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

+ **CRL.L.P. 241/2017 and CRL. M.A. 6675/2017**

STATE

..... Petitioner

Through: Mr Amit Gupta, APP for State along
with SI Rahul, PS Sabzi Mandi.

versus

GULSHAN ANEJA & ORS

..... Respondents

Through: Mr Shivankar Mehrotra, Advocate for
R-2 to 4.

CORAM:

HON'BLE MR. JUSTICE VIBHU BAKHRU

ORDER

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30.01.2020

1. The State has filed the present petition, seeking leave to appeal against the judgment dated 24.10.2016, whereby the Special Judge, CBI (PC Act) had upheld the conviction of the respondents under Sections 186/189/353/34 of the Indian Penal Code, 1860 (IPC). However, the Court had modified the order on sentence dated 08.09.2016 and had directed that the respondents be released on probation for a period of one year on furnishing personal bonds in the sum of ₹10,000/- and a surety of the like amount.

2. The State contends that it was not legally tenable for the Special Judge to uphold the conviction and yet release the respondents on probation for a period of one year. It is further contended that the Special Judge had erred in not considering the provisions of the Probation of Offenders Act, 1958, which mandates that the nature and gravity of the offence must be considered while releasing persons on probation.

3. Briefly stated, the relevant facts, which led to the respondents being prosecuted are that, on 10.01.2000, at about 8:30 pm, the respondents in furtherance of their common intention obstructed S.K. Bharel, STO, N.K. Kohli and V.K. Tyagi, ASTO, Kuldeep Singh (PW9) and R.N. Babbar (PW7) – all officials of the Sales Tax Departments and public servants – discharging their official duties of conducting enquiries at M/s Ambika Transport Service. Documents were snatched from their hands, lights were turned off and the said public servants were asked to leave the premises of M/s Ambika Transport Service. The respondents allegedly used criminal force and extended threats to the aforesaid public servants to deter them from discharging their lawful duties.

4. On 14.01.2000, FIR No. 17/2000 was registered with PS Subzi Mandi, pursuant to a complaint, which was filed by Sh. S.K. Bharel, Sales Tax Officer (PW2). On 18.07.2000, investigation was completed and the charge sheet was filed by the IO. Charges under Sections 186/189/353 of the IPC were framed against the respondents. The respondents claimed that they were not guilty and the case was set down for trial. The prosecution examined eleven witnesses to establish its case.

5. The Learned Metropolitan Magistrate-07 (Central) examined the testimonies and passed a detailed order. The Learned MM held that prosecution had established beyond reasonable doubt that the respondents were guilty of the act of snatching papers, switching off the lights and pushing the raiding party. The learned MM vide the judgment dated 30.08.2016 convicted the respondents for committing the offences punishable under Sections 186/189/353/34 of the IPC. By the order on

sentence dated 08.09.2016, the Learned Court sentenced the respondents to undergo imprisonment for a period of one month for the offence punishable under Sections 186/34 of the IPC and six months each for the offences punishable under Sections 189/34 and under Sections 353/34 of the IPC. The respondents were further imposed a fine of ₹5,000/- each for the offences punishable under Sections 353/34 of the IPC, and in default of the payment of the fine to undergo simple imprisonment for a period of one month.

6. Each of the four respondents filed a separate appeal against the judgment dated 30.08.2016 and the order on sentence dated 08.09.2016. Since the four appeals were connected, they were taken up together. The Special Judge, CBI (PC Act) after considering the material on record and evaluating the evidence concurred with the decision of the Trial court that the respondents were guilty of the offences for which they were convicted. However, the Special Judge considered the mitigating circumstances and reduced the quantum of sentence. The Special Judge took note of the submissions of the counsel appearing for the respondents that the respondents in the present case were all above the age of fifty; one of them was also suffering from diabetes; None of them were previous convicts; and there were no criminal cases pending against them.

7. The Special Judge also took note of the fact that the respondents had suffered the agony of trial for a period of fifteen years. Taking into account the totality of the facts and circumstances of the case and the clean antecedents of the respondents, the Special Judge held that the respondents should be given a chance to reform and rehabilitate themselves and become

responsible citizens of the State. In light of the same, the learned Special Judge modified the order on sentence dated 08.09.2016 and directed that the respondents be released on probation for a period of one year on furnishing a personal bond in the sum of ₹10,000/- and with a surety in the like amount to the satisfaction of the Learned Trial Court.

8. This Court finds no infirmity with the decision of the learned Special Judge in reducing the quantum of sentence awarded to the respondents. Undisputedly, the antecedents of the respondents are clean and there is no allegation that they are involved in any other criminal case.

9. The contention that the learned Special Judge has erred in not following the procedure under the Probation of Offenders Act, 1958 and therefore, the impugned decision is liable to set aside, is also unmerited. Mr Amit Gupta, learned APP drew the attention of this Court to the decision of the Supreme Court in *Lakhanlal @ Lakhan Singh v. State of Madhya Pradesh : Criminal Appeal No. 1306/2013 decided on 04.04.2019*. In that case, the Supreme Court set aside the decision of the High Court of Madhya Pradesh at Jabalpur, whereby the High Court had held that Section 360 of Cr.PC. would not be applicable as the matter fell within Sections 3 and 4 of the Probation of Offenders Act, 1958. The Supreme Court held that the said conclusion was based on an erroneous reading of the provisions of law and the appellant therein was entitled to the benefit of probation in terms of Section 360 of Cr.PC., as well as under the Probation of Offenders Act, 1958. The Supreme Court further observed as under:-

“15. We find that the attention of the Court was not drawn to sub Section (10) of Section 360 which provides that Section 360 will not affect the provisions of 1958 Act or

other similar laws for the time being in force for the treatment, training or rehabilitation of youthful offenders. Still further, Section 4 of the 1958 Act has a non obstante clause, giving overriding effect over any other provisions of law.”

10. Thus, the decision of the learned Special Judge cannot be faulted on the ground that the Court had not referred to the provision of the Probation of Offenders Act, 1958. In view of the above, this Court finds no reason to interfere with the impugned order.

11. The petition is, accordingly, dismissed. The pending application is also disposed of.

VIBHU BAKHRU, J

JANUARY 30, 2020

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