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

% Judgment delivered on: 05.02.2019

+ CRL.A. 129/2019

DANISH

..... Appellant

versus

STATE (NCT OF DELHI)

..... Respondent

Advocates who appeared in this case:

For the Petitioner : Mr. Ramesh Saraf, Advocate.

For the Respondent: Mr. Hirein Sharma, APP for the State.
ASI Data Ram, PS Seelampur.

CORAM:-

HON'BLE MR JUSTICE SANJEEV SACHDEVA

JUDGMENT

SANJEEV SACHDEVA, J. (ORAL)

CRL.A. 129/2019 & Crl.M.(Bail) 228/2019 (for suspension of sentence)

1. Appellant impugns judgment on conviction dated 01.09.2018 and orders on sentence dated 28.09.2018 and 09.01.2019, whereby, the appellant has been convicted of an offence under Sections 308 (Part II) read with Section 34 IPC and sentenced to undergo 2 years rigorous imprisonment and also convicted of the offence under Sections 323/34 IPC and sentenced to undergo 6 months imprisonment and to pay fine of Rs.16,000/-.

2. Learned counsel for the appellant submits that by order on sentence dated 28.09.2018, the appellant was directed to be released on probation of

good conduct on furnishing a bond of Rs.20,000/- with one surety of the like amount for a period of 2 years. He was also directed to pay Rs.15,000/- as compensation to the injured and to pay Rs.1,000/- as costs of the proceedings.

3. Learned counsel for the appellant submits that the appellant was granted two months time to pay the said amount.

4. Learned counsel for the appellant submits that the appellant had handed over the money to his advocate Mr. V.S. Chauhan for being deposited in Court, within the period of two months. However, as there were successive bereavements in the family of Mr. V.S. Chauhan, Advocate and he lost two of his family members within a span of one month, the fine amount could not be deposited within time.

5. Because of default in payment of the fine amount, within the time permitted, the Trial Court by order dated 09.01.2019 recalled the order of probation dated 28.09.2018 and sentenced the appellant to imprisonment as noticed above.

6. Learned counsel for the appellant further submits that the fine has already been paid and is so noticed in the order dated 09.01.2019.

7. Learned counsel for the appellant submits that he has instructions not to press the appeal on merits in case order dated 28.09.2018 releasing the appellant on probation is restored.

8. By order dated 28.09.2018, the Trial Court found this case fit for releasing the appellant on probation, accordingly, directed release of the

appellant on probation and payment of fine.

9. The case of the appellant is that he had paid the fine amount within the stipulated period to his advocate for being deposited in Court. However, the fine amount could not be deposited as there were bereavements of two of the family members of the advocate within a span of one month.

10. In my view, the same constitutes just and sufficient cause for the appellant for not depositing the fine amount within time. It is not in dispute that the appellant has furnished the requisite bond in terms of order dated 28.09.2018.

11. Keeping in view the totality of facts and circumstances of the case, I am of the view that the order dated 09.01.2019 insofar as it sentenced the appellant to imprisonment requires to be quashed.

12. In view of the above, the order dated 09.01.2019 insofar as it sentenced the appellant to imprisonment is quashed. Order dated 28.09.2018 directing release of the appellant on probation on terms and conditions mentioned therein is restored.

13. The appeal is, accordingly, allowed in the above terms.

14. Order *Dasti* under signatures of the Court Master.

FEBRUARY 05, 2019
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SANJEEV SACHDEVA, J