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

CNR No. DLHC012688472017

+ **CRL.L.P. 478/2017**

STATE

.....Petitioner

Through: Mr. Mukesh Kumar, APP for State
with SI Dilsuky, PS Begumpur.

versus

JASBIR @ LALA & ANR

.....Respondents

Through: Ms. Preeti Thakur, Advocate (*Amicus Curiae*).

CORAM:

HON'BLE MR. JUSTICE PURUSHAINDR KUMAR KAURAV

ORDER

% **14.09.2026**

The matter was listed for 11.09.2026 and is taken up today, as 11.09.2026 was declared a holiday on account of the BRICS Summit, 2026.

CRL.M.A. 13577/2017 (Condonation of delay)

1. For the reasons stated in the application, the same stands allowed. The delay of 216 days in filing the appeal stands condoned.
2. The application stands disposed of.

CRL.L.P. 478/2017

1. By way of the present petition, filed under sub-section (3) read with sub-section (1) of Section 378 of the Code of Criminal Procedure [CrPC], 1973, the petitioner-State seeks leave to appeal against the judgment of acquittal dated 29.07.2016 [impugned order] passed by the ASJ-03, North-West, Rohini Courts, Delhi, in connection with FIR No. 1195/2014



registered at PS Begum Pur, Delhi for the offences under Sections 392/397/411/34 of the Indian Penal Code, 1860 [IPC], whereby the respondents came to be acquitted.

2. The APP appearing for the State submits that the impugned order is erroneous, both on facts and in law, and that the trial Court has acquitted the respondents without independently applying its mind to the facts and circumstances of the case. It is submitted that the prosecution had established its case beyond reasonable doubt, inasmuch as the testimony of the complainant, PW-4 (Chander Bhan Singh), was consistent with his complaint and with the PCR record, and he identified both the respondents in Court, Respondent No. 1 as the person who robbed him of his mobile phone after placing a knife on his chest, and Respondent No. 2 as the person who removed his wallet. It is further submitted that the recovery of the robbed mobile phone (Ex. P-1) from the possession of Respondent No. 1 stood established, inasmuch as its IMEI number matched that recorded on the invoice (Ex. PW-4/B) issued in the name of the complainant, and that the factum of apprehension and recovery was duly proved by the members of the Anti-Auto Theft Squad, namely PW-8, PW-12 and PW-15. It is also submitted that an adverse inference ought to have been drawn from the refusal of the respondents to participate in the test identification parade, and that the trial Court, in magnifying minor inconsistencies, failed to sift the grain from the chaff and rejected the prosecution case in a mechanical manner. Accordingly, it is prayed that leave to appeal be granted, so as to enable the correction of the perversity said to be contained in the impugned order.

3. Per contra, Ms. Preeti Thakur, appearing as *amicus curiae* for the



respondents, supports the impugned order, and submits that the view taken by the trial Court is a possible and plausible one, warranting no interference.

4. I have heard counsel for the parties and perused the record.

5. As per the prosecution case, the FIR in question was registered at the instance of the complainant. Thereafter, the matter was investigated and the charges were framed for the offences under Sections 392/397/411/34 of the IPC. After the recording of evidence, the trial Court passed the impugned order and acquitted the respondents. The material portion of the findings and reasoning contained in the impugned order is reproduced as under:

“54. Perusal of the documentary evidence brought on record by prosecution itself reveals an interesting story which creates a dent on the prosecution case. The PGR form Ex.PW9/A which has been proved on record by PW-9 Ct. Kamal Singh who had received the call at about 5.32 am on 28.10.2014 makes it apparent that the call was made to PGR from mobile phone number 9871944995. Further DD no. 8A Ex.PW13/A recorded at PS Begumpur where the information was passed on from control room also mentions this very mobile number to be the one from which first intimation about the alleged incident was given to the police.

55. It is very interesting to note that the bill Ex.PW4/A & 4/B vide which as per the prosecution evidence, complainant had purchased the mobile phone in question i.e. Ex.P-1, also depicts this very number i.e. 9871944995. As per the testimony of PW-7, this number was provided to them at the time of making bills/invoice Ex.PW4/A and 4/B by complainant himself. Meaning thereby that this mobile phone number belonged to the complainant only who was using the same.

56. This fact at the very threshold creates a doubt in the prosecution case and raises a ring of suspicion with respect to the acceptability and reliability of the testimony of complainant. If his phone was snatched by the robbers, then by no stretch of imagination he could have made a call at number 100 from his own phone. It is not the case of prosecution nor has been deposed so by the complainant that at the time of incident he was carrying two mobile phones. Had that been the position, then there was no reason with the complainant to depose to the effect that he made the call at 100 number after taking assistance from a passerby. Further had that been the position and complainant had two mobile phones with him, then during the alleged incident he would have been robbed of both of the mobile phones.



57. In view thereof, the version given on record by PW-4 receives a jolt regarding its acceptability and reliability.

58. The testimony of PW-4 even otherwise does not inspire confidence. As per PW-4 he had left his house at 4.00 am in the morning for going to Madipur on his motorcycle for the purposes of getting railway ticket booked. It appears very unrealistic that a person only for the purposes of getting railway ticket booked would leave his house as early as 4.00 am in the morning. Further even if the version of PW-4 is believed that he left his house at 4.00 am in the morning for going to Madipur on his motorcycle, then he would have reached Madipur from Rohini in 15-20 minutes. As per the PGR form the intimation about the incident was given by him at 5.32 am i.e. after about 1½ hours of his leaving his house which as per his own version is situated in the same locality i.e. Sector-21, Rohini, where the present incident is stated to have taken place. It is very hard to believe as to what complainant was doing after leaving his house for 1½ hours and there is no explanation to that effect on record emanating from the testimony of PW-4, the complainant.”

6. The principles governing the exercise of appellate jurisdiction in an appeal against acquittal are well settled. In **H.D. Sundara v. State of Karnataka**,¹ the Supreme Court summarised the said principles as under:

“8. In this appeal, we are called upon to consider the legality and validity of the impugned judgment [State of Karnataka v. H.K. Mariyappa, 2010 SCC OnLine Kar 5591] rendered by the High Court while deciding an appeal against acquittal under Section 378 of the Code of Criminal Procedure, 1973 (for short ‘CrPC’). The principles which govern the exercise of appellate jurisdiction while dealing with an appeal against acquittal under Section 378 CrPC can be summarised as follows:

8.1. The acquittal of the accused further strengthens the presumption of innocence;

8.2. The appellate court, while hearing an appeal against acquittal, is entitled to reappreciate the oral and documentary evidence;

8.3. The appellate court, while deciding an appeal against acquittal, after reappreciating the evidence, is required to consider whether the view taken by the trial court is a possible view which could have been taken on the basis of the evidence on record;

8.4. If the view taken is a possible view, the appellate court cannot overturn the order of acquittal on the ground that another view was also possible; and

¹ (2023) 9 SCC 581.



8.5. *The appellate court can interfere with the order of acquittal only if it comes to a finding that the only conclusion which can be recorded on the basis of the evidence on record was that the guilt of the accused was proved beyond a reasonable doubt and no other conclusion was possible.*"

7. These principles were reiterated in ***Jafarudheen v. State of Kerala***,² wherein the Supreme Court held as under:

"25. While dealing with an appeal against acquittal by invoking Section 378 CrPC, the appellate court has to consider whether the trial court's view can be termed as a possible one, particularly when evidence on record has been analysed. The reason is that an order of acquittal adds up to the presumption of innocence in favour of the accused. Thus, the appellate court has to be relatively slow in reversing the order of the trial court rendering acquittal. Therefore, the presumption in favour of the accused does not get weakened but only strengthened. Such a double presumption that enures in favour of the accused has to be disturbed only by thorough scrutiny on the accepted legal parameters."

8. A perusal of the aforesaid findings indicates that the prosecution has not been able to prove its case against the accused beyond reasonable doubt, and that the credibility of the prosecution evidence remains doubtful. In particular, the call to the PCR was made from mobile number 9871944995 which, on the prosecution's own documents, belonged to and was used by the complainant himself; had that very phone been robbed during the alleged incident, the complainant could not have made the call from it. Tested against the principles noticed above, the view taken by the trial Court that the prosecution has failed to establish its case beyond reasonable doubt is a possible and plausible view, and the impugned order discloses no perversity or illegality warranting interference.

9. Bearing in mind the aforesaid findings, and the contradictions in the prosecution case, and finding no justification for the grant of leave, the

²(2022) 8 SCC 440.



petition stands dismissed.

PURUSHAINdra KUMAR KAURAV, J

SEPTEMBER 14, 2026

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