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

+ W.P.(CRL) 202/2017

IRSHAD ALI @ DEEPAK

..... Petitioner

Through: Mr. M. Sufian Siddiqui with Mr.
Rakesh Bhuara & Mr. M. Tabishzia,
Advts.

versus

THE STATE (NCT OF DELHI)

..... Respondent

Through: Mr. Avi Singh, ASC
Mr. Dayan Krishnan, Sr. Adv. with
Mr. Rajesh Mahajan, ASC, Ms.
Smriti Sinha & Ms. Shradha Karol,
Advts. with Insp. Dilip Kumar, Spl.
Cell

CORAM:

HON'BLE MR. JUSTICE ASHUTOSH KUMAR

ORDER

% **22.05.2017**

The petitioner was acquitted in a case instituted vide FIR No.10/2006 dated 09.02.2006 (P.S. Special Cell) for offences under Sections 121, 121A, 122, 123, 120B IPC read with Sections 4 and 5 of the Explosive Substances Act and 25 of the Arms Act. The petitioner was made accused in this case on the basis of his arrest on the recovery of a Chinese pistol of 30 bore along with 8 live cartridges and one polythene containing mixture of black and while oil based explosive material weighing 2 Kgs from near Mubarak Chowk.

At the trial, the petitioner and another co-accused, who too was

arrested along with him, were acquitted primarily on the ground that no independent persons were examined at the trial and that private vehicles were used by the police party for transporting the petitioner and others and no evidence with regard to the same was put up during the trial.

The petitioner has, therefore, prayed for initiation of departmental proceedings against the police officers in the light of the judgment of the Supreme Court in *State of Gujarat v. Kishanbhai and Ors.*: (2014) 5 SCC 108 whereby a direction has been given to the Home Department of every State Government to formulate a procedure for taking action against all erring investigating/prosecuting officials/officers and that all such erring officials/officers identified as responsible for failure of prosecution case on account of sheer negligence or because of culpable lapses, must suffer departmental action and initiation of departmental proceeding against them.

Learned counsel appearing for the State, on the other hand, submits that necessary sanction has been obtained for preferring an appeal against the aforesaid judgment of acquittal and it would be rather premature for the petitioner to ask for initiation of departmental action against the police officials who had participated in the investigation.

It has also been submitted that according to the scheme of the Code of Criminal Procedure, Section 437A of the Code obliges any person who is acquitted in a case, for ensuring his or her appearance before the higher court to furnish a bond. That apart, it is submitted that an appeal is only a continuation of trial and the direction given by the Supreme Court in *State of Gujarat v. Kishan Bhai* (supra), would not straight away be applicable to the facts of this case. It has also been submitted that pursuant to the judgment in *State of Gujarat v. Kishan Bhai* (supra) a Standing Committee has been

constituted by the Delhi Government and that it would be open for the petitioner to approach the Standing Committee for the aforesaid/needful.

Taking into account the aforesaid facts, this court is not inclined to allow the prayer made in this writ petition.

The writ petition is dismissed.

ASHUTOSH KUMAR, J

MAY 22, 2017

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