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

DECIDED ON : FEBRURY 05, 2018.

+ **CRL.L.P. 6/2018**

DIRECTORATE OF REVENUE INTELLIGENCE

..... Petitioner

Through : Mr.Satish Aggarwala, Advocate.

versus

RAJU ARORA

..... Respondent

Through : None.

CORAM:

HON'BLE MR. JUSTICE S.P.GARG

S.P GARG, J. (ORAL)

1. Present petition under Section 378 (iv) of the Code of Criminal Procedure, 1973 has been preferred by the petitioner-Directorate of Revenue Intelligence for leave to appeal against the judgment of acquittal dated 08.09.2017 of learned Chief Metropolitan Magistrate in Complaint Case No.254/01/16.

2. I have heard the learned counsel for the petitioner. It is urged that the trial court did not appreciate the evidence in correct perspective. Summons to appear before the Investigating Agency were issued by speed post and were duly served upon the respondent. The trial court

ignored the statutory presumption of service of summons sent by speed post as prescribed under Section 27 of General Clause Act coupled with Section 114 of Indian Evidence Act. The respondent deliberately avoided to appear before the Investigating Agency; he being involved in a serious case under Section 135 of Customs Act.

3. Record reveals that summons under Section 108 of Customs Act were sent to the respondent on 06.09.2016 (Ex.PW-1/A), 15.09.2016 (Ex.PW-1/B) and 23.09.2016 (Ex.PW-1/C) for his appearance on 13.09.2016, 22.09.2016 and 30.09.2016. It is on record that these summons were not served personally upon the respondent. The prosecution placed reliance only on the tracking reports Ex.PW-1/E, Ex.PW-1/G and Ex.PW-1/J respectively. It was, however, not ascertained as to when and to whom the summons were delivered. No efforts were made by the Investigating Agency to serve the summons personally upon the respondent. It was specifically denied by the respondent that no such summons were received by him. It was further informed that during the relevant period he was admitted in the hospital. The prosecution though examined PW-3 (Satya Prakash) Public Relation Inspector, GPO, Delhi but he was unable to disclose about the service of the process sent by speed post as the relevant record had already been weeded out in the normal course as per department rules. Without making sincere and genuine efforts to serve the summons upon the respondent, the Investigating Agency in quick succession sent the summons purportedly by speed post. The impugned judgment records that the summons dated 6.9.2016 sent by speed post was delivered as per tracking report on 14.09.2016. The date of appearance mentioned

therein was 13.09.2016. The trial court committed no error to observe that before initiating criminal proceedings against the respondent, the prosecution/Investigating Agency was expected to ensure that the summons were duly served upon the respondent and he avoided to appear before it deliberately or intentionally.

4. It has been informed during arguments that subsequently the respondent appeared; he was also arrested and remained in custody for certain duration. It was further informed that the respondent was detained under COFEPOSA.

5. The impugned judgment is based upon fair and proper appreciation of evidence and this Court finds no illegality or irregularity to grant leave to file appeal against acquittal.

6. The leave petition being unmerited is dismissed.

FEBRUARY 05, 2018/sa

**S.P.GARG
(JUDGE)**