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

+ **CRL.L.P. 656/2018**

STATE

..... Petitioner

Represented by: Ms. Rajni Gupta, APP for the State
with ASI Krishan Pal, PS Seelampur.

versus

NADEEM

..... Respondent

Represented by: None.

CORAM:

HON'BLE MS. JUSTICE MUKTA GUPTA

ORDER

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11.10.2018

Crl.M.A. No. 34093/2018 (Exemption)

Allowed, subject to all just exceptions.

CRL.L.P. 656/2018

1. By this petition, the State seeks leave to appeal against the impugned judgment acquitting the respondent for offences punishable under Sections 394/397/34 IPC.

2. The FIR in question was registered on the complaint of Mohd. Arif who stated that he was a tailor by profession. On 26th June, 2011 at about 11:00 P.M. when he was sitting at general merchant shop of Amil, respondent i.e. Nadeem came to him and demanded some money from him. As Mohd. Arif refused to give him money, an altercation took place whereafter Nadeem left the shop.

3. At about 11:30 P.M. brothers of Nadeem, namely 'M' a juvenile and Mohd. Muzeem @ Vikranta came, stabbed him, robbed ₹2,500/- and his mobile phone. Mohd. Arif sustained injuries on his left arm, below armpit, hand and head. Thereafter, a PCR call was made and Mohd. Arif was taken

CRL.L.P. 656/2018

page 1 of 2

to the hospital.

4. Since 'M' was a juvenile, trial was conducted qua Nadeem and Mohd. Muzeem @ Vikranta and after the trial, the learned Trial Court convicted Mohd. Muzeem @ Vikranta for offence punishable under Section 394 IPC and acquitted Nadeem of the charges framed.

5. Besides the statement of the complainant, there was no evidence led by the prosecution to prove that Muzeem @ Vikranta and 'M' committed the offence in conspiracy with Nadeem. Even as per the statement of Mohd. Arif complicity of Nadeem is only in the realm of suspicion, because before the incident Nadeem and Mohd. Arif had an altercation. Further charge framed against Nadeem was for offences punishable under Section 394/34 IPC and 397 IPC. When the offence of robbery with assault took place no overt act is attributed to Nadeem much less showing a deadly weapon or committing the offences of robbery or assault.

6. In view of the evidence led by the prosecution and admittedly Nadeem not being at the spot when the incident of robbery and assault took place at 11:30 P.M., this Court finds no error in the impugned judgment acquitting Nadeem. Thus this Court finds no ground to grant leave to appeal.

7. Petition is dismissed.

MUKTA GUPTA, J.

OCTOBER 11, 2018
'yo'