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

+ **CRL.L.P. 466/2016**

STATE OF NCT OF DELHI

..... Petitioner

Through: Mr Amit Gupta, APP for State.
SI Sandeep Shrivastava, PS Shalimar
Bagh, Delhi.

versus

CITU & ORS

..... Respondents

Through: Mr Hanish Sahrawat, Advocate.

CORAM:

HON'BLE MR. JUSTICE VIBHU BAKHRU

ORDER

% **25.09.2019**

CRL.M.A. 13666/2016

1. For the reasons stated in the application, the delay in filing is condoned.
2. The application is disposed of.

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3. The petitioner has filed the present petition seeking leave to impugn the judgment dated 04.04.2016, whereby the respondents (accused) were acquitted of offences under Section 392/394/397/411/34 IPC. The said proceedings commenced pursuant to the FIR bearing no.98/2015 registered with PS Shalimar Bagh.

4. It is the prosecution's case that respondent no.1 (one of the accused) had boarded e-rickshaw at about 7:30 PM on 22.01.2015. It is alleged that other two accused had come along with said e-rickshaw on a motor cycle and

had stopped the same.

5. The complainant (who also deposed as PW-1) was one of the passengers in the e-rickshaw. The complainant had alleged that respondent no.1 had placed a long knife on his neck and asked him to handover his valuables. He has also deposed that the other accused (respondent nos.2 and 3) who had arrived on a motorcycle were also armed with knives and had held up the complainant and another co-passengers. The complainant had stated that he along with other co-passengers had resisted the said attempt to rob them of their valuables, which had resulted in a scuffle. PW-1 deposed that he had shouted for help which attracted public attention. He also stated that he managed to release himself from the clutches of the accused and fled from site to seek help from the police officials. These police officials, who were in the traffic department, deposed as PW-12 and PW-13. It is the prosecution's case that these two police officials had come to their rescue and on reaching the spot had apprehended respondent no.1 along with a knife while respondent no.2 and one juvenile, who was also stated to be one of the accomplices of respondent no.1, had managed to flee from the spot along with mobile phones robbed from the complainant (PW-1) and a co-passenger (one Sunil).

6. It is also the prosecution's case that public had collected at the site and had beaten up respondent no.1.

7. The defence had countered the aforesaid allegations. It is their case that the scuffle had resulted, not on account of the accused holding up the passengers in the e-rickshaw, but on account of spilling of milk that was being carried by the complainant. The complainant had demanded the cost of spilt

milk and that had resulted in a fight. Admittedly, the complainant (PW-1) runs a milk dairy and he was carrying milk in the e-rickshaw on the date of the incident.

8. The trial court had examined the evidence and had found that the evidence of PW-12 and PW-13 (the traffic police men who reportedly came to rescue of the complainant and Sunil) did not support the case set out by the prosecution. They deposed that they had arrived at the site separately and had found that there was a scuffle between various persons and the knife was in the hands of the complainant (PW-1) and not in the hands of respondent no.1. The medical evidence also indicated that respondent no.1 had several injuries including an incised wound of size 3.5x0.5 cm on his left cheek. In view of the evidence obtaining in the said case and considering that the testimony of PW-1 and PW-13 did not support the version of the complainant, the trial court acquitted the accused. The trial court had also noticed that relatively the complainant was better built than respondent no.1.

9. The testimony of the driver of the e-rickshaw also did not support the case of the prosecution that the passengers were held up by respondent no. 1 on a knife point. He claimed that there was a scuffle after respondent no.1 had boarded the e-rickshaw and he had run away from the spot. Clearly, if any of the passengers had been held up on a knife point, he would be in the position to testify to the same.

10. In *Ghurey Lal v. State of Uttar Pradesh: (2008) 10 SCC 450*, the Supreme Court had held that the appellate court would not interfere with the view of a trial court to acquit the accused unless it is found that there are

compelling reasons to do so. The trial court's view on the evidence available on record, is a plausible view. Clearly, in this case, this Court finds no compelling reasons to interfere with the impugned judgement.

11. The appeal is, accordingly, dismissed.

VIBHU BAKHRU, J

SEPTEMBER 25, 2019
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