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

+ CRL.REV.P. 287/2016

RAVI KAPOOR

..... Petitioner

Through: Mr.Biswajit Kumar Patra, Adv.

versus

STATE

..... Respondent

Through: Ms.Neelam Sharma, APP.
SI Ajay Kumar, P.S.S.J.Enclave.

CORAM:

HON'BLE MR. JUSTICE ASHUTOSH KUMAR

ORDER

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08.08.2017

Ravi Kapoor, the revisionist was convicted by the Trial Court in connection with FIR No.24/2009 for the offences under Sections 186/353/332 and 224 of the IPC and was sentenced to undergo RI for three months for the offence under Section 186 IPC; RI for three years for the offence under Section 332 IPC; RI for two years for the offence under Section 353 IPC and RI for two years for the offence under Section 224 IPC by judgment and order dated 23.09.2014 and 24.09.2019 respectively. The sentences were, however, ordered to run concurrently.

Against the aforesaid judgment and order of conviction, the petitioner preferred an appeal vide Crl.A.129/2014, which too was dismissed vide judgment dated 30.11.2015.

The petitioner has challenged both the concurrent judgments of the Courts below.

The petitioner tried to escape from the lawful custody on 19.10.2009 at about 11 AM from near the X-ray room of H block, Safdarjung Hospital, New Delhi and in the process obstructed the police officials from performing their duty. While preventing the duty functionaries from discharging their functions, the petitioner is also said to have caused hurt by throwing chilli powder to ASI Umed Pal (PW-4), thereby making himself liable for being prosecuted and tried for the offences under Sections 224/186/353 and 332 of the IPC.

Constable Satya Pal, PW-1 has stated before the Trial Court that on 19.10.2009 he along with ASI Umed Pal (PW-4) and HC Jagdish Singh Hudda (PW-3) had taken the petitioner for his treatment at Ortho department of Safdarjung Hospital. There, X-ray of the petitioner was taken. It was stated that the petitioner tried to escape from the custody of the policemen by throwing chilli powder in the eyes of ASI Umed Pal (PW-4). Thereafter the petitioner was chased by him and PWs.3 & 4. PW-4 is also said to have fired three rounds in the air. The petitioner thereafter fell down. In the meantime Constable Virender (PW-10) reached the spot and overpowered the petitioner.

HC Ashok (PW-2) claims to have seen the petitioner trying to run away from the custody of the police officials. He along with PW-10 overpowered the petitioner, who was thereafter handed over to PW-4. He has proved Exh.PW-2/A which is the OPD slip regarding his treatment and his visit to hospital on that date.

Jagdish Singh Hudda (PW-3) has supported the prosecution version and has stated that the petitioner was found to be in possession of chilli

powder and thousand rupees in his pocket.

ASI Umed Pal (PW-4) has deposed that he took in possession empty cartridges (Exh.PW-4/A) and arrested the petitioner. He also prepared the search memo (Exh.PW-4/D).

Similarly, Raghbir Singh (PW-5), Rajnish Kumar (PW-6), Dr.S.Gaghavan (PW-7), Head of Department, Neurology, Safdarjung Enclave who has deposed that the CT scan of the head of the petitioner was taken, supported the prosecution version.

SI S.S.Bisht (PW-13) who is the IO of this case has testified to the fact that the petitioner was arrested and from his possession chilli powder and rupees thousand were recovered.

Thus, all the offences for which the petitioner was charged stand established at the trial. The act of the petitioner came squarely within the mischief of Section 224 of the IPC which provides punishment for resistance or obstruction by a person to his lawful apprehension. The petitioner has been found to have obstructed a public servant in discharge of public function and, therefore has rightly been convicted under Section 186 of the IPC. Similarly, the act of the petitioner has made him liable to be punished under Section 353 of the IPC which provides for punishment for assault or use of criminal force to deter a public servant from discharge of his duties and voluntarily causing hurt to such public servant attracting Section 332 of the IPC.

It has been seriously argued on behalf of the petitioner that since he was in police custody, it was highly improbable for him to have been in possession of chilli powder and one thousand rupees. It has been argued that Rajnish Kumar (PW-6) who has proved Exh.PW-6/A which is the relevant

entry in register No.16, has stated that there was no chilli powder or any other objectionable substance. The petitioner was also searched outside the casualty ward of the hospital and nothing was found in his possession.

The aforesaid argument was advanced on behalf of the petitioner before the Trial Court as well as the Appellate Court but both the Courts, on taking into account the overwhelming evidence regarding throwing of chilli powder by the petitioner, resulting in injuries to the person of PW-4, rejected such argument. If at all the petitioner was not found in possession of the aforesaid chilli powder and one thousand rupees, at best it could be attributed to the lapse on the part of the constables on duty but that by itself would not discredit the version of the prosecution witnesses.

It was argued on behalf of the petitioner that admittedly he was taken to the CT scan room and thereafter he was taken to the X-ray room but he was never referred for X-ray. Thus the whole story of throwing chilli powder in the eyes of PW-4 in an open area in front of X-ray room is rendered doubtful.

Both the Courts below took note of the fact that consistent version of the prosecution witnesses namely PWs.1, 2 & 3 has been that the petitioner was escorted from jail to the hospital and that they had taken the petitioner to the X-ray department. The aforesaid prosecution witnesses had gone to the X-ray department to collect the previous X-ray report. A reference slip of 25.09.2009 with an advice of X-ray of spine and foot is part of the record and, therefore, such contention of the petitioner was rightly rejected by both the Courts below. Some other grounds also have been urged by the petitioner in the present revision petition, all of which pertain to the petitioner not having been taken to the X-ray room and his not being in

possession of the chilli powder and one thousand rupees. However, those grounds are not being recorded for the simple reason that they have no substance/merit.

The petitioner has undergone the entire period of sentence.

Taking into account the aforesaid facts, this Court is of the view that no interference is required in the judgment and order of the Trial Court as well as of the Appellate Court.

The revision petition is thus dismissed.

ASHUTOSH KUMAR, J

AUGUST 08, 2017

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