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* IN THE HIGH COURT OF DELHI AT NEW DELHI

+ CRL.L.P. 67/2019, CRL.M.A. 1409/2019 – EXMP

STATE

..... Petitioner

Through: Mr. G.M. Farooqui, APP with ASI
Suresh, P.S. New Usmanpur.

versus

MOHD TAREEK

..... Respondent

Through:

CORAM:

HON'BLE MR. JUSTICE NAJMI WAZIRI

O R D E R

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22.01.2019

Crl. M.A. 1409/2019 (Exemption)

Exemption allowed, subject to all just exceptions.

The application stands disposed off.

CRL.L.P. 67/2019

The petitioner seeks leave to appeal against the order of acquittal dated 16.10.2018. It is argued that the impugned order is erroneous because it is based largely on the issue of the FIR being registered five hours after the incident. This impugned order has considered it a huge delay. He submits that the mere five hours delay cannot be considered as huge delay, especially in the facts and circumstances of the case.

The Court would note that the learned Trial Court had considered that it was not only the delay in registration of the FIR, but the conduct of the IO and the other prosecution witnesses did not make out a case for conviction. The Court had reasoned that if there was delay, then it ought to have been explained in the DD entry or in the FIR. It reasoned, *inter alia*, as under:

“26. Time of alleged offence is 5:00 pm on 29.01.2017. Statement of complainant was recorded at 10:00 pm. There is gap of five hours in lodging the

FIR. It-is huge delay. The only explanation was furnished by IO/PW-4 ASI Arvind Kumar who stated that after Ct. Akram and complainant Hashim had come to police station alongwith accused, and after preparing pullanda and sketch, he had gone out of the police station alongwith them in search of other two associates of the accused. PW-4 has stated that he searched nearby areas but the associates could not be found. Thereafter, they came back to the police station and he recorded statement of complainant.

27. This explanation is not found genuine. It has come in cross examination of PW-4 that he did not make any DD entry about arrival of Ct. Akram, complainant Hashim and accused to the police station at the first instance. This non-recording of DD entry is inexplicable. No reason is coming forth as to why no entry was made in the DD register. If PW-4 decided to search for associates of accused prior to lodging FIR, he could have made at least an entry in the DD register about arrival of complainant and accused with Ct. Akram. He also could have made departure entry. These entries would have lent credence to the version of PW-4. It would have made the proceedings genuine. However, this is not the case. PW-4 did not make any entry. The huge gap of five hours has remained unexplained and creates doubt. This time gap was enough to manipulate the things and record a distorted version of the events. The whole prosecution story has come under doubt.

28. Further, there are various contradictions in the version of PW-3/complainant. In the FIR, PW-3 stated that one police official had come to the spot and with his help, he apprehended the accused. However, in cross examination, he told that two police officials were there. This contradiction cannot be ignored as minor.

29. PW-3 does not say that they had gone out of police station in search of other associates prior to recording

FIR. Rather, according to PW-3, / firstly his statement was recorded; thereafter sketch of the paper cutter was prepared; paper cutter was converted into pullanda and seized; FIR was registered, accused was arrested and his personal search was conducted. Thereafter, they had gone to the spot for preparation of site plan and search was made for other associates. Testimony of PW-4/10 is on a different track. It is found that PW-4 stands contradicted by PW-3.

30. PW-3 has not been able to show that he was using any mobile phone Samsung J-2. He could not produce original bill. IO did not collect any Customer Application Form (CAF) to show that mobile phone no. 8375884196 belongs to PW-3. IO did not collect any Call Detail Record (CDR) to show that mobile phone Samsung J-2 having IMEI No. 358156075354835 and 358157075354833 was being used for abovesaid mobile number. Location of the mobile phone has also not been confirmed through the location chart. It would have confirmed presence of complainant at the spot. These are glaring lapses on the part of the IO.

31. Prosecution case is full of doubts and inconsistencies. Accused deserves benefit of doubt.”

What is evident from the above is that there was a clear conflict between the version of the alleged victim and of the police officials. The conflict cannot be resolved in a manner to suit the prosecution's case. Neither of the two versions could be said to be evidence of such nature as to establish the guilt of the accused beyond reasonable doubt.

In the circumstances, no ground is made for grant of leave to appeal. The petition is without merit and is accordingly dismissed.

NAJMI WAZIRI, J

JANUARY 22, 2019/acm