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IN THE HIGH COURT OF DELHI AT NEW DELHI

Decided on : 18th May, 2017

+ CRL.L.P. 443/2016 and Crl. M.A. 13063/2016

VAIBHAV GUPTA

..... Petitioner

Through: Mr. R.K. Jain, Advocate

versus

STATE & ORS

..... Respondents

Through: Mr. Tarang Srivastava, APP with
SI Amit Kumar, PS Subash Place for R-
1/State

Mr. Ankit Mangla and Mr. Kanu Agrawal,
Advocates for R-2 to 5

CORAM:

HON'BLE MR. JUSTICE R.K.GAUBA

ORDER (ORAL)

1. The first information report (FIR) no.449/1997 was registered in police station Saraswati Vihar respecting offence punishable under Section 325 read with Section 34 of Indian Penal Code, 1860 (IPC) having been committed allegedly by the respondents, Jai Prakash Gupta, the late father of the petitioner herein being the first informant.
2. According to the allegations in the said FIR, Purshottam Dass Gupta, father of the informant had been assaulted within the precincts of his house in his presence. The case eventually resulted in a report under Section 173 of the Code of Criminal Procedure, 1973 (Cr. PC)

being submitted in the court of the Metropolitan Magistrate on the basis of criminal case which was registered against no.78/02. The said criminal case involved the four respondents herein as the accused persons who stood summoned and were put to trial on charge for offence under Section 325, 34 IPC. The said trial resulted in judgment dated 05.02.2011 whereby the respondents were acquitted primarily for the reason the first informant Jai Prakash Gupta and the other crucial witness Purshottam Dass Gupta had died and there was no other evidence available to confirm the involvement or complicity of the respondents in the crime.

3. By the petition at hand, the said order is sought to be challenged, the petitioner seeking leave to file a criminal appeal, also referring in the process to an earlier order of the Metropolitan Magistrate passed on 11.01.2011 whereby his application under Section 311 Cr. PC for his evidence and that of one Sarla Gupta to be taken was declined. The petitioner thus seeks to assail not only the judgment of acquittal dated 05.02.2011 but also the rejection of the prayer for additional evidence to be considered and taken on board by order dated 11.01.2011.

4. Having heard the learned counsel for the petitioner and having gone through the record, this court is of the opinion that the reasons why the prayer under Section 311 Cr. PC was declined by the Metropolitan Magistrate cannot be faulted. In the evidence presented before the trial court to the report under Section 173 Cr. PC, only two witnesses were shown as material, the case hinging on their eye-

witness account. Purshottam Dass Gupta had died in 1999. The case thereafter depended primarily on the evidence of Jai Prakash Gupta, the first informant and the solitary surviving eye witness to the incident. Jai Prakash Gupta was called by the trial court on number of occasions but he would not appear. Adjournments were taken for several reasons attributable to him. Eventually, his evidence also became unavailable since he died on 30.05.2007. During the entire said period, there was no move made either by the prosecution or by the petitioner or even by Jai Prakash Gupta to bring on record the fact that the petitioner or Sarla Gupta had also been present at the scene when the incident took place.

5. It is against the above backdrop that the Magistrate found the effort through the application under Section 311 Cr. PC to be a move to fill in lacuna, such move having come on 20.05.2008, almost 11 years after the occurrence.

6. Since the order declining the relief under Section 311 Cr. PC cannot be faulted, the leave petition is rendered devoid of substance as in absence of any other evidence, the trial court was left with no option but to acquit the respondents.

7. The petition and the accompanying application are dismissed.

R.K.GAUBA, J.

MAY 18, 2017

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