



2024:DHC:8529



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IN THE HIGH COURT OF DELHI AT NEW DELHI

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Date of Decision: 05th November, 2024

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CRL.L.P. 101/2019**STATE OF NCT OF DELHI**

.....Petitioner

Through: Mr. Manoj Pant, APP for
the State
SI Sandeep, PS- Kashmere
Gate

versus

AJAY KUMAR JATAV

.....Respondent

Through:

CORAM:**HON'BLE MR. JUSTICE AMIT MAHAJAN****AMIT MAHAJAN, J. (Oral)**

1. The respondent is stated to be in judicial custody in some other case.
2. Arguments are heard on behalf of the State.
3. The present petition is filed under Section 378 of the Code of Criminal Procedure, 1973 ('CrPC') seeking grant of leave to challenge the judgment dated 05.12.2018 (hereafter '**the impugned judgment**'), in Sessions Case No. 84/2016 arising out of FIR No.299/2016, registered at Police Station Kashmere Gate, whereby the learned Trial Court had acquitted the respondent of the offence under Sections 392/397 of the Indian Penal Code, 1860 ('IPC').
4. The FIR, in the present case, was registered after the respondent was allegedly caught by the Police Officials on hue and cry being made by the complainant.
5. The complainant alleged that on 17.08.2016, when he was

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the respondent came and stood in front of him and took out one *Ustra* and snatched his mobile phone. It is alleged that the accused, after snatching the mobile phone of the complainant, started running and was caught after hue and cry was made by the complainant.

6. The prosecution alleged that *Ustra* was found in his pocket. The prosecution examined the complainant and other Police witnesses.

7. The accused/respondent in his statement under Section 313 of the CrPC stated that he has been falsely implicated and on the date of the incident, while he was returning from his workplace, due to the area being crowded, his hand touched the complainant on which he got angry and a minor altercation took place. He stated that the *Ustra* was planted on him.

8. The learned Trial Court noted that the complainant, in his cross-examination deposed that he was also carrying ₹1,600/- with him and the same was snatched by the accused. He deposed that the said fact was not told to the Police who were only informed that the accused had snatched the mobile. The same is a material contradiction and as rightly noted by the learned Trial Court, casts a doubt on the case of the prosecution. Clearly, there had been material improvement in the statement of the complainant and the learned Trial Court rightly did not rely upon the same.

9. The learned Trial Court further noted that the Police official only deposed as prosecution witnesses though it was mentioned that seven to eight persons were asked to join the



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investigation but they did not join and left the place of incident.

10. It is an admitted case that no notice under Section 100(4) of the CrPC was given to any of the persons who had refused to join investigation nor was their names or addresses noted by the Police Officials.

11. Non-production of independent witnesses cast a doubt on the fact as to the recovery of the mobile phone from the possession of the accused. It is undisputed that the place of incident was a crowded place.

12. The deposition of PW-4, Head Constable Avadh Bihari was also noted who stated that he did not remember the day and date of incident and whether his statement was recorded two and three days after the incident whereas PW-6, ASI Dalbir Singh had deposed that the statement of PW-4 was recorded on the same day.

13. It is trite law that this Court must exercise caution and should only interfere in an appeal against acquittal where there are substantial and compelling reasons to do so. At the stage of grant of leave to appeal, the High Court has to see whether a *prima facie* case is made out in favour of the appellant or if such arguable points have been raised which would merit interference. The Hon'ble Apex Court in the case of ***Maharashtra v. Sujay Mangesh Poyarekar: (2008) 9 SCC 475*** held as under:

“19. Now, Section 378 of the Code provides for filing of appeal by the State in case of acquittal. Sub-section (3) declares that no appeal “shall be entertained except with the leave of the High Court”. It is, therefore, necessary for the State where it is aggrieved by an order of acquittal recorded by a Court of Session to file an application for leave to appeal as required by sub-section (3) of Section 378 of the Code. It is also true that an appeal can be registered and



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heard on merits by the High Court only after the High Court grants leave by allowing the application filed under sub-section (3) of Section 378 of the Code.

20. In our opinion, however, in deciding the question whether requisite leave should or should not be granted, the High Court must apply its mind, consider whether a prima facie case has been made out or arguable points have been raised and not whether the order of acquittal would or would not be set aside.

21. It cannot be laid down as an abstract proposition of law of universal application that each and every petition seeking leave to prefer an appeal against an order of acquittal recorded by a trial court must be allowed by the appellate court and every appeal must be admitted and decided on merits. But it also cannot be overlooked that at that stage, the court would not enter into minute details of the prosecution evidence and refuse leave observing that the judgment of acquittal recorded by the trial court could not be said to be “perverse” and, hence, no leave should be granted.”

(emphasis supplied)

14. In view of the aforesaid discussion, this Court is of the opinion that the State has not been able to establish a *prima facie* case in its favour and no credible ground has been raised to accede to the State’s request to grant leave to appeal in the present case.

15. The leave petition is dismissed in the aforesaid terms.

AMIT MAHAJAN, J

NOVEMBER 5, 2024

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