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

+ CRL.L.P. 170/2016

MAHENDER YADAV

..... Petitioner

Through: Mr. Pradeep Kumar Yadav and
Ashutosh Yadav, Adv.

versus

STATE (NCT OF DELHI) & ORS

..... Respondent

Through: Mr. Mukesh Kumar, APP
Mr. Saurabh Jhamb and Deepak
Kumar for R-2 to 5

CORAM:

HON'BLE MR. JUSTICE VIPIN SANGHI

ORDER

08.03.2017

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The petitioners seek leave to appeal against the judgment dated 09.12.2015 passed by the learned ASJ-03 (East) Karkardooma Courts in SC No.141/2014 arising out of FIR 310/2012 u/s 341/308/34 IPC registered at PS Pandav Nagar. The respondent/ accused have been acquitted by the Trial Court by the impugned judgment on the basis that the prosecution had failed to prove the charge against them and they have been given the benefit of doubt. The petitioner is the complainant/ victim.

The Trial Court has acquitted the accused by taking into account the said several contradictions in the statement of PW-1/ petitioner. He claimed

that on 25.07.2012, an altercation took place between his wife PW-4 and one Bhupender, who was the nephew of the accused Mohan Lal. However, in his subsequent examination, he stated that Bhupender @ Bhupa was the brother of the accused Jagpal who had caused injuries to him. He stated that the accused Bhupender who was in court and who was the son of the accused Prem Chand had not caused injuries to him.

The Trial Court also observed that in the complaint the complainant had described Bhupender as nephew of the accused Mohan Lal, whereas in the witness box he did not state so and did not even gave the name of the father of the said Bhupender who had caused injuries to him. At this stage, I may observe that the submission of counsel for the petitioner is that the petitioner was only aware of the fact that Bhupender was nephew of Mohan Lal and he was not aware of his paternity. It is for this reason that he did not tell the name of the father of the Bhupender/ accused.

The Trial Court also takes note of the fact that arrest memo bear the signatures of the complainant, though in his evidence recorded on 24.07.2014 he stated that the arrest memo were not prepared in his presence and he had signed the same later on. Similarly, he had identified his signatures on the seizure memo PW-1/J, whereby the danda allegedly used in the commission of the offence was seized, but during his examination he stated that no danda was recovered from any of the accused persons. On this premise, the Trial Court held that PW-1 was not a reliable witness. The Trial Court also takes note of the fact that there were several litigations between PW-1 and the accused Mohan Lal. The accused had filed a recovery suit for arrears of rent dues since February 2012 which had been decreed in favour of the accused Mohan Lal. The pre-existing enmity

between them started in February 2012 could not rule out false implication.

Counsel for the petitioner submits that merely because the accused Bhupender produced in court was not the one who had assaulted the petitioner could not be a reason to acquit the other accused in the case. He submits that the MLC had been completely disregarded by the Trial Court. He has referred to the testimony of PW-12 Dr Ashok Nagar, Senior Resident, Aruna Asif Ali Govt. Hospital.

Having heard counsel for the petitioner and perused the impugned judgment and the testimonies placed on record, I am of the view that there is no merit in this petition and the impugned judgment does not call for interference since the view taken by the Trial Court is a plausible view. It is clear that the arrest memo and seizure memo are not reliable since they bear the signatures of PW-1 even though admittedly neither the arrest were effected in his presence nor the recovery of danda allegedly used in the offence was effected in his presence. In fact, he stated that no recovery of danda was made from the accused persons, but the testimony of PW-12 refers to the danda/ bamboo stick produced before him for his opinion as to whether the same could be the weapon of offence.

For the aforesaid reasons, the petition is dismissed.

VIPIN SANGHI, J

MARCH 08, 2017

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