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

+ CRL.L.P. 496/2016

JAI DEVI SHARMA Petitioner
(THROUGH HER
LEGAL REPRESENTATIVE)

Through : Mr. B.R. Sharma, Adv.

versus

STATE & ORS Respondents

Through :Mr. Izhar Ahmad, APP with SI
Mahendro Koli, P.S. Subzi Mandi for
the State

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

% **ORDER**
19.09.2016

Crl. M.A. No. 14553/2016 (condonation of delay in re-filing)

For the reasons explained in the application, delay in re-filing is condoned. Application is disposed of.

Crl. M.A. No. 14555/2016 (condonation of delay in filing)

For the reasons explained in the application, delay in filing is condoned. Application is disposed of.

Crl. M.A. No. 14554/2016 (exemption)

Allowed, subject to all just exceptions. Application is disposed of.

CRL.L.P. No. 496/2016

Petitioner seeks leave to appeal against the judgment dated 18th April, 2016 passed by the Metropolitan Magistrate; whereby complaint case No. 3399/T filed by the petitioner against respondent nos. 2 and 3 has been dismissed and they have been acquitted after trial.

Petitioner filed a criminal complaint before the trial court on 15th January, 1991 wherein respondent nos. 2 and 3 were summoned for the offences under Sections 420/468/471/193/196 IPC, after recording pre-summoning evidence. Petitioner had alleged that respondent nos. 2 and 3 had forged and fabricated the property documents. Petitioner led pre-charge evidence and examined herself as PW1. Mr. Roshan Lal, Ahlmad of the court of Civil Judge was examined as PW2. Mr. S.P. Singh, Handwriting & Fingerprint Expert was examined as CW2. Witnesses were cross-examined by the learned counsel for the respondent nos. 2 and 3. Trial court framed charges under Sections 420/468/471/120-B against the respondent nos. 2 and 3 on 18th October, 2012 to which they pleaded not guilty and claimed trial.

During the post-charge evidence, PW1 was not tendered in the witness box as she had died. As regards CW2, that is the Handwriting

Expert, is concerned, he was also not examined since he had lost vision. After marshalling the entire material on record, including the pre-charge stage evidence, Trial court has concluded that petitioner had failed to prove its case beyond the shadow of reasonable doubt to the effect that respondent nos. 2 and 3 had fraudulently forged the documents-in-question and had cheated the complainant.

I do not find the view taken by the trial court to be perverse. In fact, view taken by the trial court is a possible view. Trial court has scrutinized the statement of complainant meticulously. Trial court has observed that as per the complainant, she was taken to house no. 908, Lane No. 8, Govindpuri, Delhi by her daughter-in-law where she signed certain blank documents. In these circumstances, her daughter-in-law herself is a suspect, but was not impleaded. Complainant further admitted, during her cross-examination, that her photo was affixed on the General Power of Attorney, on which she had admitted her signatures. No explanation was coming forward as to how her photo was there on the General Power of Attorney. Had her signatures been taken on blank papers, her photo would not have been there on the GPA. Complainant admitted that she had not approached the police. Why? This conduct is also unusual. A prudent

person, who has been cheated by the other person by forging the documents, would certainly approach the police after coming to know about the fraud. Statement of the complainant was also vague as she failed to disclose the number of blank papers on which her signatures were taken. Even Handwriting Expert (CW2), in his report Ex. CW2/1, has opined that signatures on Agreement to Sell, Affidavit and Deed of Will were that of complainant. It is not understood as to why respondent nos. 2 and 3 would have forged signatures of complainant on “Undertaking” and “Receipt”, when they had opportunity to get as many blank papers signed, to cover the “Undertaking” and “Receipt” as well. Case as set up by the complainant was suspicious for all these discrepancies. It is further noted here that signatures of complainant on the questioned documents were not compared with the documents of contemporary period. As per the complainant, her signatures on the questioned documents were taken somewhere in the year 1992; whereas the documents used for comparison pertained to the year 2007, that is, after more than 16 years. As per the handwriting expert, writing flow of a human being varies after 10 to 15 years. This is also a material discrepancy.

It is trite law that leave to appeal is to be granted in exceptional cases

and for substantial and compelling reasons, where the judgment under appeal is found to be perverse. It has to be shown that the conclusions arrived at by the trial court are perverse or there is misapplication of law or any legal principles have been violated. High Court cannot entertain a petition merely because another view is possible or that another view is more plausible. Reliance is placed on *Arulvelu and Anr. Vs. State*, MANU/SC/1709/2009 in which *Ghurey Lal vs. State of Uttar Pradesh*, MANU/SC/3223/2008 has been considered. The principles which have to be kept in mind by the High Court while entertaining the appeal against the acquittal have been enunciated 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.

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.

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.

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.

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."

For the foregoing reasons, I am of the view that petitioner has failed to make out a case for grant of leave to appeal. Petition is dismissed.

A.K. PATHAK, J.

SEPTEMBER 19, 2016

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