

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

+ **CRL.M.C. 2808/2016**

% **Decided on: 5th August, 2016**

JOHURAN BEGUM

..... petitioner

Through: Mr.Kartar Singh along with appellant
in person.

versus

STATE

..... Respondent

Through: Mr. Kewal Singh Ahuja, APP for
State along with SI Ramesh Kumar, PS Sultan
Puri.

CORAM:

HON'BLE MS. JUSTICE MUKTA GUPTA

MUKTA GUPTA, J. (ORAL)

1. By this petition, the petitioner seeks release of a sum of ₹2,86,000/- in her favour, which was recovered as case property in case FIR No. 269/2008 under Section 380/120b/363/366/506/34 IPC, registered at Police Station Sultan Puri.

2. In the above-noted FIR three accused were charged for the offences as noted above i.e. Brij Lal @ Raja, Dilshad, Meenu @ Simran. Vide the judgment dated 1st April, 2014, Brij Lal @ Raja was convicted for offence punishable under Section 363 IPC and acquitted of the rest of the offences, whereas, Dilshad and Meenu @ Simran were acquitted of all the offences.

3. The prosecution case in the above-noted FIR was that Brij Lal @ Raja, Dilshad and Meenu @ Simran in furtherance of their common intention kidnapped the minor girl aged about 14 years, took her obscene photographs, criminally intimidated her to bring a sum of ₹8,50,000/- from her house,

belonging to her parents, out of which a sum of ₹ 2,86,000/- was recovered from the house of one Mustkeem, the brother of accused Dilshad, husband of the present petitioner.

4. The finding of the learned trial court with regard to the recovery of ₹2,86,000/- was that it was not disputed that the amount of ₹2,86,000/- had been recovered from the house of the brother of Dilshad namely Mustkeem who was neither the accused in the present case nor a witness. Assuming that this amount belonged to Panna Lal and had been recovered by prosecution from the house of Mustkeem, there was no explanation forthcoming as to how the said amount reached Mustkeem. The details of the currency notes or their denominations had not been mentioned or given by the complainant Panna Lal. In fact the complainant Panna Lal also did not inform if there was any definite identification mark on these currency notes which could establish that these were stolen from his Almirah by his daughter nor this recovered case property (currency notes) had been subjected to any Judicial TIP.

5. During trial Mustkeem filed an application seeking release of the recovered amount of ₹2,86,000/- and also submitted an agreement executed between four persons i.e. Mohd.Mustkeem, Naresh S/o Inderdev, Mukesh S/o Shri Ram Kishan and Naresh S/o Khubi Ram for purchasing a plot of land and claimed to have collected the amount, which was kept in his house. The learned Trial Court noted that the defense of the accused was that the amount was planted by the police in the present case. This it raised prima facie doubt with regard to ownership of the recovered amount. This application was dismissed as Mustkeen passed away.

6. The complainant Pannalal also filed an application before the learned trial court seeking release of amount of ₹2,86,000/-, which was dismissed.

7. Thereafter the petitioner, wife of Mustkeem filed the application before the learned trial court, which was dismissed vide the impugned order dated 14th March, 2016, which reads as under:-

“By this order I shall dispose of the application moved by the applicant namely Johuran Begum for release of ₹2,86,000/-.

I have heard the Ld. APP and Ld. Counsel for the accused and have perused the material available on record. Ld. Counsel for the applicant stated that the police illegally raided the house of the applicant and recovered ₹ 2,86,000/- from her house. Since the matter has been decided, hence, the aforesaid amount may be released in favour of the applicant.

Ld. Addl. PP for the State opposed the application and pleaded that the accused was given benefit of doubt. The applicant has not produced on record any document to show that the said amount belongs to her. Hence, the application may be dismissed.

Perusal of the record reveals that during investigation, ₹ 2,86,000/- were recovered from the house of brother of the accused Dilshad namely Mustakin. Vide judgment dated 01.04.2014, the accused was acquitted giving benefit of doubt. In the said judgment, it was held that the source of the said amount had not been proved. As per record, the complainant Panna Lal moved an application for release of the said amount, but the same was dismissed by the Ld. Predecessor of this Court on 01.04.2014. Brother of the accused namely Mustakin also moved a separate application for release of the said amount. Since, Mustakin, as stated by the applicant herein, is not alive, hence, the said application has become infructuous and is disposed of accordingly.

Now, the present application has been moved by the applicant, claiming herself to be the wife of Mohd. Mustakin.

In the entire application, the applicant has not disclosed the source of the said amount and as to how the said amount belongs to her. Perusal of the order dated 01.04.2014 passed by Ld. Predecessor of this Court reveals that Mustakin claimed the said amount being the proceeds of a property transaction. However, Mustakin had not filed any document along with application moved by him to substantiate the said fact. In the present application, even the said fact is not pleaded. The applicant only pleaded that the said amount was recovered from her house. However, the same is not sufficient to pass order in her favour. In view of the following discussions, I am of the opinion that there is nothing on record to suggest that the said amount belongs to her. Hence, the application is dismissed.”

8. Even before this court no document has been produced by the petitioner to show that the said amount belonged to her or her deceased husband. Further, it was the case of the accused in the trial court that the amount of ₹2,86,000/- was planted by the police. Hence, without demonstrating the ownership of the money and contradicting the plea of the accused, who were granted benefit of doubt, I do not find any error in the order passed by the learned trial court dismissing the application of the petitioner seeking release of sum of ₹2,86,000/-.

9. The present petition is accordingly dismissed.

(MUKTA GUPTA)
JUDGE

AUGUST 05, 2016
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