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

+ **CRL.L.P. 485/2016**

STATE (GNCT OF DELHI)

..... Petitioner

Through :Mr. Sudershan Joon, APP with SI
Karamveer, P.S. Narela

versus

RAKESH KUMAR

..... Respondent

Through : None

CORAM:

HON'BLE MR. JUSTICE A.K. PATHAK

ORDER

% **20.09.2016**

Crl. M.A. No. 14255/2016 (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. 14256/2016 (exemption)

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

CRL.L.P. No. 485/2016

Petitioner seeks leave to appeal against the judgment dated 18th February, 2016 passed by the Metropolitan Magistrate; whereby respondent has been acquitted of the charge under Sections 325/34 IPC.

As per the prosecution, FIR was registered on the statement of

complainant/injured Chhote Lal, recorded on 2nd November, 2008, wherein he stated that he used to sell *gol gappa* on *rehri* near Pocket 8, Sector A-5, Narela. Respondent also started selling *gol gappa* by placing his *rehri* near the *rehri* of complainant. On 2nd November, 2008 at about 5:10 PM complainant asked the respondent to move away his *rehri* at some distance at which he quarrelled with him. In the meanwhile, younger brother of respondent, namely, Mukesh also came there. Mukesh caught hold of him while responding gave *danda* blow on his right hand.

As per the prosecution, on receipt of information about the incident, DD No. 39-A was recorded and handed over to HC Krishan Kumar, who reached the spot along with Constable Jitender and came to know that injured had been removed to SHRC Hospital. HC Krishan Kumar left Ct. Jitender at the spot and went to hospital and obtained MLC of complainant. Since opinion regarding the nature of injuries was not given by the doctor, no FIR was registered. After doctor opined injuries to be grievous on account of fracture on the right hand, FIR was registered on 4th December, 2008. On the pointing of complainant, respondent was arrested on 4th December, 2008. *Danda* was not recovered.

Complainant Chhote Lal was examined as PW1. Constable Jitender

was examined as PW2. ASI Krishan Kumar was examined as PW3. Dr. Mazhar Hussain was examined as PW4. ASI Jai Bhagwan was examined as PW5 and HC Ashok Kumar was examined as PW6. In his statement under Section 294 Cr.P.C., respondent denied that he had caused injuries to the complainant. Trial court has scrutinized the evidence on record and has disbelieved the prosecution story. Trial court has noted that uncle of the complainant was present but was not examined. Several persons had gathered at the spot but still respondent was not apprehended at the spot, even though police officials had reached the spot immediately after the incident. Trial court has also noted that Investigating Officer deposed, in his cross examination that on inquiry he came to know that no shopkeeper had seen the incident. Complainant had admitted that he suffered losses after respondent started selling *gol gappa* on *rehri*, therefore, false implication was also possible. Further, in the MLC, nature of weapon used was not described nor use of any weapon was supported. As per the MLC, swelling and tenderness was seen over distal 1/3rd forearm and multiple scratch marks over neck of the complainant.

I have heard learned APP for the State and have perused the material placed on record and I am of the view that findings returned by the trial

court are possible and do not suffer from any perversity. Whole case of the prosecution appears to be suspicious. Incident took place on 2nd November, 2008, but surprisingly FIR has been registered only on 4th December, 2008, even though PW3 ASI Krishan Kumar claims to have reached the spot immediately after the incident and recorded statement of victim on the same day. Inordinate delay of one month has not been explained by cogent reasons. Registration of FIR could not have been put on hold for one month awaiting the outcome of opinion of the doctor. This is quite unusual. It may further be noted that PW1 has admitted in his cross-examination that apart from the public his family members had also gathered at the spot, on hearing the noise of quarrel. However, none of the family members of complainant came forward to make a statement before the Investigating Officer. PW3/ASI Krishan Kumar has deposed that he had contacted uncle of the complainant but he declined to make any statement. As per the prosecution, respondent was arrested on 4th December, 2008, on the pointing of complainant, vide Arrest Memo and Personal Search Memo Ex. PW1/B and Ex. PW1/C, respectively. PW3, in his cross-examination, has stated that signatures of complainant on Arrest Memo of the accused (respondent) were taken. However, signatures of complainant were not found on the

Arrest Memo and Personal Search Memo and this fact has been noted by the trial court.

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 20, 2016

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