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

+ CRL.L.P. 295/2017

STATE (NCT OF DELHI) Petitioner

Through: Mr.Ashish Dutta, APP.

versus

SANDEEP @ BABU & ORS

..... Respondents

Through: None.

CORAM:

HON'BLE MR. JUSTICE ASHUTOSH KUMAR

ORDER

% **17.05.2017**

Crl.M.A.No.8151/2017

For the reasons stated in the application, the delay of 5 days in filing the leave petition is condoned.

The application stands disposed of.

Crl.M.A.No.8152/2017

For the reasons stated in the application, the delay of 5 days in re-filing the leave petition is condoned.

The application stands disposed of.

CRL.L.P. 295/2017

The Government of NCT of Delhi has called in question the judgment dated 15.12.2016 passed by the Special Judge-2, NDPS Act (Central District), Tis Hazari Courts, Delhi in case No.28566/2016 in connection with FIR No.06/2012 (P.S.Old Delhi Railway Station) instituted for the

offences under Sections 392/394/397/411 and 34 of the IPC whereby the respondents have been acquitted of all charges by giving them benefit of doubt.

On 30.01.2012 the respondents are alleged to have divested the complainant, a constable in Delhi Police, of his mobile telephone, a purse containing Rs.4200/-, ATM card of Axis Bank and I card of Delhi Police on point of knife.

Sandeep @ Babu (respondent No.1) and Mangal @ Sirfira (respondent No.3) were arrested on 16.09.2012 on the basis of secret information. Sandeep @ Babu was found to be in possession of one knife whereas on the disclosure made by Mangal (respondent No.3), the mobile phone of the complainant was recovered from his house. The other respondents namely Vinod (respondent No.2) and Vijay @ Bhuri (respondent No.4) surrendered in Court on 13.12.2012. From them, nothing was recovered. However, Vijay @ Bhuri (respondent No.4) is alleged to have made a disclosure on the basis of which the Identity Card of the complainant was recovered from the bushes in the area of Jwala Nagar.

The Trial Court after examining 10 witnesses on behalf of the prosecution acquitted the respondents by giving them benefit of doubt.

Constable Vichitra Kumar, complainant (PW-2) though supported the prosecution version before the Trial Court but his deposition does not inspire confidence. According to him he made a telephone call to the PCR with the help of the mobile phone of a dairy owner who has not been examined in this case. The PCR arrived immediately. However, no details with regard to the place and time of the occurrence has been given by PW-2. According to his version, the occurrence took place at about 6 AM, but in the rukka, the

time of occurrence has been recorded as 7 AM.

Even with respect to the number of accused persons involved in the commission of the crime, there is discrepancy in the deposition of witnesses. In the written complaint, four persons have been alleged to have committed the crime whereas in the DD No.6 PP (Exh.PW-10/A) no specific number of the accused persons has been given. With respect to the articles which were robbed, there is no unanimity. The DD entry referred to above does not state about the taking away of Identity card of PW-2. No public was associated and no independent person has been examined in the case.

The knife which is said to have been recovered from respondent No.1 was stated to have been sealed by SI Brahm Dev at the place of arrest and then seized vide seizure memo Exh.PW-6/B. However, in the seizure memo referred to above, there is no reference about the SI having delivered the seal to anyone else. There is no evidence also of the same knife having been used in the commission of the robbery.

The recovery of the mobile phone at the instance of respondent No.3 also appears to be doubtful as no public witness was associated at the time of such recovery. The other recoveries also appear to be doubtful. From two of the respondents, viz. respondent Nos.2 & 4, nothing incriminating was recovered.

Thus the Trial Court, taking into account the lack of clarity with respect to place, time and manner of occurrence and inconsistencies in the prosecution version coupled with non examination of any independent/public witness, did not accept the prosecution version and gave benefit of doubt to the respondents.

There is no reason to differ with the findings arrived at by the Trial Court.

The leave petition is therefore dismissed.

ASHUTOSH KUMAR, J

MAY 17, 2017
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