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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ CRL.REV.P. 578/2016 & Crl.M.A.13570/2016 & Crl.M.B.1587/2016
TILAK CHAND @ TILLU Petitioner
Through : Mr. Vikas Mahajna, Adv. with Mr. S.
S. Rai and Mr. Amit Mehta, Adv.

versus
STATE (GOVT OF NCT OF DELHI) Respondent
Through : Mr. Tarang Srivastava, APP.

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

ORDER
% **02.09.2016**

By this petition under Section 397 read with Section 401 of Code of Criminal Procedure, 1973, petitioner has assailed the judgment dated 25th May, 2016 passed by the learned Additional Sessions Judge/Special Judge:CBI-03, (PC Act), South District, Saket Courts, New Delhi whereby the appeal filed by the petitioner against the judgment dated 2nd November, 2015 and order on sentence dated 15th December, 2015 of trial court thereby convicting the petitioner under Sections 279/337/304-A IPC and sentencing him to undergo SI for one month for offence punishable under Section 279 IPC, sentenced to undergo SI for one month for offence punishable under Section 337 IPC and sentenced to undergo SI for one year for offence punishable under Section 304-A IPC, has been dismissed.

As per the prosecution, petitioner on 10th December, 2001 at about 4:00 pm, while driving the truck bearing no.HR-55-0016, at a fast speed and in a rash and negligent manner, had hit a truck bearing no.HR-38-2540 which was parked at the central verge at M. B. Road, near Lal Kuan, ICD Mor resulting in death of Shri Ghan Shyam (deceased) and simple injuries to Shri Rampreet. Deceased was the driver of truck bearing no.HR-38-2540 and injured Shri Rampreet is a mechanic, who was repairing the truck. Truck bearing no.HR-38-2540 was parked on the unmetalled vacant space (patri) between two roads. Speed of truck driven by the petitioner was so high that the stationary truck was pushed back by a distance of 12-13 steps after the accident. Petitioner was apprehended at the spot and beaten by the public and later on handed over to Investigating Officer.

On receipt of information about the accident, DD No.19 was recorded at police station Sangam Vihar and handed over to W/ASI Sarita Rathi, who along with constable Gurmeet Singh, reached the spot and found both the trucks parked there in an accidental condition. Truck driven by the petitioner was found half on the road and half on the divider. Statement of Shri Gopal, the helper of the truck bearing no.HR-38-2540, was recorded and pursuant thereof FIR was registered. Petitioner was arrested. Mechanical inspection

of offending vehicle was got done. Vehicles were seized. Driving license of petitioner was also seized. Site plan was prepared. Charge sheet was filed in the Court.

Notice under Sections 279/337/304A IPC was served on the petitioner to which he pleaded not guilty and claimed trial.

Prosecution examined six witnesses. FIR was proved as Ex.PW-1/A, endorsement on rukka as Ex.PW-1/B, DD No.19 as Ex.PW-2/A, DD No.20 as Ex.PW-2/B, statement of Gopal as Ex.PW-2/C, seizure memo of offending vehicle as Ex.PW-2/D, seizure memo of truck as Ex.PW-2/E, seizure memo of driving license of accused as Ex.PW-2/F, arrest memo of accused as Ex.PW-2/G, site plan as Ex.PW-2/H and mechanical inspection report as Ex.PW-3/A.

Thereafter, statement of petitioner under Section 313 Cr.P.C. was recorded. Petitioner claimed himself to be innocent. Petitioner examined himself as DW-1. He also examined one Shri Krishan Kumar as DW-2. DW-2 claimed that he was the conductor on the truck driven by the petitioner. Petitioner deposed that on 10th December, 2001, he was driving the offending truck and Shri Krishan Kumar (DW-2) was sitting besides him. At about 3/4 pm, when they reached near T-point, Lal Kuan Sagar, he

noticed a cow running from the right side of the road to the left side and on the left side, one cyclist was going. He tried to save the cow and smeared the vehicle towards right side of the road, that is, central verge. After the accident, public persons caught him, beat him and snatched ₹10,000/- from his pocket. Similar is the statement of DW-2 Shri Krishan Kumar. This clearly shows that petitioner has himself admitted about the happening of accident. He also admitted that he was apprehended at the spot.

PW-5 has supported the prosecution as regards the accident. He categorically deposed that the offending truck was being driven at a fast speed and in a rash and negligent manner as a consequence of which accident took place. He further deposed that his truck was pushed back by 12-13 paces, as a result of the impact of collision. In his cross examination, he has deposed that width of the patri was 10 feet. Though, PW-4 Ram Preet and PW-5 Gopal have failed to identify the petitioner, however, petitioner has himself admitted that accident took place and he was apprehended at the spot, his identity has been fixed. His plea that accident was not intentional but for unavoidable reasons can not be accepted. From the circumstances, as detailed above, it can be deduced that truck was driven in such a high speed that petitioner was having no control over it and he was

driving it rashly and negligently. It is noted that no suggestion was put to the witnesses that accident occurred on account of saving the cow and this plea has emerged only at the defence evidence stage and, otherwise, appears to be an afterthought.

Trial court has concluded from the testimony of the witnesses more particularly PW-4 and PW-5 coupled with the admission of the petitioner, as aforesaid, and the circumstances that petitioner while driving the truck on the fateful day at a fast speed and in a rash and negligent manner caused the accident in which one person lost his life and the other sustained injuries. Appellate court has again scrutinized the evidence on record of the Trial court and has concurred with the view taken by the trial court. Findings of facts recorded by the trial court and the appellate court are based on the meticulous examination of evidence adduced by the parties and in my view, do not suffer from any material irregularity, illegality or perversity.

It is trite to say that in exercise of its revisional jurisdiction, High Court is not to sift and weigh the evidence on record as if hearing an appeal and substitute a finding against what has been arrived by the two courts below after marshalling the evidence. Only gross perversity in the findings as well as the procedural illegality, if any, has to be considered. High Court

can interfere only if petitioner is able to demonstrate any flagrant violation or misuse of procedure in the order or that the settled legal position had been ignored. Petitioner has failed to point out any perversity and illegality in the impugned order resulting in miscarriage of justice. It cannot be said that the findings returned by the courts below are without any evidence and/or are perverse.

I am of the view that concurrent findings relied by the courts below are in consonance with the documentary as well as ocular evidence adduced by the parties and in accordance with the settled legal principles and does not suffer from any illegality or perversity.

However, sentence of the petitioner under 304A IPC is reduced to seven months keeping in mind that petitioner is a poor person, aged about 60 years, has faced agony of trial for last 15 years, has no previous criminal record and has a family to support.

Revision petition is disposed of in the above terms. Miscellaneous applications are disposed of as infructuous.

A.K. PATHAK, J.

SEPTEMBER 02, 2016/dk