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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ CRL.REV.P. 657/2018, Crl. M.A. Nos. 29328-29/2018 & Crl. M.B.
No. 1229/2018

DINESH PRASAD PATEL Petitioner
Through Mr. G. Sirabalamurugan and Mr. Anis
Mohd., Advs.
Versus

STATE Respondent
Through Ms. Aashaa Tiwari, APP with ASI
Ranbir Singh, P.S. Pul Prahlad Pur

CORAM:
HON'BLE MR. JUSTICE A.K. PATHAK

ORDER
% **06.08.2018**

Petitioner was convicted under Sections 279/304-A/336 IPC by the trial court and sentenced to undergo rigorous imprisonment for six months under Section 279 IPC; two years rigorous imprisonment for the offence under Section 304-A IPC with fine of ₹ 3,000/- and in default of payment of fine, to undergo simple imprisonment for two months and rigorous imprisonment for three months under Section 336 IPC. All the sentences were directed to run concurrently. Petitioner preferred an appeal before the learned Additional Sessions Judge, which has been dismissed on merits. However, sentence of the petitioner under Section 304-A IPC was reduced to one and half years and he was acquitted under section 336 IPC.

That is how, petitioner is before this Court by way of present petition

under Section 397 Cr.P.C.

It is trite law that in exercise of its revisional jurisdiction, High Court is not to sift and weigh the evidence on record as if hearing an appeal. High Court cannot substitute a finding of fact as against what has been arrived by the two courts below, on appreciation of evidence. Only gross perversity in the findings as well as the procedural illegality, if any, has to be considered. High Court can interfere only if petitioner is able to demonstrate any flagrant violation or misuse of procedure in the order or that the settled legal position had been ignored.

During the hearing, learned counsel for the petitioner has failed to point out any perversity and illegality in the impugned order resulting in miscarriage of justice. It cannot be said that the findings returned by the courts below are without any evidence and/or are perverse.

In this case, incident has not been disputed by the petitioner. Plea taken by the petitioner is that he was not in the offending vehicle at the time of incident. The vehicle moved of its own and deceased came under its wheels. Petitioner even examined two witnesses before the trial court in support of his defence. Learned counsel for the petitioner submits that no evidence is there to prove that petitioner was driving the vehicle in a rash

and negligent manner.

Trial court as well as appellate court have not accepted the defence of the petitioner, in view of the categorical statement of eye-witness PW1 Bindavan. PW1 has deposed that he along with his brother (deceased) was sleeping outside his jhuggi. At about 3.45 AM, he heard a loud noise and got up. He saw that his brother had come under the wheels of the truck. He also deposed that when he shouted at the driver, he fled away from the spot. In his cross-examination by the learned APP, he has stated that he heard sound of *ghar-ghar* in the night. He reiterated that vehicle had come at a very high speed in a negligent manner. He further stated that accused (petitioner) was the one, who was driving the offending truck. He fled away from the spot. In his cross-examination also, he reiterated that his brother had come under the wheels of the truck. It is also noted that petitioner has himself admitted that deceased had come under the wheels of the truck. The plea taken by the petitioner that vehicle was parked and moved of its own and deceased came under the wheels of the truck, has not been accepted by the trial court as well as appellate court rightly so, in view of the statement of PW1, which has also been perused by me.

At this stage, learned counsel for the petitioner has given up challenge

to the conviction of petitioner on merits. Only plea taken by him is that petitioner may be released on probation. He has placed reliance on a judgment dated 4th August, 2017 passed by a Bench of coordinate jurisdiction in Crl. Rev. P. No. 83/2009 titled Manvender Singh vs. State. Keeping in view that petitioner is a driver of a commercial vehicle inasmuch as had even fled away from the spot after the accident. I am of the view that the petitioner is not entitled for probation. However, in view of the submissions of learned counsel that petitioner has six children; his wife is illiterate and unemployed; petitioner's aged parents are also dependent upon him, sentence of the petitioner under Section 304-A IPC is reduced to one year from one and half years. Other sentences are maintained as it is. All the sentences shall run concurrently. Benefit of Section 428 Cr.P.C. shall also be given to petitioner.

Petition is disposed of in the above terms. Miscellaneous applications are disposed of as infructuous.

A.K. PATHAK, J.

AUGUST 06, 2018
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