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

\+ CRL.L.P. 432/2012

STATE ..... Petitioner

Through :Mr. Sudershan Joon, APP for the State

versus

JAIPAL SINGH ..... Respondent

Through : Ch. Ram Kishan, Adv.

CORAM:
HON'BLE MR. JUSTICE A.K. PATHAK

O R D E R

% 27.07.2016

1. By this petition under Section 378(1) of the Code of Criminal Procedure, 1973 ("the Code", for short), petitioner seeks leave to appeal against the judgment dated 5th January, 2012, passed by the learned Special Judge, Delhi, whereby respondent has been acquitted of the charge under Section 13(i)(d) read with Section 13(2) of the Prevention of Corruption Act, 1988.

2. Prosecution was launched against the respondent on the ground that, while working as SDM (Elections), he had assessed stamp duty of DDA properties, that is, property no. 17, Manglam Place, District Centre, Rohini,

Delhi and property no. C-2, District Centre, Saket, Delhi, as Collector of Stamps, during the period 19th June, 2001 to 17th September, 2004 and caused loss to Government Exchequer to the tune of ₹13,62,430/- and ₹32,79,521/-, respectively. Respondent had assessed the deficient stamp duty. Later on, stamp duty of ₹32,79,521/- was recovered from the owner but stamp duty of ₹13,62,430/- could not be recovered. It is further alleged that the aforesaid fact was discovered in a preliminary inquiry conducted by PW2 Shri N.R. Sharma, SDM, Darya Ganj, New Delhi.

3. Trial court has noted that prosecution had examined 19 witnesses to support their claim, however, had failed to prove the guilt of respondent beyond shadow of reasonable doubt. In view of the posting orders placed and proved on record, it has been held that respondent was not assigned the job of assessing the stamp duty of DDA properties, as he was not posted as Collector of Stamps, New Delhi between 4th July, 2003 to 7th October, 2003. Respondent had been working as SDM, Darya Ganj and prior thereto he had worked as SDM (Elections) on 19th June, 2001 and SDM, (Headquarter) from 29th June, 2001. At the same time, it has been held, on scrutiny of the evidence adduced by the prosecution, that prosecution had failed to prove that respondent exercised a power not vested in him that caused evasion/loss

to the Government Exchequer in the shape of collection of deficient stamp duty in respect of the aforesaid two properties.

4. It has been specifically noted that prosecution had failed to produce original Lease Deeds, inasmuch as no witness was examined to prove that he had seen the original Lease Deeds on which deficient stamp duty was evaluated by the respondent. Prosecution had also failed to prove that respondent had assessed the stamp duty in his handwriting, by appending his signatures and under the stamp of his office. No evidence was led to suggest that the documents, which were insufficiently stamped, were entered in the register pertaining to the office of respondent. Inquiry report of PW2 Shri N.R. Sharma was neither here nor there. PW2 Shri N.R. Sharma had deposed that deficiency of stamp duty was calculated by him from PW4 Shri Laxman Singh Rawat. However, the report Ex. PW4/A to this effect was not signed by PW4, inasmuch as PW4 made a categorical statement that he had not appended any certificate to the effect that he had made the calculation as per prescribed rules. Trial court has concluded that there was no direct or circumstantial evidence to show that Lease Deeds were produced before the respondent or that stamp duty was calculated or stamped by the respondent, in respect of the alleged two properties. It has

been further noted that prosecution had failed to produce any formula or guideline with regard to calculation of stamp duty, during the relevant period.

5. I have also perused the trial court record and am of the view that the view taken by the trial court is very much a possible view on the evidence adduced by the prosecution. There are material and inherent discrepancies in the prosecution case, which have been elaborated by the trial court in the manner as aforesaid. The view taken by the trial court cannot be said to be perverse or suffering from any misapplication of law.

6. In Arulvelu and Anr. Vs. State MANU/SC/1709/2009, wherein earlier judgment in Ghurey Lal vs. State of Uttar Pradesh, MANU/SC/3223/2008 has been referred, Supreme Court has enunciated the principles to be kept in mind by the High Court while entertaining an appeal against acquittal, in the following manner :-

> "1. The accused is presumed to be innocent until proven guilty. The accused possessed this presumption when he was before the trial court. The trial court's acquittal bolsters the presumption that he is innocent.
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> 2. The power of reviewing evidence is wide and the appellate court can re-appreciate the entire

> evidence on record. It can review the trial court's conclusion with respect to both facts and law, but the Appellate Court must give due weight and consideration to the decision of the trial court.
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> 3. The appellate court should always keep in mind that the trial court had the distinct advantage of watching the demeanour of the witnesses. The trial court is in a better position to evaluate the credibility of the witnesses.
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> 4. The appellate court may only overrule or otherwise disturb the trial court's acquittal if it has "very substantial and compelling reasons" for doing so.
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> 5. If two reasonable or possible views can be reached – one that leads to acquittal, the other to conviction – the High Courts/appellate courts must rule in favour of the accused."

7. In my view, leave to appeal can be granted only where it is demonstrated that the findings arrived at by the trial court are perverse or there is misapplication of law or any legal principle has been flouted. Merely because another view is possible or that another view is more plausible cannot be made a ground to grant leave to appeal. If the view taken by the trial court is possible, the same cannot be interfered with. Leave to appeal is to be granted in exceptional cases where the judgment

under appeal is found to be perverse.

8. In this case, trial court has given detailed reasoning for arriving at a conclusion that guilt of the respondent had remained unproved, which I find to be a possible view. Findings returned by the trial court are based on sound reasoning.

9. Petition is dismissed.

A.K. PATHAK, J.

JULY 27, 2016

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