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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ **CRL. REV. P. 28/2016**

ANIL NAIR

..... Petitioner

Through: Mr. V. Madhukar, Adv.
versus

STATE (NCT OF DELHI)

..... Respondent

Through: Mr. Sudershan Joon, APP for State.

CORAM:

HON'BLE MR. JUSTICE A.K. PATHAK

ORDER

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21.07.2016

Crl. M.B. 1119/2016

I propose to hear the main revision petition as trial court record has already been received. In view of this, learned counsel for the petitioner does not press this application and the same is disposed of.

Crl. Rev. P. 28/2016

Vide judgment dated 4th September, 2014 passed by the Metropolitan Magistrate (South District), New Delhi, petitioner was convicted under Sections 279/338/304-A IPC and vide order on sentence dated 7th April, 2015 he was sentenced to undergo simple imprisonment for three months for the offence under Section 279 IPC; for a period of six months for the offence under Section 338 IPC and for a period of one year for the offence

under Section 304-A IPC. He was also directed to pay compensation of ₹25,000/- to the injured Murlidhar Mishra and in default of payment of compensation to undergo simple imprisonment for three months. All the sentences were directed to run concurrently. It was further noted that one of the legal representatives of deceased Ahmed Hussain has already received ₹5 lacs from and that of deceased Vidyarthi has received ₹95,000/ from the insurance company.

Petitioner preferred an appeal before the Sessions Judge which has been dismissed vide judgment dated 22nd December, 2015. Petitioner prayed for his release on probation of good conduct but the said plea was rejected. However, benefit of Section 428 Cr.P.C. was extended to the petitioner.

That is how the petitioner is before this Court by way of present writ petition under Section 401 read with Section 397 Cr.P.C.

Prosecution case before the trial court was that on 28th January, 2014 at about 10:30 am near Mazeedia Hosptial, Gate No. 6 petitioner, while driving Santro car bearing registration no. DL3CAA 2230 at a fast speed, hit three cyclists Murlidhar Mishra, Ahmed Hussain and Vidyarthi who were riding the bicycles, as a result whereof they sustained injuries. They were taken to the hospital. Subsequently, Ahmed Hussain and Vidyarthi

succumbed to their injuries. Santro car also hit one Tata 709 bearing registration no. DL1LD 6410 which was parked on the road. Initially, FIR was registered under Sections 279/337/338 IPC, however, subsequently, Section 304-A IPC was added. Injured-Murlidhar Mishra is the only eye witness who stepped in the witness box as PW1. Owner of the Santro car, namely, Sunil Singh was examined as PW2. PW5 Dr. Sanjeev Lalwani had proved the post-mortem report of Vidyarthi and MLC of Ahmed Hussain. Other witnesses examined by the prosecution were police officials who had joined the investigation at one stage or the other. Trial Court as well as Appellate Court have meticulously scrutinised the evidence of the witnesses recorded and other material placed on record including the mechanical inspection report and concluded that the accident occurred on account of rash and negligent of the vehicle driven by the petitioner. The plea taken by the petitioner that accident occurred on account of failure of brakes was not accepted, more particularly in view of the mechanical inspection report Ex. PW6/A. There are concurrent findings of the two courts below about the guilt of the petitioner.

During the course of hearing, learned counsel for the petitioner has given up challenge to the conviction on merits. However, he has prayed for

leniency in the sentence keeping in view that petitioner has no past criminal record. Petitioner is aged about 32 years. He is the sole bread earner in the family. His wife and four and a half years child are solely dependent upon him. Petitioner is in incarceration for seven years. His jail conduct is satisfactory. On account of petitioner being in jail for seven years his wife is at the verge of starvation, inasmuch as, his child's education is also affected. Keeping in mind totality of the circumstances, while affirming the conviction of the petitioner under the aforesaid provisions, his sentence is reduced to the period already undergone by him. Compensation is stated to has already been deposited. Petitioner be released from jail if not wanted in any other case.

Revision petition is disposed of in the above terms.

Dasti.

A.K. PATHAK, J.

JULY 21, 2016

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