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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ **CRL.M.C. 5487/2017 and Crl.M.A. No.21342/2017**

RUCHI Petitioner
Through: Mr.Sunil Tiwari, Advocate

versus

THE STATE GOVT OF NCT OF DELHI Respondent
Through: Mr.Izhar Ahmad, APP for State.

CORAM:
HON'BLE MS. JUSTICE ANU MALHOTRA
ORDER
% **09.05.2018**

In terms of the proceedings dated 22.12.2017, the Trial Court Record has been received.

The applicant, by the present application, who is the spouse of one of the accused, *namely*, Devender @ Ballu in relation to FIR No.9/2009 under Section 392/397/411/120B Indian Penal Code, 1860, Police Station Nangloi, is indicated to have been the superdar of the vehicle No.DL 3CU 7485 during the course of trial and the said vehicle had been allowed to be released to her on superdari on submission of a superdarinama dated 6.3.2009 for a sum of Rs.1,80,000/-.

During the course of the trial, the said vehicle was not produced by the petitioner/applicant it having been submitted by the petitioner herself that she had sold off the said vehicle due to financial constraints.

During the course of the submissions made in the petition, it is also indicated that the accused in State Case No.5/2011 in relation to the FIR No.09/09, under Sections 392/397/411/120B Indian Penal Code, 1860, Police Station Nangloi, has since been acquitted as indicated vide the order dated 23.8.2017 on the Trial Court Record also.

The applicant has assailed the imposition of the penalty amount of Rs.1,80,000/- imposed on the applicant vide order dated 30.9.2015 during the course of the trial when she was unable to produce the vehicle, it having been sold off. The applicant thereafter moved an application dated 30.9.2015 seeking reduction of the penalty amount of Rs.1,80,000/- (which was indicated to have been deposited vide receipt No.2321 in the Court of ASJ/FTC(e-Court) West, Tis Hazari Court, Delhi on 30.9.2015) and in the alternative, the applicant sought reduction of the said amount to a minimum in terms of Section 440 of the Cr.P.C,1973.

Vide order dated 14.10.2017, which is the impugned order, the learned ASJ/FTC (e-Court) West, Tis Hazari Courts, Delhi declined the prayer of the applicant observing to the effect that the acquittal of the spouse of the petitioner had no bearing on the order vide which the penalty was imposed. During the submissions made by the petitioner it was submitted that she was unaware that she had to produce the vehicle and that for non-production of the same, a penalty could be imposed upon her, which rightly was held to be a plea based on ignorance of law which itself was no defence of the applicant which could avail any benefit. It was also observed vide proceedings

dated 14.10.2017 that it was consequent upon the failure of the applicant to produce the vehicle that the applicant had herself offered on 31.8.2015 to deposit the amount of superdarinama.

It has thus been submitted on behalf of the State that there is no merit in the case.

Reliance has *inter alia* been placed on behalf of the petitioner on the verdict of this Court in **Anand v. N.C.T. of Delhi**, 112 (2004) DLT 317 to contend that in similar circumstances where the vehicle was allowed to be released on superdari of Rs.1,70,000/-, on non-production of the said vehicle which was stolen during the course of the trial, the penalty of Rs.1,70,000/- was imposed which penalty vide the judgment of this Court relied upon **Anand v. N.C.T. of Delhi** (Supra) was reduced to Rs.20,000/- with specific observations in paragraphs 5 and 6 thereof which are reproduced as under:

5. It appears such a situation is a fall out of delayed trials. The amount of Superdari is generally fixed by the Court as the amount of the price of the property or vehicle. For releasing any property on Superdari the object is to ensure its production and not to extract the value thereof from the owner in case he fails to produce it. The release of a property on Superdari is almost on the same pedestal as a release of a person on the bail and as there is a mandatory provision in the law by way of [Section 440, Cr.P.C.](#) that the amount shall not be "excessive" it should always be kept in mind by the Trial Court that object of releasing the property on "Superdari" is to ensure its production and therefore the amount of Superdari should not

be the same as the value of the property as it invariably is an "excessive" amount.

6. Be that as it may as in the instant case some suspicion was raised against the bona fide of the petitioner whether the report of the theft of the vehicle lodged by him was false or true as it was hardly 3-4 days before he was to produce the same that a report of theft was lodged but without going into the merits as to whether the report of theft is false or true I feel inclined to reduce the penalty imposed by the Trial Court from Rs. 1,70,000/- to Rs. 20,000/-. On payment of Rs. 20,000/- within one month, the warrant of attachment issued by the Trial Court shall not be executed. In case the petitioner fails to pay this amount the warrant of attachment executable shall be for the amount of Rs. 20,000/-.

It has thus been submitted on behalf of the petitioner that in terms of Section 440 of the Cr.P.C. which falls under Chapter XXXII of the Cr.P.C. under which Chapter the provisions of Section 446 Cr.P.C. also falls, the penalty imposed be waived or reduced..

Vide Section 440(1) of the Cr.P.C., 1973, it has been stipulated that the amount, of every bond executed under the said Chapter, i.e., Chapter 32 of the Cr.P.C. has to be fixed with regard to the circumstances of the case and '**shall not be excessive**'. In terms of Section 446 (3) Cr.P.C., the Court may after recording its reasons for doing so may remit any portion of the penalty mentioned and enforce payment in part only.

Taking the totality of the circumstances of the case into

account, the penalty amount of Rs.1,80,000/- imposed vide order dated 30.9.2015 in S.C. No. 5/11 which amount is indicated to have already been deposited by the petitioner is reduced to Rs.30,000/-. The balance amount of Rs.1,50,000/- is allowed to be released to the petitioner by the learned Trial Court.

The petition is disposed of accordingly.

The Trial Court Record be returned.

A copy of the order be given *dasti*, as prayed.

ANU MALHOTRA, J

MAY 09, 2018/sv

