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

+ CRL.L.P. 491/2017

STATE NCT OF DELHI

..... Petitioner

Through

Ms. Neelam Sharma, APP.
SI Sandeep, P.S. Safdarjung

versus

NARAYAN

..... Respondent

Through

CORAM:

HON'BLE MR. JUSTICE ASHUTOSH KUMAR

ORDER

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29.08.2017

Crl.M.A.14005/2017

Exemption allowed subject to all just exceptions.

Application stands disposed of.

Crl.M.A. 14004/2017 (condonation of delay)

For the reasons stated in the application, the delay of 469 days in filing the petition is condoned.

The application stands disposed of.

CRL.L.P. 491/2017

The petitioner /State is aggrieved by the judgment dated 12.02.2016 passed by the Metropolitan Magistrate-01, South District, Saket Courts, New Delhi in FIR No.782/2014 whereby the respondent has been acquitted of the charge under Section 188 of the IPC.

The respondent was charged for the offence under Section 188 of the

IPC for not having got the details of his tenant, Brijesh Chauhan, verified from the police in accordance with order No.42198-42298/SD(X) dated 25.08.2014 passed by the DCP, South.

It appears that the house of the respondent was visited by the beat police and it was found out that in the house of the respondent, one Brijesh Chauhan resided as a tenant. On further enquiry, it was learnt that no verification of the credentials of aforesaid Brijesh Chauhan was obtained by the petitioner.

By order dated 25.08.2014, the DCP, South had made it obligatory for the persons of the locality to have the address of the tenant or servant verified by the police in order to avoid any future trouble. The same not having been done, the respondent was charged for the aforesaid offence.

During trial, one witness namely S.P. Tyagi, ACP (PW1) was examined on behalf of the prosecution. He has only brought on record the successive orders passed by the DCPs of the area. The aforesaid prosecution witness was not cross-examined despite opportunity having been provided to the respondent. The prosecution evidence was closed thereafter. It further appears that the requirement of recording the statement of the respondent under Section 313 read with Section 281 Cr.P.C. was dispensed with in view of the testimony of PW1 which made the order dated 25.08.2014, an unlawful/illegal order.

Section 188 of the IPC reads as hereunder:

“Disobedience to order duly promulgated by public servant.—Whoever, knowing that, by an order promulgated by a public servant lawfully empowered to promulgate such order, he is directed to abstain from a certain act, or to take certain order with certain property in his possession or under his management,

disobeys such direction, shall, if such disobedience causes or tends to cause obstruction, annoyance or injury, or risk of obstruction, annoyance or injury, to any person lawfully employed, be punished with simple imprisonment for a term which may extend to one month or with fine which may extend to two hundred rupees, or with both; and if such disobedience causes or trends to cause danger to human life, health or safety, or causes or tends to cause a riot or affray, shall be punished with imprisonment of either description for a term which may extend to six months, or with fine which may extend to one thousand rupees, or with both.

Explanation.—It is not necessary that the offender should intend to produce harm, or contemplate his disobedience as likely to produce harm. It is sufficient that he knows of the order which he disobeys, and that his disobedience produces, or is likely to produce, harm. Illustration An order is promulgated by a public servant lawfully empowered to promulgate such order, directing that a religious procession shall not pass down a certain street. A knowingly disobeys the order, and thereby causes danger of riot. A has committed the offence defined in this section”

From the record, it appears that the order dated 25.08.2014, requiring the respondent to have the address of his tenant verified by police, was only a continuation of the earlier orders. The trial Court has held that such successive orders passed under Section 144 of the Cr.P.C. was not fit enough to be sustained in the eyes of the law as the orders passed under Section 144 of the Cr.P.C. have a life for a particular period i.e. two months.

Without going into the aforesaid solitary ground taken by the trial court to acquit the respondent, this Court is of the view that for an offence under Section 188 of the IPC to be brought home, it is mandatory for the prosecution to prove that the violation of the order was deliberate, having knowledge of the existence of the same.

Even if the order dated 25.08.2014 is not held to be a *non est* order, there is nothing on record to satisfy this Court that the respondent was aware of the existence of such an order and that he deliberately violated the aforesaid order. Thus, the net result is that the respondent cannot be prosecuted/convicted for the offence under Section 188 of the IPC.

This Court is not in disagreement with the end result of the trial.

The order of acquittal of the respondent does not warrant any interference.

Leave is declined.

The petition is disposed of accordingly.

ASHUTOSH KUMAR, J

AUGUST 29, 2017

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