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

Date of decision: 24th March 2023

+ **CRL.REV.P. 817/2022 & CRL.M.(BAIL) 1458/2022, CRL.M.A.
7029/2023**

MOHD IJHAR ANSARI Petitioner

Through: Mr. Baldeo Sharan, Advocate.

versus

STATE(NCT OF DELHI) Respondent

Through: Mr. Tarang Srivastava, APP for the
State with Inspector Dharmender
Kumar, P.S.: Jahangir Puri.

CORAM:

HON'BLE MR. JUSTICE ANUP JAIRAM BHAMBHANI

J U D G M E N T

ANUP JAIRAM BHAMBHANI J. (ORAL)

CRL.M.A. No.7030/2023 (Exemption)

Exemption granted, subject to just exceptions.

The application stands disposed of.

**CRL.REV.P. 817/2022 & CRL.M.(BAIL) 1458/2022, CRL.M.A.
7029/2023**

By way of the present revision petition under sections 397/401 of the Code of Criminal Procedure 1973 ('Cr.P.C.'), the petitioner impugns judgment dated 23.09.2022 made by the learned District and Session Judge, District North, Rohini Courts, Delhi in Crl. Appeal No.101/2022, thereby rejecting the appeal against judgment of conviction dated 08.12.2021 and sentencing order dated

25.06.2022 made by the learned Metropolitan Magistrate in Cr. Case No. 528640 1/2016 arising from case FIR No. 205/2011. The petitioner was convicted and sentenced to 01 year imprisonment for the offence under section 304-A of the Indian Penal Code, 1860 ('IPC'); and to fine of Rs. 500/- under section 279 IPC, with a default sentence of 15 days imprisonment; to fine of Rs. 500/- under section 337 IPC, with a default sentence of 15 days imprisonment, along with compensation of Rs. 5,000/-. The sentences were directed to run concurrently; and benefit of section 428 Cr.P.C. was given to the petitioner.

2. Mr. Baldeo Sharan, learned counsel appearing for the petitioner submits, that the judgment of the learned Magistrate as well as of the learned Sessions Court suffer from complete non-appreciation of the evidence that came to be recorded in the matter. Counsel submits, that there is no proof that the auto was being driven 'negligently'; and in fact the petitioner had even contended that he was not the person driving the auto.
3. The matter has been heard at length at the pre-notice stage itself. The court has perused the decision of the learned Magistrate, as also of the judgment of the learned Sessions Court.
4. In essence and substance, the verdicts turn-on the following factual matrix that has emerged in the course of trial:
 - 4.1 On 02.07.2011 the petitioner was driving 03 persons in an auto (a husband, his wife and her mother) when the auto collided with a Sumo/Tavera car, which led to the demise of the wife's mother and injuries to the husband;

- 4.2 Both passengers, husband and wife, appeared as PW-2 and PW-3 respectively at the trial. PW-2 was an 'injured witness' and PW-3 was an 'eye-witness' to the accident; and they both deposed to the effect that the petitioner was driving the auto rashly and negligently;
- 4.3 The learned Magistrate records that PW-2 and PW-3 specifically deposed that the offending vehicle was being driven by the petitioner at high speed in a completely negligent manner, so-much-so that despite there being a red-light, the petitioner took a sharp right turn and collided with the Sumo/Tavera car, whereupon the auto turned turtle, injuring the passengers;
- 4.4 The learned Magistrate further records that the testimony of PW-2 was clear, cogent and without any embellishments or concoctions and deserved to be accepted; and since PW-2 was an injured witness, his presence at the spot could not be doubted;
- 4.5 The learned Magistrate further records that the statements of PW-2 and PW-3 did not suffer from any major discrepancies *inter-se*;
- 4.6 In addition, the learned Magistrate also observes that PW-3, who was cited as an eye-witness, was cross-examined at length, but the defence was unable to extract anything that would detract from the prosecution case;
- 4.7 The learned Magistrate further records, that the mechanical inspection report of the auto that was proved in the course of trial by the statement of PW-4/Ex-ASI Tech. Gurdeep Singh, opined that the front glass of the offending vehicle was broken

and the left-side body and roof were damaged. The report further records, that the seat support and rear left-side were also damaged along with the rear right wheel, which was punctured; and that the vehicle was not fit for a road test;

- 4.8 Insofar as the alibi canvassed by the petitioner is concerned, the learned Magistrate records that the petitioner, who appeared as DW-1 at the trial, deposed in his cross-examination that “... *it is correct that the accident had taken place with my auto bearing No. DL-1RK-9713. It is wrong to suggest that I was driving my above mentioned auto at a very high speed and took a turn towards right side when the signal of Light was Red due to which one Tata Sumo bearing no. DL-1Z-2661 hit against my auto.*” (emphasis supplied);
- 4.9 Insofar as DW-2 is concerned, who was sought to be cited as an eye-witness by the defence, the learned Magistrate records that the said witness could not even tell the registration number of the auto; nor of the other vehicle with whom the auto collided. DW-2 also says that he never gave any statement to the police; nor did he make any effort to shift the injured persons to the hospital. It would appear that DW-3 deposed exactly to the same effect as DW-2, so-much-so that the learned Magistrate records that DW-2 and DW-3 deposed in a ‘parrot-like manner’, and did not inspire confidence.
5. It was in the foregoing circumstances that the learned Magistrate proceeded to convict the petitioner.

6. Insofar as sentencing is concerned, the sentence awarded to the petitioner is 01 year simple imprisonment for the offence under section 304-A IPC (which attracts a maximum sentence of 02 years), with lesser prison sentences and small fines for the other offences, which are subsumed in the one-year period since they were directed to run concurrently. In addition, Rs. 5,000/- was directed to be paid to the injured victim as compensation. Benefit of section 428 Cr.P.C. was also given to the petitioner.
7. In the above backdrop, the judgment of conviction and the sentencing order have been upheld by the learned Sessions Court in the criminal appeal.
8. At this point, a brief reference may be made to the scope and ambit of the power of this court to interfere in a judgement or order in its revisional jurisdiction under section 397 CrPC. This has been explained pithily by the Supreme Court *inter-alia* in the following words in ***Amit Kapoor vs. Ramesh Chander & Anr.***¹ :

“12. Section 397 of the Code vests the court with the power to call for and examine the records of an inferior court for the purposes of satisfying itself as to the legality and regularity of any proceedings or order made in a case. The object of this provision is to set right a patent defect or an error of jurisdiction or law. There has to be a well-founded error and it may not be appropriate for the court to scrutinise the orders, which upon the face of it bears a token of careful consideration and appear to be in accordance with law. If one looks into the various judgments of this Court, it emerges that the revisional jurisdiction can be invoked where the decisions under challenge are grossly erroneous, there is no compliance with the provisions of law, the finding recorded is based on no evidence, material evidence is ignored or judicial discretion is exercised arbitrarily or perversely. These are not exhaustive

¹ (2012) 9 SCC 460.

classes, but are merely indicative. Each case would have to be determined on its own merits.

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*“20. The jurisdiction of the court under Section 397 can be exercised so as to examine the correctness, legality or propriety of an order passed by the trial court or the inferior court, as the case may be. Though the section does not specifically use the expression “prevent abuse of process of any court or otherwise to secure the ends of justice”, the jurisdiction under Section 397 is a very limited one. The legality, propriety or correctness of an order passed by a court is the very foundation of exercise of jurisdiction under Section 397 but ultimately it also requires justice to be done. **The jurisdiction could be exercised where there is palpable error, non-compliance with the provisions of law, the decision is completely erroneous or where the judicial discretion is exercised arbitrarily.** ...”.*

(emphasis supplied)

9. Upon a careful consideration of the matter, this court is of the opinion, that there is no ground for this court to interfere in the judgement of the appellate court or in the judgement or sentencing order rendered by the trial court, much less under the limited scope of interference under section 397 Cr.P.C. More specifically, this court is unable to discern anything amiss in the correctness, legality or propriety of the findings as recorded by the appellate court.
10. The revision petition is accordingly dismissed *in-limine*.
11. Pending applications, if any, also stand disposed-of.

ANUP JAIRAM BHAMBHANI, J

MARCH 24, 2023/ak