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

\+ **CRL.L.P. 228/2019**

STATE .....Petitioner

Through: Mr. Naresh Kumar Chahar, Advocate with SI Naresh Kumar PS Anti Corruption Branch

versus

SMT. SARLA GUPTA .....Respondent

Through: Ms. Richa Kapoor, Mr. Kunal Anand, Mr. Sandesh Kumar and Ms. Udipti Chopra, Advocates

CORAM:
HON'BLE MR. JUSTICE AMIT MAHAJAN

ORDER

% **04.10.2024**

1. The present petition is filed seeking leave to appeal against the judgement dated 22.12.2018, passed by the learned Special Judge, Central District, Tis Hazari Courts, Delhi, in CC No. 532275/2016 arising out of FIR No. 26/1999, registered by Anti-Corruption Branch, whereby the respondent was acquitted.

2. The brief facts of the case are as follows:

2.1. A complaint was filed by the Accounts Officer, MCD against the accused Mahinder Kumar Gupta (since deceased) for causing loss to the MCD. It was alleged that during the reconciliation of the accounts, it was found that the municipal money was misappropriated as the accused Mahinder Kumar Gupta had dishonestly collected the cheques from the Accounts

Department and deposited them in the fake account opened by him in the name of the DMC, Civil Lines Zones instead of in the genuine account of MCD, Civil Lines Zone.

2.2. It was alleged that accused Mahinder Kumar Gupta misappropriated more than ₹5 crores. The irregularities were committed since June, 1998. Out of the total misappropriated amount, the MCD was able to recover the amount of ₹3.96 crores. During investigation it was found that the accused Mahinder Kumar Gupta was working as UDC / Cashier in the office of Executive Engineer, Civil Lines Zone, MCD from June, 1998 to July, 1999. He was assigned the duties of preparing bills and scrutinizing all the bills / demands for advance payments to M/s. Indian Oil Corporation Ltd., etc. and put up to the higher authorities. He was also tasked to work as a Cashier and to maintain all the records of the Division, that is, Budget, Watch Register, Advance Register, Cash Book, Bill Passing Register, etc., in accordance with the duties assigned to him.

2.3. It was alleged that the accused Mahinder Kumar Gupta had been preparing the bills regarding advance payments to the M/s. Indian Oil Corporation Ltd. as per projected demand of fuel. The bills were then scrutinized and signed by the accused Brij Lal (since deceased) and were thereafter put up to accused Ram Kishan (Executive Engineer), who used to pass the bills. After the bills were passed, the demand notes were prepared. After signing of the demand notes by accused RS Narang (Assistant Chief Accountant), the account payee cheques used to be prepared in the name of Deputy Municipal Commissioner, Civil Lines Zone, Delhi.

2.4. It is the case of the prosecution that the accused Mahinder Kumar Gupta with dishonest intention had opened a bank account at Punjab National Bank in the name of Deputy Municipal Commissioner with the help of forged documents containing forged signatures of Deputy Municipal Commissioner of Civil Lines Zone for the purpose of misappropriating the money. The details and the manner in which cheques were prepared and misappropriated has been mentioned in the chargesheet.

2.5. It was alleged that amounts were diverted to different accounts opened by accused Mahinder Kumar Gupta. A sum of ₹30,15,318/- was transferred in the accounts of Shri Dhari Steel Rolling Mills Pvt. Ltd., where accused Surender Kumar Gupta and the respondent, who is the wife of accused Mahinder Kumar Gupta, were the directors. The accounts of the said company were however operated by the accused Mahinder Kumar Gupta. The allegation against the respondent is thus that she was Director in Shri Dhari Steel Rolling Mills Pvt. Ltd. where certain amount was transferred by the accused Mahinder Kumar Gupta.

2.6. The respondent was acquitted by the learned Trial Court by giving her the benefit of doubt. The accused Mahinder Kumar Gupta and Brij Lal expired during the course of the trial. The learned Trial Court, however, convicted the other accused persons for offences under Section 120B of the Indian Penal Code, 1860 (‘**IPC**’) read with Section 13(1)(2) of the Prevention of Corruption Act, 1988 read with Section 409/467/468/471/119 of the IPC.

3. The learned Additional Public Prosecutor for the State submits that the respondent is sought to be prosecuted on account of being Director in the company Shri Dhari Steel Rolling Mills Pvt. Ltd.

4. He submits that it has been proven that the money was

being fraudulently taken out from the MCD and some part of its was transferred in the accounts of Shri Dhari Steel Rolling Mills Pvt. Ltd.

5. He submits that it is clear that the company had received the cheated amount and it is undisputed that the respondent and accused Surender were the directors in the company.

6. I have heard the counsel and perused the record.

7. 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 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.*
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> ***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.***
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> ***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)

8. In the present case, from a bare perusal of the chargesheet, it is apparent the respondent is sought to be implicated on account of being a director in the company were a portion of the cheated amount was transferred.

9. A person can be held vicariously liable for the conduct of the company if it is proved that the person was responsible for the day-to-day functions of the company or was actively involved in the working of the company.

10. However, in the present case, it is the case of the prosecution itself that the accounts of the company were being operated by accused Mahinder Kumar Gupta.

11. It is also relevant to note that no allegation has been made against the respondent that she was actively involved in the working of the company or that she was responsible for deposit or withdrawal of money from the accounts of the company.

12. Concededly, the respondent was the wife of the main accused Mahinder Kumar Gupta. It is a common knowledge that the companies are being opened by the accused persons by making their family members as directors, including the housewives. However, in the absence of any specific allegation, no criminal liability can be fastened on the family members.

13. During the investigation, it was also revealed that no cheque on behalf of the company was ever signed by the respondent.

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 that the respondent was actively involved with the accused

Mahinder Kumar Gupta in misappropriation of money or that she entered into a criminal conspiracy to facilitate the siphoning off of the misappropriated money of the Municipal Corporation. 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

OCTOBER 4, 2024
SV/ "SK"