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

BEFORE

HON'BLE MR. JUSTICE PURUSHAINDRA KUMAR KAURAV

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CRL.REV.P.No. 229 of 2019

Between:-

**SHRI K. K. RAO S/O LATE SHRI K. R. RAO,
R/O DOOR NO. 49-27-48 MATHURA NAGAR,
VISAKHAPATNAM-AP**

.....PETITIONER

(Through: Shri. D. Rajeshwar Rao, Advocate)

AND

**STATE OF NCT OF DELHI, THROUGH
POLICE COMMISSIONER,
POLICE HEADQUARTERS, NEW DELHI**

.....RESPONDENT NO.1

**KULDEEP SINGH
S/O SH. LAXMAN SINGH
R/O BH-35, EAST SHALIMAR BAGH , DELHI**

.....RESPONDENT NO.2

**BALJEET SINGH
S/O SH. LAXMAN SINGH
R/O BH-35, EAST SHALIMAR BAGH, DELHI**

.....RESPONDENT NO.3

**JOGINDER SINGH
S/O SH. GYAN SINGH
R/O H. NO. 29A, SAHIPUR, DELHI**

.....RESPONDENT NO.4

**INDER PAL NANGIA
S/O LATE SH. H.K. NANGIA
R/O 453, SECTOR-14, GURGAON, HARYANA**

.....RESPONDENT NO.5



**NAROTTAM NANGIA
S/O DR. H.K. NANGIA
R/O 53, SECTOR-14, GURGAON, HAIYANA**

.....RESPONDENT NO.6

**SUDERSHAN KUMAR NANGIA
S/O SH. HARI KRISHAN NANGIA
R/O C-236, VIKAS PURI, DELHI**

.....RESPONDENT NO.7

*(Through: Shri Amit Ahlawat, APP for State with SI Prameet,
P.S. Shalimar Bagh.
Shri Ramesh Kumar & Shri Paramveer Deshwal,
Advocates for R-2 & 3.
Dr. Mahesh Kumar, Advocate for R-7)*

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Pronounced on : 09.11.2022

J U D G M E N T

1. This revision under Section 397 read with Section 482 of the Code of Criminal Procedure, 1973 (Cr.P.C.) is directed against the impugned order dated 28.02.2018, whereby, an appeal preferred by the State against the order of acquittal dated 05.10.2016, passed by the learned Metropolitan Magistrate, has been dismissed on the ground of delay.

2. It is to be noted that the petitioner, who was the complainant in FIR No.565/1995, did not prefer any appeal against the order of acquittal dated 05.10.2016 and the appeal was only preferred by the State which has been dismissed on the ground of delay. The petitioner, however, challenges the order of dismissal of appeal filed by the State.

3. Facts of the case are that respondent Nos.2, 3 & 4 were charged under Sections 323/452/506(2)/34 of the Indian Penal Code, 1860

(IPC). The allegation against them was that on 26.10.1995, at about 7 AM at AN-1D, Shalimar Bagh, they in furtherance of their common intentions criminally intimidated the complainant by threatening to kill him if he did not vacate the house. The further allegation was that the accused committed house trespass after making preparation for causing hurt, assault and wrongful restrain to the complainant. The accused *Inderpal Nangia* respondent No.5, *Narrotam Nangia* respondent No.6 and *Sudarshan Nangia* respondent No.7 were also charged for the offence punishable under Section 506(1) of the IPC and under Section 451 read with Section 34 of the IPC.

4. After investigation, the chargesheet was filed and charges were framed for respective offences. The accused pleaded not guilty and therefore, the trial was conducted. The complainant/petitioner was partly examined on 03.08.2005. His further examination and cross-examination could not be completed on that date and the matter was adjourned for 31.03.2006. Since the complainant/petitioner did not appear for his further examination and cross-examination therefore, *vide* order dated 05.10.2016, testimony of the complainant/petitioner as PW-2 was declined to be read in evidence. After conducting the trial, the learned Metropolitan Magistrate acquitted the respondents. The appeal preferred by the State has been dismissed by the appellate court on the ground of delay. Therefore, the complainant/petitioner has preferred the instant revision.

5. The complainant/petitioner, who appears in person submits that he was not called for his further examination and without there being any notice, the learned Metropolitan Magistrate passed the order of acquittal. He therefore, submits that grave injustice has been caused and this court in exercise of its power should direct for fresh trial. He placed reliance on the decision of the Hon'ble Supreme Court in the

case of ***Odisha Forest Development Corporation Ltd v. M/s Anupam Traders & Anr.***¹ dated 28.11.2019. On the strength of the aforesaid judgment he submits that no party should suffer due to the act of the court.

6. The learned counsel appearing on behalf of respondent Nos. 2, 3 & 7 jointly submits that the complainant/petitioner did not prefer any appeal against the order of acquittal. The complainant/petitioner did not appear for his further examination on the next date which was given by the trial court and did not track his case for about 15 years, and it is after the dismissal of the State appeal on the ground of delay, he has approached this court. According to him, there is no substance in the instant revision. The same is a misuse of the process of law therefore, the same should be dismissed.

7. I have heard the petitioner in-person and learned counsel appearing on behalf of the respondent Nos.2, 3 & 7 and perused the record.

8. It is to be noted that on 03.08.2005, part evidence of complainant/petitioner as PW-2 was recorded. The matter was fixed for recording of further evidence on 31.03.2006. The order sheet indicates that the complainant/petitioner did not appear on 31.03.2006 and his further examination and cross-examination could not be conducted. Since the matter was pending before the concerned court for more than 20 years, therefore, the prosecution evidence was closed *vide* order dated 26.09.2015. Since part testimony of complainant/petitioner PW-2 was not subjected to cross-examination, therefore, the same cannot be read in evidence and hence, in the absence of there being any material against the accused, the

Metropolitan Magistrate has rightly acquitted the respondents/accused.

9. So far as the challenge to the impugned judgment of dismissal of the State appeal at the instance of the complainant/petitioner is concerned, the same also cannot be accepted as the State has not preferred any revision against the said order. The complainant/petitioner also did not prefer any appeal against the order of acquittal. His part evidence was recorded on 03.08.2005 and there is nothing on record to indicate that he has taken any step to enquire into further progress of the case. Since the date was already fixed by the trial court on 03.05.2005 for 31.03.2006, therefore, no further notice was required to be issued to the complainant/petitioner.

10. In view of the aforesaid, this court, under its revisional jurisdiction, does not find it appropriate to interfere with the order passed by the trial court. Hence, the instant petition is hereby dismissed.

(PURUSHAINDRA KUMAR KAURAV)
JUDGE

NOVEMBER 09, 2022
MJ