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

+ CRL.L.P. 610/2016

KRISHNA PAHWA

..... Petitioner

Through: Mr. S.C. Singhal, Advocate

versus

STATE & ORS.

..... Respondent

Through: Ms. Radhika Kolluru, APP with ASI
Ved Prakash, PS Tilak Nagar

CORAM:

HON'BLE MR. JUSTICE VIPIN SANGHI

ORDER
10.01.2017

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The petitioner has preferred the present leave petition to seek leave to appeal against the judgment dated 12.08.2016 passed by the learned MM (West-05), Tis Hazari Courts, Delhi in case no.63822/2016 arising out of FIR 869/1995 registered at PS Tilak Nagar. By the impugned judgment, the respondent/ accused has been acquitted.

The aforesaid FIR came to be registered for offences punishable under Section 380/448/506/34 IPC, wherein the complainant/ petitioner alleged that the accused persons, namely, Asha Rani and Ashok Kumar committed house trespass in Shop No.2WZ-80, Old Mahavir Nagar, Tilak Nagar, Delhi and also threatened the complainant with dire consequences. The

complainant alleged that the said shop was handed over by the accused persons at the time of taking a loan of Rs.45,000/- from the husband of the complainant, which was never repaid by the accused persons. The complainant examined herself as PW-1 and a few other witnesses including Sh. Brij Mohan Kohli as PW-2, a witness to the pledge deed. She also examined PW-3 Rajesh Narula and PW-4 Sanjeev Kumar in relation to the accusations under Section 448 IPC. Anil Khanna, PW-8 was examined in respect of the loan transaction allegedly advanced by the husband of the complainant to the accused persons.

The Trial Court has observed that the complainant PW-1 did not utter a single word against the accused persons except Asha Rani. Her testimony was found to be vague. No witness was produced relating to the commission of house trespass in the shop in question. No witness had seen the accused persons criminally intimidating the complainant. PW-3 and PW-4 had, in fact, deposed in favour of the accused by stating that Ashok Kumar and his son Suraj were running the shop in question. During the cross examination, they stated that they did not know the complainant PW-1 and they had not seen the complainant or any other lady opening the lock of the shop in question or putting lock in the said shop. The Trial Court has also observed that no recovery of any article belonging to the complainant had been affected from the accused persons. Consequently, the accused were acquitted of all the charges.

The submission of learned counsel for the petitioner is focused on the aspect of house trespass only. He submits that the two pro-note and pledge deed (Ex P1 to P3) executed by the accused acknowledged the delivery of possession of the shop in question to the petitioner/ complainant as security

for the loan advanced by her husband for Rs.45,000/-.

Even if the argument of Mr. Singhal were to be accepted that the pro-note and pledge deed were proved, the recording made therein that the possession of the shop in question had been delivered by the accused to the complainant by itself is not sufficient to establish the charge u /s 448 IPC. It was essential for the prosecution to firstly establish that the actual physical possession of the shop was with the complainant and that the accused had trespassed into the said premises. On the said aspect, the prosecution has completely failed.

In the light of the aforesaid, there is no perversity in the impugned judgment and the same does not call for interference by this court. Dismissed.

VIPIN SANGHI, J

JANUARY 10, 2017

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