presumption of his innocence is further reinforced, reaffirmed and strengthened by the trial court.

(5) If two reasonable conclusions are possible on the basis of the evidence on record, the appellate court should not disturb the finding of acquittal recorded by the trial court.”

7. This position has been reiterated by the Supreme Court in ***Babu***

¹ (2007) 4 SCC 415.



Sahebagouda Rudragoudar v. State of Karnataka,² wherein it was observed:

“Acquittal can be reversed only if the findings recorded by the trial Court are found to be patently illegal or perverse or if the only view possible on the basis of the evidence available on record points towards the guilt of the accused. If two views are possible, the acquittal recorded by the trial Court should not be interfered with unless perversity or misreading of evidence is reflected from the judgment recording acquittal.”

8. The Supreme Court in **Sadhu Saran Singh Vs. State of Uttar Pradesh and Others,**³ has held that there lies a difference between an appeal against acquittal and an appeal against conviction. Paragraph no. 20 is reproduced as under:-

“20. Generally, an appeal against acquittal has always been altogether on a different pedestal from that of an appeal against conviction. In an appeal against acquittal where the presumption of innocence in favour of the accused is reinforced, the appellate court would interfere with the order of acquittal only when there is perversity of fact and law. However, we believe that the paramount consideration of the Court is to do substantial justice and avoid miscarriage of justice which can raise by acquitting the accused who is guilty of an offence. A miscarriage of justice that may occur by the acquittal of the guilty is no less than from the conviction of an innocent. This Court, while enunciating the principles with regard to the scope of powers of the appellate court in an appeal against acquittal, in Sambasiva V. State of Kerala 1998 SCC (Cri) 1320 has held:

“7. The principles with regard to the scope of the powers of the appellate court in an appeal against acquittal, are well settled. The powers of the appellate court in an appeal against acquittal are no less than in an appeal against conviction. But where on the basis of evidence on record two views are reasonably possible the appellate court cannot substitute its view in the place of that of the trial court. It is only when the approach of the trial in acquitting an accused is found to be clearly erroneous in its consideration of evidence on record and in deducing conclusions therefrom that the appellate court can interfere with the order of acquittal.”

² 2024 SCC OnLine SC 561.

³ (2016) 4 SCC 357.



9. It is trite law that the Appellate 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 Supreme Court in the case of ***State of Maharashtra v. Sujay Mangesh Poyarekar***,⁴ held as under:

“ 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. 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 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. 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.”

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“We may hasten to clarify that we may not be understood to have laid down an inviolable rule that no leave should be refused by the appellate Court against an order of acquittal recorded by the trial Court. We only state that in such cases, the appellate Court must consider the relevant material, sworn testimonies of prosecution witnesses and record reasons why leave sought by the State should not be granted and the order of acquittal recorded by the trial Court should not be disturbed. Where there is application of mind by the appellate Court and reasons (may be in brief)

⁴ (2008) 9 SCC 475.



in support of such view are recorded, the order of the Court may not be said to be illegal or objectionable. At the same time, however, if arguable points have been raised, if the material on record discloses deeper scrutiny and re-appreciation, review or reconsideration of evidence, the appellate Court must grant leave as sought and decide the appeal on merits. In the case on hand, the High Court, with respect, did neither. In the opinion of the High Court, the case did not require grant of leave. But it also failed to record reasons for refusal of such leave.”

10. In ***Bhupatbhai Bachubhai Chavda & Anr. v. State of Gujarat***,⁵ the Supreme Court has held as under:-

“It is true that while deciding an appeal against acquittal, the Appellate Court has to reappreciate the evidence. After re-appreciating the evidence, the first question that needs to be answered by the Appellate Court is whether the view taken by the Trial Court was a plausible view that could have been taken based on evidence on record. Perusal of the impugned judgment of the High Court shows that this question has not been adverted to. Appellate Court can interfere with the order of acquittal only if it is satisfied after reappreciating the evidence that the only possible conclusion was that the guilt of the accused had been established beyond a reasonable doubt. The Appellate Court cannot overturn order of acquittal only on the ground that another view is possible. In other words, the judgment of acquittal must be found to be perverse. Unless the Appellate Court records such a finding, no interference can be made with the order of acquittal. The High Court has ignored the well-settled principle that an order of acquittal further strengthens the presumption of innocence of the accused. After having perused the judgment, we find that the High Court has not addressed itself on the main question.”

11. Tested against the aforesaid principles, this Court finds that the view taken by the learned Trial Court cannot be said to be perverse or a view which no reasonable court could have arrived at on the material on record. The Trial Court, upon appreciation of the prosecution evidence, noticed material inconsistencies regarding the presence and arrival of the police officials at the spot, as reflected from the differing testimonies of PW1, PW2, PW3 and PW5/IO, coupled with the prosecution’s failure to explain

⁵ 2024:INSC:295.



the reference made by PW1 to a piece of paper allegedly found at the spot, which did not find any mention in the charge-sheet. The Trial Court further noticed the absence of any independent witness to corroborate the prosecution case and, consequently, found that the evidence led by the prosecution did not inspire such confidence as would establish the allegations under Sections 506/509 IPC beyond reasonable doubt. These findings, viewed cumulatively, constitute plausible grounds for extending the benefit of doubt to the accused and do not disclose any perversity or misreading of evidence warranting interference in an appeal against acquittal.

12. The relevant findings recorded by the learned Trial Court in paragraph Nos. 23 to 28 of the impugned judgment are extracted hereinbelow:-

“23. It is further argued by Ld. Counsel for accused that PW1 in her cross examination deposed that when video was prepared children are sitting in other room and watching TV, then what is the urgency to flush the condom which is the case property in the toilet as the police officials reached the spot within 15 minutes of the call. Have the case property seized from the spot, it can very well be examined by FSL to prove everything.

24. PW1 in her examination deposed that one piece of paper was also lying with the condom. But, there is nothing on record in the chargesheet any single averment regarding that paper and prosecution also failed to explain the same.

25. PW2 deposed in his cross examination that only one police official IO Dhirender came to his house but PW3 contradicted the testimony of PW1 and deposed that he went alongwith IO at the spot at the time of incident and met complainant and her husband. The testimony of PW3 is corroborated and testimony of PW1 is contradicted by PW5, IO, who deposed that he reached the spot along with PW3. Moreover, during his cross examination, PW5 deposed that when he reached the spot, PCR officials had already reached the spot. This also creates doubt as to who went on the spot for investigation.

26. Moreover, no other witness has been examined by the prosecution to prove his case Considering all the circumstances and evidence led by the



prosecution, prosecution failed to prove that accused.

27. It is settled preposition that the prosecution has to prove the guilt of accused beyond all reasonable doubt and that too by leading independent, reliable and unimpeachable evidence. There is no controversy to the proposition that the accused is entitled to the benefit of every doubt occurring in the prosecution case. The general principles of criminal jurisprudence, namely, that the prosecution has to prove its case beyond reasonable doubt and that the accused is entitled to the benefit of a reasonable doubt, are to be borne in mind.

28. In view of the above said discussion, the prosecution has failed to prove the charges u/s 506/509 IPC against the accused. Accordingly, benefit of doubt is given to accused and he is acquitted for the offences punishable U/s 506/509 IPC. Accused is directed to furnish fresh bail bond in terms of Section 437A of Cr.P.C in the sum of Rs. 20,000/- with one surety in the like amount. Accused through his surety furnished requisite bail bond u/s 437A Cr.PC having affixed thereon photographs and address proof of accused as well as surety. Bail bond accepted.”

13. These are findings drawn from a considered appreciation of the documentary and testimonial evidence on record, and not findings founded on conjecture or surmise. Even if another view were possible on the same set of facts, that, by itself, would furnish no ground for this Court to interfere with the acquittal, the settled principle being that where two reasonable views are possible on the evidence, the view favouring the accused, taken by the trial court which had the advantage of observing the demeanour of the witnesses, ought not to be disturbed.

14. For the reasons aforesaid, the Court does not find any reason to grant leave to file an appeal against the impugned judgment dated 21.01.2020. Accordingly, the application fails and is hereby dismissed.

15. All pending applications, if any, also stand disposed of.

PURUSHAINDR KUMAR KAURAV, J

AUGUST 31, 2026

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