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

DECIDED ON : 24th OCTOBER, 2016

+ **CRL.L.P.316/2016**

STATE OF NCT OF DELHI

..... Petitioner

Through : Mr.Amit Gupta, APP.

VERSUS

ARUN KUMAR & ORS.

..... Respondents

Through : None.

**CORAM:
HON'BLE MR. JUSTICE S.P.GARG**

S.P.GARG, J. (Oral)

CRL.M.A.No.9128/2016 (Delay)

1. For the reasons mentioned in the application for condonation of delay in filing the appeal, the delay is condoned.
2. The application for condonation of delay is disposed of.

CRL.L.P.316/2016

1. The instant leave to file appeal petition has been preferred by the State to challenge the legality and correctness of a judgment dated 21.11.2015 of learned Addl. Sessions Judge in Sessions Case No.64/2015 arising out of FIR No.577/2014 registered under Sections 376/506 IPC at PS Baba Haridas Nagar.

2. I have heard the learned Addl. Public Prosecutor and have examined the Trial Court Record. On perusal of the Trial Court record, it reveals that on the victim's complaint, the respondents were sent for trial. The Trial Court has noted that initially the prosecutrix had not leveled any allegations whatsoever against respondent No.2 - Priya for hatching conspiracy along with her associates. Only in her 164 Cr.P.C. statement, she assigned a role to respondent No.2 - Priya alleging that at the instance of her associates, she had called her but had not disclosed it to her. In her Court statement, however, she completely exonerated Priya and did not assign any role whatsoever. The prosecutrix did not explain as to why there was change of heart.

3. The Trial Court has noted various discrepancies, inconsistencies and improvements in the statements of the prosecution witnesses making it unsafe to base conviction on the sole testimony of the prosecutrix. The prosecutrix and respondent No.3 Mohit Rohilla @ Bhura were acquainted with each other and wanted to marry. However, this did not succeed and the victim was engaged to one Gopal. Priya was present along with the prosecutrix throughout. However, strange enough, she did not apprise her ordeal to her after the alleged commission of rape at an isolated place. She did not raise any alarm at the time of commission of rape. Even after arrival at the bus stand, the prosecutrix came to her residence as if nothing had happened and informed her mother about the occurrence. Even then, no complaint at 100 was lodged at the Police Station. Victim's father was not apprised of the incident for about 4 / 6 months. The prosecutrix was medically examined, however, no external injuries whatsoever were found on her body to infer forcible commission of

rape. The material prosecution witness Gopal, victim's fiancée, who had allegedly made call at 100 was not examined. The Trial Court also noted that the prosecution was unable to establish if any call at 100 was made by the complainant or her mother to the police.

4. Considering the vital discrepancies and inconsistencies in the complainant's version, respondents' acquittal cannot be faulted.

5. In a recent case *Govindaraju @ Govinda vs. State by Srirampuram P.S. and Anr.* AIR 2012 SC 1292, the Supreme Court discussed the law while dealing with appeals against acquittal.

13. "When an accused is acquitted of a criminal charge, a right vests in him to be a free citizen and this Court is very cautious in taking away that right. The presumption of innocence of the accused is further strengthened by the fact of acquittal of the accused under our criminal jurisprudence. The courts have held that if two views are possible on the evidence adduced in the case, then the one favourable to the accused, may be adopted by the court. However, this principle must be applied keeping in view the facts and circumstances of a case and the thumb rule is that whether the prosecution has proved its case beyond reasonable doubt. If the prosecution has succeeded in discharging its onus, and the error in appreciation of the evidence is apparent on the face of the record then the court can interfere in the judgment of acquittal to ensure that the ends of justice are met. This is the linchpin around which the administration of criminal justice revolves.

14. It is a settled principle of criminal jurisprudence that the burden of proof lies on the prosecution and it has to prove a charge beyond reasonable doubt. The presumption of innocence and the right to fair trial are twin safeguards available to the accused under our criminal justice system but once the prosecution has

proved its case and the evidence led by the prosecution, in conjunction with the chain of events as are stated to have occurred, if , points irresistibly to the conclusion that the accused is guilty then the court can interfere even with the judgment of acquittal. The judgment of acquittal might be based upon misappreciation of evidence or apparent violation of settled canons of criminal jurisprudence.

15. We may now refer to some judgments of this Court on this issue. In State of M.P.v..Bacchudas, the Court was concerned with a case where the accused had been found guilty of an offence punishable under Section 304 Part II read with Section 34 Indian Penal Code by the trial court; but had been acquitted by the High Court of Madhya Pradesh. The appeal was dismissed by this Court, stating that the Supreme Court's interference was called for only when there were substantial and compelling reasons for doing so. After referring to earlier judgments, this Court held as under: (SCC pp.138-39, paras 9-10).

9. There is no embargo on the appellate court reviewing the evidence upon which an order of acquittal is based. Generally, the order of acquittal shall not be interfered with because the presumption of innocence of the accused is further strengthened by acquittal. The golden thread which runs through the web of administration of justice in criminal cases is that if two views are possible on the evidence adduced in the case, one pointing to the guilty of the accused and the other to his innocence, the view which is favourable to the accused should be adopted. The paramount consideration of the court is to ensure that miscarriage of justice is prevented. A miscarriage of justice which may arise from acquittal of the guilty is not less than from the conviction of an innocent. In a case where admissible evidence is ignored, a duty is cast upon the appellate court to reappreciate the evidence where the accused has been acquitted, for the purpose of

ascertaining as to whether any of the accused really committed any offence or not. (See Bhagwan Singh v.State of M.P.). The principle to be followed by the appellate court considering the appeal against the judgment of acquittal is to interfere only when there are compelling and substantial reasons for doing so. If the impugned judgment is clearly unreasonable and relevant and convincing materials have been unjustifiably eliminated in the process, it is a compelling reason for interference. The aspects were highlighted by this Court in Shivaji Sahabrao Bobade v.State of Maharashtra, Ramesh Babulal Doshi v.State of Gujrat, Jawant Singh v.State of Haryana, Raj Kishore Jha v.State of Bihar, State of Punjab v.Karnail Singh, State of Punjab v.Phola Singh, Suchand Pal v.Phani Pal and Sachchey Lal TGiwari v.State of U.P.

10. When the conclusions of the High Court in the background of the evidence on record are tested on the touchstone of the principles set out above, the inevitable conclusion is that the High Court's judgment does not suffer from any infirmity to warrant interference."

6. In view of the above discussion, I find no sufficient ground to grant leave to State to file appeal. The leave petition is dismissed.
7. Trial Court record be sent back forthwith with the copy of the order.

(S.P.GARG)
JUDGE

OCTOBER 24, 2016 / tr