

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

% Decided on: 23rd January, 2017

+ **CRL.REV.P. 79/2017**

KUSUM BALA

..... Petitioner

Represented by: Mr. Arun Sharma, Adv.

versus

STATE & ORS.

..... Respondent

Represented by: Mr. Ashok Kumar Garg, APP
with SI Anukul, PS Subji
Mandi.

CORAM:
HON'BLE MS. JUSTICE MUKTA GUPTA

MUKTA GUPTA, J. (ORAL)

CrI.M.A. 1239/2017

Exemption allowed subject to just exceptions.

CrI.M.A. 1240/2017

For the reasons stated in the application 20 days delay in filing the petition is condoned.

Application is disposed of.

CRL.REV.P. 79/2017

1. The complainant got lodged FIR No.314/2008 under Sections 354/452/506/34 IPC pursuant to directions under Section 156(3) Cr.P.C. After investigation a charge-sheet was filed and charge for offences punishable under Sections 452/354/34 IPC was framed against the

respondents. After recording the evidence of the prosecution, the learned Trial Court acquitted the respondents. The learned Trial Court noted that neither any MLC was prepared nor any medical record of the complainant was available to substantiate that she was assaulted or criminal force was used. Even in examination-in-chief the complainant did not say that she received minor injuries which was deposed by PW-2 her sister-in-law. A civil dispute was filed by the complainant Ex.PW-1/DA wherein each and every instance was mentioned except the incident on the basis of which FIR was got registered. Besides the fact that neither the alleged torn clothes were recovered which were case property nor any other incriminating object was recovered, the learned Trial Court noted that the falsity of the alleged occurrence is further proved during the cross-examination of the complainant wherein she admitted that other family members were present at the house when the alleged incident took place but strangely none was joined in the investigation and in the entire record there is no mention of any other person being available except the sister-in-law. Thus granting benefit of doubt to the accused they were acquitted.

2. An appeal against the judgment of the learned Metropolitan Magistrate dated 1st June, 2015 was also dismissed vide the impugned judgment dated 29th September, 2016. Hence the present revision petition. As noted above, the two Courts below have applied themselves on facts and law and a concurrent finding of two Courts is against the complainant. In a revision petition this Court would interfere only if there is a gross illegality in the impugned judgments.

3. Learned counsel for the petitioner to press his claim submits that though the learned Trial Court disbelieved the evidence of the prosecution

with respect to the offence punishable under Section 354 IPC, however there is no finding returned with regard to Section 452 IPC.

4. The contention of learned counsel for the petitioner is contrary to the record. The learned Trial Court in Para 10 specifically referred to the necessary ingredients for an offence of criminal trespass punishable under Section 452 IPC. Adverting to the evidence and appreciating thereto, the learned Trial Court found that the evidence of the complainant could not be relied upon as she had been contradicted on material aspects during cross-examination. One of the necessary ingredients of criminal trespass to be punishable under Section 452 is to commit an offence or to intimidate, insult or annoy any person in possession of the property. Since no offence has been allegedly proved or any annoyance or insult to the complainant or any other family member, the learned Trial Court and the Appellate Court rightly acquitted the respondents of the charges framed. This Court finds no reason to interfere in the same.

5. Petition is dismissed.

(MUKTA GUPTA)
JUDGE

JANUARY 23, 2017
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