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

+ **CRL.L.P. 370/2022 & CRL.M.A. 14612/2022**

THE STATE (NCT OF DELHI)Petitioner

Through: Mr. Ritesh Kumar Bahri,
APP for the State with
MS. Divya Yadav, Adv.
SI Rahul Kumar, PS-
Model Town

versus

MS. SHALINI JAINRespondent

Through: Mr. Satyendra Mishra &
Mr. Praveen Seera, Advs.

CORAM:

HON'BLE MR. JUSTICE AMIT MAHAJAN

ORDER

% **06.05.2025**

CRL.L.P. 370/2022

1. The present petition is filed under Section 378 of the Code of Criminal Procedure, 1973 ('CrPC') seeking leave to challenge the judgment dated 26.02.2022 (hereafter '**impugned judgment**') passed by the learned Metropolitan Magistrate ('MM'), North District, Rohini Courts, Delhi in Criminal Case No. 5287006/2016 whereby the respondent was acquitted of the offences under Sections 279/337 of the Indian Penal Code, 1860 ('IPC').

2. Briefly stated, the case of the prosecution is that on 21.10.2011 at about 11 AM at Bhamashah Road the respondent, while allegedly driving her car bearing no. DL-4CS-21B9 in a rash and negligent manner, hit a motorcyclist from behind thereby causing simple injuries to the victim.

3. The respondent was charged with the offences under Sections 279/337 of the IPC.



4. By the impugned judgment the learned MM acquitted the respondent of the charged offences. It was noted that the identity of the respondent, and the fact that the respondent was driving the offending vehicle at the time when the accident took place were not disputed.

5. The learned MM noted that except the victim/PW-3, no other public witness had been examined by the prosecution to establish its case. It was noted that the victim/PW-3 did not state that the respondent was driving her vehicle in a rash or negligent manner. It was noted that the victim only deposed that the respondent had hit his motorcycle from behind with a great force.

6. The learned MM noted that it was the victim's own case that he was driving his vehicle at a speed of 40 km/hour and upon being hit by the respondent, he only suffered some minor injuries. It was noted that the same itself showed that the respondent was not driving her vehicle at a very high speed. It was further noted that in the examination-in-chief, the victim/PW-3 even failed to identify the offending vehicle. It was noted that the prosecution failed to bring forth any other eye-witness to the said incident, and that the other witnesses examined by the prosecution were only formal/police witnesses. Consequently, considering that the prosecution failed to establish its case beyond reasonable doubt, the learned MM acquitted the respondent of the charged offences.

7. The learned Additional Public Prosecutor for the State submits that the learned MM erred in acquitting the respondent of the charged offences. He submits that since the identity of the respondent and the presence of the offending vehicle at the time of the accident were not disputed, it stood established that the respondent was driving the offending vehicle at the time when



the accident took place. He submits that the victim/PW-3 deposed that the respondent, while driving her car in a rash and negligent manner, had hit his motorcycle from behind with great force thereby causing simple injuries to him. He submits that minor inconsistencies are not fatal to the case of the prosecution and ought to be ignored. He consequently submits that the acquittal of the respondent is manifestly erroneous and perverse and is liable to be set aside.

Analysis

8. It is trite law that the Appellate 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 ***State 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. 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.

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24. We may hasten to clarify that we may not be understood to have laid down an inviolable rule that no leave should be refused by the appellate court against an order of acquittal recorded by the trial court. We only state that in such cases, the appellate court must consider the relevant material, sworn testimonies of prosecution witnesses and record reasons why leave sought by the State should not be granted and the order of acquittal recorded by the trial court should not be disturbed. Where there is application of mind by the appellate court and reasons (may be in brief) in support of such view are recorded, the order of the court may not be said to be illegal or objectionable. At the same time, however, if arguable points have been raised, if the material on record discloses deeper scrutiny and reappreciation, review or reconsideration of evidence, the appellate court must grant leave as sought and decide the appeal on merits. In the case on hand, the High Court, with respect, did neither. In the opinion of the High Court, the case did not require grant of leave. But it also failed to record reasons for refusal of such leave.”

(emphasis supplied)

9. In the present case, in order to establish its case, the prosecution examined 07 witnesses out of which the victim/PW-3 deposed about the manner in which the accident took place, and the other witnesses deposed regarding the manner of conduction of the investigation, and the medical report of the victim.

10. The victim/PW-3 in his evidence stated that on 21.10.2011 when he was going to Panchkuiyan Road on his motorcycle and was near Kripal Bagh, the car being driven by the respondent hit his motorcycle from behind as a result of which he fell down and sustained injuries. He stated that he did not remember the registration number of the offending vehicle. He stated that he himself was driving his motorcycle at a speed of 40 km/hour. He further stated that he could not tell the speed of the offending



vehicle, however, the same person hit him with a great force. Upon being shown certain photographs marked as A, B and C, the victim/PW-3 stated that he could not identify whether the car shown in such photographs were those of the offending vehicle or not.

11. It is pertinent to note that the respondent has been charged for the offence of rash driving on a public way, and causing hurt by such rash or negligent act. In order to bring home the guilt of the accused under Sections 279/337 of the IPC, the prosecution ought to prove that the accused was driving the vehicle in a rash or negligent manner as a consequence of which the victim sustained injuries. The gravamen of the offences under Sections 279/337 of the IPC, thus, is that the act of the respondent is done rashly or negligently.

12. While delineating the meaning of the term rashness, the Hon'ble Apex Court in the case of **Mohd. Aynuddin v. State of A.P. : (2000) 7 SCC 72** observed as under:

"9. A rash act is primarily an overhasty act. It is opposed to a deliberate act. Still a rash act can be a deliberate act in the sense that it was done without due care and caution. Culpable rashness lies in running the risk of doing an act with recklessness and with indifference as to the consequences. Criminal negligence is the failure to exercise duty with reasonable and proper care and precaution guarding against injury to the public generally or to any individual in particular. It is the imperative duty of the driver of a vehicle to adopt such reasonable and proper care and precaution."

13. In the case of **Ravi Kapur v. State of Rajasthan : (2012) 9 SCC 284**, the Hon'ble Apex Court while examining the scope of Section 279 of the IPC, and the meaning of the term "negligence" observed as under:

"12. Rash and negligent driving has to be examined in the light of the facts and circumstances of a given case. It is a fact incapable of being construed or seen in isolation. It must



be examined in light of the attendant circumstances. A person who drives a vehicle on the road is liable to be held responsible for the act as well as for the result. It may not be always possible to determine with reference to the speed of a vehicle whether a person was driving rashly and negligently. Both these acts presuppose an abnormal conduct. Even when one is driving a vehicle at a slow speed but recklessly and negligently, it would amount to “rash and negligent driving” within the meaning of the language of Section 279 IPC. That is why the legislature in its wisdom has used the words “manner so rash or negligent as to endanger human life”. The preliminary conditions, thus, are that (a) it is the manner in which the vehicle is driven; (b) it be driven either rashly or negligently; and (c) such rash or negligent driving should be such as to endanger human life. Once these ingredients are satisfied, the penalty contemplated under Section 279 IPC is attracted.

13. “Negligence” means omission to do something which a reasonable and prudent person guided by the considerations which ordinarily regulate human affairs would do or doing something which a prudent and reasonable person guided by similar considerations would not do. Negligence is not an absolute term but is a relative one; it is rather a comparative term. It is difficult to state with precision any mathematically exact formula by which negligence or lack of it can be infallibly measured in a given case. Whether there exists negligence per se or the course of conduct amounts to negligence will normally depend upon the attending and surrounding facts and circumstances which have to be taken into consideration by the court. In a given case, even not doing what one was ought to do can constitute negligence.”

14. It is trite that for the offences under Sections 279/337 of the IPC, the prosecution must establish that the accused was driving the vehicle in a manner so rash or negligent as to endanger human life or personal safety of others. In the present case, the material on record falls short of establishing rashness or negligence on the part of the respondent beyond reasonable doubt.

15. While the prosecution has sought to base its case on the testimony of PW-3, it is evident that the same does not establish that the respondent was driving her car in a manner so rash and negligent so as to endanger human life or personal safety of others beyond reasonable doubt. PW-3, in his evidence, only



stated that the car being driven by the respondent hit him from behind with great force. However, as it apparent from the testimony of PW-3, he could not tell whether the respondent was driving her car at a high speed or not. PW-3 further did not state that the respondent was driving her car in a rash or negligent manner. He merely stated that the car being driven by the respondent had hit him from behind with great force as a consequence of which he fell down. He further stated that he was driving his motorcycle at a speed of 40 km/hour. As rightly appreciated by the learned MM, while the speed at which the respondent was driving her car could not be ascertained, if the car was even being driven by the respondent at a low speed and was to hit the motorcycle, the same would cause sufficient impact to lead the motorcyclist to lose balance and fall down. The same however does not establish that the respondent was driving her car in a rash or negligent manner.

16. Further, as rightly noted by the learned MM, the victim/PW-3, as a consequence of the accident, only sustained simple injuries. The same further belied the assumption that the respondent could be driving her car at a very high speed. Mere involvement of the accused's vehicle in the incident, thus, without establishing rashness or negligence beyond reasonable doubt, is insufficient to sustain a conviction.

17. It is equally relevant to note that the victim/PW-3, upon being shown the photographs, failed to identify the offending vehicle. No other witness except formal/police witnesses were examined by the prosecution to establish the guilt of the respondent. Mere allegation that the respondent hit the victim from behind with great force in the absence of attendant circumstances, thus, does not suffice to prove that the respondent



was driving her vehicle in a negligent manner.

18. Upon a consideration of the totality of facts and circumstances, this Court does not find any infirmity in the impugned judgment, and the same cannot be faulted with. This Court is of the opinion that the State has not been able to establish a *prima facie* case in its favour and no arguable ground has been raised to accede to the State's request to grant leave to appeal in the present case.

19. The leave petition is therefore dismissed in the aforesaid terms.

AMIT MAHAJAN, J

MAY 6, 2025