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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ **CRL.L.P. 128/2018 & CRL.M.A. 3110/2018**

STATE

.....Petitioner

Through: Mr. Ritesh Kumar Bahri,
APP for the State along
with Ms. Divya Yadav,
Adv.
Mr. Yakub Khan, PS
NDRS.

versus

IQBAL HUSSAIN & ANR

.....Respondents

Through: Mr. Rajat Srivastav, Adv.
for R-2.

CORAM:

HON'BLE MR. JUSTICE AMIT MAHAJAN

ORDER

30.04.2025

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CRL.L.P. 128/2018

1. The present petition has been filed under Section 378 of the Code of Criminal Procedure, 1973 ('**CrPC**') seeking grant of leave to challenge the judgment dated 11.09.2017 (hereafter 'the **impugned judgment**'), in Sessions Case No. 27692/2016, arising out of FIR No. 127/2012, registered at Police Station New Delhi Railway Station, whereby the learned Trial Court had acquitted the accused/ respondents for the offences under Sections 328/379/411/34 of the Indian Penal Code, 1860 ('**IPC**').

2. The brief facts are that on 13.07.2012 the complainant/ victim had travelled from Mumbai to New Delhi Railway Station and was sitting at Railway Platform No. 16 as he had to travel to Rudrapur.

3. At about 11:00 p.m. the accused/ respondents came near to him and started talking to him and informed him that they would



also go to Rudrapur. Pursuant to which, at about 12:30 a.m. one of the accused/ respondents had got tea and biscuits and insisted him to have it. He had initially refused, however, he had the same and later on fell asleep.

4. The accused/ respondents had taken away his black colour bag containing his clothes, a polythene bag that contained his certificates of his high school and intermediate education as well as a Nokia 1650 mobile phone, SANPADA CR card on which his photo was affixed and ₹2,000/-.

5. He had also kept a white coloured handkerchief and a brown coloured purse which contained ₹ 4,998/- with some additional papers which were also not there.

6. When the complainant/ victim woke up, he found himself in a hospital. He reported the aforesaid facts to the police, pursuant to which FIR No. 127/2012 under Sections 328/379/34 of the IPC was registered.

7. The police thereafter arrested the accused/ respondents from whom the stolen items allegedly were recovered and after completion of investigation, chargesheet was filed against them under Sections 328/379/411/34 of the IPC.

8. The learned Area Magistrate took cognizance of the said offences and summoned the accused/ respondents and observing that such offences are triable exclusively by the Sessions Court, transferred the same.

9. The learned Trial Court on 26.07.2013 framed charges under Sections 392/328/411/34 of the IPC to which both the accused/ respondents pleaded not guilty.

10. The accused/ respondents in their statement under Section 313 of the CrPC stated that they have been falsely implicated in the present case. An opportunity was granted to them to lead



defence evidence, but they have not lead the same. The learned Trial Court noting the contradictions in the evidence of witnesses acquitted the respondent by impugned judgment.

11. The learned Additional Public Prosecutor for the State submits that the learned Trial Court had failed to appreciate the legal position that the complainant/ victim had by and large supported the case of the prosecution and the contradictions in his depositions were not material.

12. He further submits the learned Trial Court had failed to appreciate that, depositions of PW1, PW4, PW6 and PW11 were consistent regarding the incidents as alleged, recoveries made qua the accused/ respondents and their arrest.

13. He also submits that PW12, Doctor Adesh had opined and proved that the stomach of the complainant/ victim contained a seductive drug namely 'Lorazepam'.

14. I have heard the learned counsels appearing for the parties and perused the record.

Analysis

15. 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.

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)

16. The learned Trial Court *vide* the impugned judgment had acquitted the accused/ respondents for the said offences on the ground that there were material contradictions in the depositions made by the prosecution witnesses.

17. It was noted by the learned Trial Court that PW1, the complainant/ victim had deposed on the lines of the FIR registered and had identified the accused/ respondents in court.

18. Further the learned Trial Court noted that PW4, Sub Inspector Mahender Singh, PW6, Head Constable Inderpal and PW11, Sub Inspector Ashok Kumar deposed on similar lines as the complainant/ victim regarding the arrest of the accused/ respondents and recovery of the said items. They had also identified both the accused/ respondents in court.

19. It was further noted by the learned Trial Court that from an analysis of the dispositions of the aforesaid prosecution witnesses there appeared to be material contradictions in the same and the deposition of the complainant/ victim is self – contradictory.



20. The complainant/ victim in his examination in chief deposed that the recovery of his brown coloured purse and white coloured handkerchief was made at behest of Respondent No. 1, but in his cross examination he had stated that recovery of the said items from Respondent No. 1 was not made in his presence

21. The complainant/ victim in his examination in chief had said nothing regarding his railway tickets, whereas in his cross – examination he stated that his railway ticket for the journey from Mumbai to Delhi was in his pocket but he had no idea as to where had it gone.

22. He further deposed that his statement was recorded on the spot where the incident had occurred. However, in his cross examination he stated that his statement was recorded in the police station.

23. The complainant/ victim in his examination in chief had deposed that he saw the accused at around 3:00 p.m. near platform No. 16 of the railway station. In his cross – examination he stated that he reached the spot of the incident at around 3:30 p.m.

24. The learned Trial Court further noted that deposition of the complainant/ victim was contrary to the depositions as given by the other witnesses as examined by the prosecution.

25. The complainant/ victim had deposed that, he had spotted the accused/ respondents at around 3:00 p.m., whereas as per the depositions of Sub Inspector Mahender Singh, Head Constable Inderpal and Sub Inspector Ashok Kumar, the complainant/ victim had pointed towards the accused/ respondents at about 7:30 p.m. behind the washroom at platform No. 16 towards Ajmeri Gate.

26. Further, the complainant/ victim as well as Sub Inspector Ashok Kumar had deposed that the Nokia 1650 mobile phone was recovered at behest of Respondent No. 2. However, Sub Inspector



Mahender Singh and Head Constable Inderpal had stated that the recovery of the mobile phone was made at behest of Respondent No. 1.

27. The complainant and Head Constable Inderpal deposed that the Investigation Officer did not make any attempt to ask any public witnesses to join the said investigation. Sub Inspector Mahender Singh and Sub Inspector Ashok Kumar had deposed to the contrary that the Investigating Officer had attempted to ask a few persons to join the investigation but they had refused to join.

28. Nonetheless, if the deposition of the complainant/ victim is to be believed, Respondent No. 1 had already been apprehended by the police and the recovery of purse and handkerchief of the complainant/ victim had already been effected from Respondent No. 1. Therefore, the depositions of the other prosecution witnesses are in direct contradiction to the one made by the complainant/ victim.

29. Therefore, in the opinion of this Court the statement of the complainant/ victim is self-contradictory. Further it is also apparent that there are material contradictions in the depositions of the aforesaid prosecution witnesses regarding the place where the statement of the complainant/ victim had been recorded, place where the accused/ respondents had been searched for, how were the accused/ respondents apprehended, what were the articles that were recovered at behest of the accused/ respondents and from which of the accused/ respondent was it made from and whether the Investigating Officer had made any attempt to include public witnesses in the said investigation.

30. Further, the complainant/ victim had not deposed anything regarding the physical appearances of the accused/ respondents, which creates a suspicion as to whether the accused/ respondents



were involved in the said incident.

31. In view of the aforesaid discussion, this Court is of the opinion that there is no infirmity with the impugned judgment passed by the learned Trial Court and 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.

32. The leave petition is dismissed in the aforesaid terms. Pending applications if any also stand disposed of.

AMIT MAHAJAN, J

APRIL 30, 2025
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