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

+ CRL.A. 984/2015

SHAHSI KANTA

..... Appellant

Through: Ms.Jyoti Gupta, Adv.

versus

STATE & ORS

..... Respondents

Through: Ms.Rajni Gupta, APP for the State
with SI Gaurav Kumar, PS Nand
Nagri

CORAM:

HON'BLE MS. JUSTICE PRATIBHA RANI

ORDER

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10.03.2016

1. This Criminal appeal has been filed by the appellant impugning the judgement dated 20.05.2015 of Ld. M.M., Karkardooma Courts, Delhi whereby the respondent Nos. 2 and 3 have been acquitted.

2. Learned APP for the State has submitted that the complainant should have sought leave to appeal instead of filing criminal appeal against the order of acquittal. In the decision reported as *Satya Pal Singh vs. State of M.P. and Ors. in Criminal Appeal No. 1315 of 2015*, the right of victim to file appeal against an order of acquittal has been examined by the Supreme Court. The conclusion on this legal issue arrived at is as under:-

“.....Thus, to conclude on the legal issue:

Whether the appeallant herein, being the father of the deceased, has statutory right to prefer an appeal to the High Court against the order of acquittal under proviso to Section 372 of Cr.P.C. without obtaining

the leave of the High Court as required under sub-Section (3) to Section 378 of Cr.P.C., this Court is of the view that the right of questioning the correctness of the judgment and order of acquittal by preferring an appeal to the High Court is conferred upon the victim including the legal heir and others, as defined under Section 2(wa) of Cr.P.C., under proviso to Section 372, but only after obtaining the leave of the High Court as required under sub-Section (3) to Section 378 of Cr.P.C. The High Court of MP. has failed to deal with this important legal aspect of the matter while passing the impugned judgment and order.

Adverting to another contention of the learned counsel on behalf of the appellant regarding the failure on the part of the High Court to re-appreciate the evidence it is clear from a perusal of the impugned judgment and order passed by the High Court that it has dealt with the appeal in a very cursory and casual manner, without adverting to the legal contentions and evidence on record. The High Court in a very mechanical way has stated that after a perusal of the evidence on record it found no reason to interfere with the decision of the trial Court as the prosecution has failed to establish the charges levelled against the accused beyond reasonable doubt and it has dismissed the appeal by passing a cryptic order. This Court is of the view that the High Court, being the Appellate Court, has to exercise its appellate jurisdiction keeping in view the serious nature of the charges levelled against the accused. The High Court has failed to exercise its appellate jurisdiction properly in the appeal filed by the appellant against the judgment and order of acquittal passed by the trial Court.

Hence, the impugned judgment and order of the High Court is not sustainable in law and the same is liable to be set aside by this Court and the case is required to be remanded to the High Court to consider for grant of leave to file an appeal by the appellant as required under sub-Section (3) to Section 378 of Cr.P.C. and thereafter proceed in the matter for the reasons stated supra, this appeal is allowed by setting aside the impugned judgment and order of the High Court. The case is remanded to the High Court to hear the appellant with regard to grant of leave to file an appeal as the appellant is legal heir of the victim as defined under Section 2(wa) of Cr.P.C. and dispose of the appeal in accordance with law in the light of observations made in this order as expeditiously as possible.”

3. In view of the legal position, learned counsel for the appellant seeks permission to withdraw this appeal with liberty to file criminal leave petition. She further submits that the period spent by the petitioner in pursuing this remedy may be considered in condoning the delay in filing the leave petition.
4. The delay in filing the leave petition, due to bonafide pursuing the remedy of appeal needs to be pleaded in the application seeking condonation of delay.
5. The appeal is dismissed as withdrawn.

PRATIBHA RANI, J.

MARCH 10, 2016
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