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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ CRL.L.P. 321/2013

STATE

Through Mr. Sudershan Joon, APP for the
State

..... Petitioner

versus

SOMPAL SINGH & ANR.

Through :Mr. K.P. Mavi and Mr. B.P. Mishra,
Advs.

..... Respondents

CORAM:

HON'BLE MR. JUSTICE A.K. PATHAK

ORDER

% **29.07.2016**

1. Present petition has been filed by the petitioner under Section 378(1) of the Code of Criminal Procedure, 1973 ("the Code", for short) against the judgment dated 12th December, 2012 passed by the Special Judge, Central District, Tis Hazari Courts, Delhi, whereby respondents have been acquitted of the charges under Section 7/13(2) read with Section 13(1)(d) of the Prevention of Corruption Act, 1988 and under Section 120-B of the IPC.
2. As per the prosecution, complainant PW4 Shri Rajudin approached Inspector Naresh Kumar (PW22) of Anticorruption Branch on 18th December, 2009 and lodged a complaint (Ex. PW4/A) stating therein that he was a driver; whereas Shri Narender Kumar (PW12) was his helper and on 14th December, 2009 respondents, who were working as Head Constable and Constable respectively in Special Staff Cell of Delhi Police, took them to

their office at Madangir and locked them up, on the pretext that driving licence of PW4 was fake. At about 1:30 a.m., they demanded ₹50,000/- from PW4 to release them. After negotiations, amount was scaled down to ₹30,000/-. PW4 was allowed to go for arranging the money. PW4 arranged ₹15,000/- by borrowing ₹6,800/- from one Rajinder, ₹7,200/- from one Mustaq and ₹1000/- from Balwan Singh (PW9). On payment of this amount of ₹15,000/- to the respondents, PW4 was released. Respondents told PW-4 that Narender Kumar would be released after balance payment of ₹15,000/- is made. On 16th December, 2009 PW4 arranged ₹10,000/- and handed over the same to his friend Madan Nagar (PW7) to deliver the same to the respondents. PW7 went to the office of Special Staff Cell at Madangir and delivered ₹10,000/- to the respondent no. 1. PW4 also got the conversation recorded in his mobile phone. Two CDs of the conversation were made and handed over to PW22 Inspector Naresh Kumar. Mobile phone along with SIM and memory cards were seized. Respondents were arrested. Voice samples of respondents, PW4 and PW7 were taken in an audio cassette and were sent to FSL along with CDs. FSL report Ex. PW22/D was obtained.

3. Prosecution examined 22 witnesses. Material witnesses to prove the

demand and acceptance of bribe, are PW4 Rajudin, PW7 Madan Nagar, PW9 Balwan Singh, PW12 Narender Kumar. Investigating Officer Inspector Naresh Kumar is PW22. All other witnesses are formal witnesses, having joined the investigation at one or the other stage. Learned trial court has meticulously scrutinized the statements of all the witnesses, more particularly that of complainant/PW4 Rajudin, PW7 Madan Nagar, PW9 Balwan Singh and PW12 Narender Kumar and has held that prosecution had failed to prove that respondents have demanded and accepted the bribe. Trial court has noted that none of these witnesses had supported the prosecution on the point of demand and acceptance of the bribe.

4. PW4 has deposed that in the month of December, 2009 he came to know that PW12 Narender Kumar was apprehended by the police officials of Special Staff Cell, Madangir on the pretext that he was carrying a fake licence. One Sanjiv told him to arrange a surety for him. Thereafter, PW4 contacted his friend PW7 Madan Nagar and gave him ₹25,000/- for arranging the release of Narender Kumar but Narender Kumar was not released. On asking the wife of Narender Kumar, PW4 had lodged the complaint (Ex. PW4/A). PW4 stated that he had not handed over anything

to police officials of Anticorruption Branch since Madan Nagar was handling the matter. PW4 has categorically deposed that respondents were not known to him nor had they demanded any money from him. He further stated that no police official demanded any money from him as a bribe for the release of Narender Kumar. He was cross-examined by the learned APP for the State, but nothing could be elicited from him in his cross-examination which go in favour of prosecution. PW4 further stated that conversation in the CDs was not clearly audible.

5. PW7 Madan Nagar has also not supported the prosecution version. PW7 has stated that on 16th December, 2009, he along with Rajudin went to the office of Special Staff Cell, Madangir and found Narender Kumar along with another person locked up there. Police officials advised them to reach the court as Narender Kumar was to be produced in Court. PW7 further deposed that they came out and found some traffic police officials outside and they talked to them when PW4. Rajudin recorded the conversations on his mobile phone. He categorically deposed that no talk of demand of bribe had taken place in his presence. He denied that Rajudin had handed over 2 CDs to the police officials of Anticorruption Branch, in his presence. He has categorically stated that he did not know the respondents nor has he met

them. He denied that PW4 Rajudin gave him ₹10,000/-. PW9 Balwan Singh has also not supported the prosecution story. As per the prosecution, PW4 had taken ₹1,000/- from him in the night intervening 14th/15th December, 2009. PW12 Narender has also not supported the prosecution case. He denied that any money was demanded as a bribe for his release from the lock-up. He deposed that on 14th December, 2009 he was taken to Special Staff Cell and after three days, he was challaned and sent to jail. PW12 also categorically deposed that no one demanded any money from him towards the bribe. He has not identified the respondents in court. PW17 Inspector K.P. Malik has also deposed that voices in CDs were not clear. In absence of the testimonies of above witnesses, who are relevant and material to prove the demand and acceptance of the bribe, in my view, trial court has taken a possible view that prosecution has failed to prove its case that respondents had demanded and accepted the bribe from PW4 Rajudin and PW7 Madan Nagar.

6. I have also perused the statements of the aboveresferred witnesses and am of the view that finding returned by the trial court does not suffer from any perversity. The view taken by the trial court is a possible view. It is trite law that leave to appeal can be granted only where it is shown that the

conclusions, arrived at by the trial court, are perverse or there is misapplication of law or any legal principle. High Court cannot entertain a petition merely because another view is possible or that another view is more plausible. Leave to appeal is to be granted in exceptional cases where the judgment under appeal is found to be perverse.

7. For the foregoing reasons, petition is dismissed.

A.K. PATHAK, J.

JULY 29, 2016

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