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

+ **CRL.L.P. 572/2023 & CRL.M.A. 31115/2023**

STATE

.....Petitioner

Through: Mr. Tarang Srivastva, APP for the
State.

SI Sanjeeta, P.S.: Mukherjee Nagar.

versus

AMIT KUMAR & ANR.

.....Respondents

Through: Mr. Shahil Rao and Mr. Rahul Yadav,
Advocates for R-1.

CORAM:

HON'BLE MR. JUSTICE ANUP JAIRAM BHAMBHANI

ORDER

03.02.2025

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By way of the present petition filed under section 378(3) of the Code of Criminal Procedure 1973, the petitioner seeks leave to appeal against judgment dated 20.10.2022 passed by the learned Additional Sessions Judge, Rohini Courts, Delhi in CA Nos.153/2019 and 158/2019.

2. Notice in the present matter was issued on 22.12.2023 limited to CRL.M.A. No. 31115/2023 seeking condonation of 383 days' delay in *filing* the leave petition. Reply dated 24.01.2025 has been filed to that application by respondent No. 1.
3. Not restricting itself to the question of delay, this court has heard Mr. Tarang Srivastva, learned APP appearing for the State on the merits of the leave petition.



4. Briefly, the matter relates to the conviction of respondents Nos. 1 and 2 *vide* judgment dated 29.04.2019 passed by the learned ACMM, Rohini Courts, Delhi for the offences under sections 417/419/34 of the Indian Penal Code, 1860 ('IPC') and being sentenced to simple imprisonment for 06 months and fine of Rs. 5,000/- each *vide* sentencing order dated 25.07.2019.
5. Upon an appeal filed from the conviction and sentencing, *vide* order dated 20.10.2022, the learned Sessions Court has acquitted both the respondents in the matter. It is this order of acquittal that is challenged by the State by way of the present petition seeking leave to appeal.
6. Having heard Mr. Srivastva, learned APP in the matter, it is observed that the essential reasoning on which the learned Sessions Court has overturned the conviction of the respondents is contained in the following paras of the impugned judgment :

“6.1 Admittedly in the present case neither the OMR sheet nor any attendance sheet containing the signature of accused Pawan was placed on record. Ld. MM has convicted the accused persons mainly on the oral testimonies of PW 2 & PW 3. No reason was forwarded by PW 2 & PW 3 as to why the OMR sheet and the attendance sheet where the accused Pawan had signed was not produced as evidence. What was the difficulty to produce these crucial documents to rope in the accused Pawan. The Ld. MM was in clear error to hold PW 2 & PW 3’s seeing the accused signing the attendance sheet was sufficient. The application of Section 73 of Evidence Act, as applied by the Ld. MM is not inconsonance with the provision stated in the Section. In the absence of any document containing the signature of accused Pawan, the method of proving signature this way was not possible.

“6.2 The Ld. MM had also considered that witnesses PW 2 & PW 3 were on the spot and they had inquired accused Pawan on 16.09.2007, therefore IO did not consider it necessary to seize the



attendance sheet. The most material evidence cannot be kept away from the court by such lame excuses. Therefore, Ld. MM was in error in not considering the production of attendance sheet as material on the ground that PW 2 & PW 3 have deposed before the court regarding the incident.

“6.3 In the present case, though the fact of impersonation by accused Pawan had come to the knowledge of the PW 2 & PW 3 at the time the examination was going to be conducted on 16.09.2007. Despite this fact, accused Pawan was permitted to give exam. This fact belies the testimonies of PW 2 & PW 3 that sufficient interrogation of accused Pawan was conducted at the time of giving exam. It is pertinent to mention here that no written document regarding the interrogation of accused Pawan had been produced before the court by PW 2 & PW 3. What is more surprising is that not even a DD was registered in this regard. Admittedly, the FIR was registered on 17.09.2007. No proper explanation has come from the witnesses as to why the FIR was not registered immediately. This is more relevant as in the present case the complainants were police officials who are well versed with the need to register the FIR at the earliest.

“6.4 From the testimonies of witnesses, it cannot be ascertained whether accused Pawan and Amit had meeting of mind regarding the alleged impersonation. Merely production of roll number slip i.e. Ex.PW 2/D1 is not sufficient to constructively put liability upon accused Amit. No telephonic/mobile conversation between the accused Pawan and Amit has been placed on record. No evidence is on record, that accused Amit had applied for the post.”

(emphasis supplied)

7. Evidently therefore, and learned APP does not dispute, that on point of fact the OMR sheet and the attendance sheet containing the signatures of respondent No. 2/Pawan Kumar, who is alleged to have impersonated respondent No. 1/Amit Kumar and taken the



examination for the post of Constable (Executive) Male in Delhi Police in his place, were not produced in the course of evidence.

8. Though Mr. Srivastva argues that the witnesses *viz.* PW-2 and PW-3, who were acting as invigilator and supervisor at the time of the exam, have identified respondent No. 2 as the person who sat the exam, it is observed that though the alleged impersonation had come to the knowledge of PW-2 and PW-3 at the time the examination was being conducted, despite that respondent No.2 was permitted to sit the exam. Furthermore, not even a complaint nor a DD Entry was registered in regard to respondent No.2 having sat the exam at the relevant time; and PW-2 and PW-3's statements were not even recorded in the course of the investigation.
9. Accordingly, the sole piece of evidence on which the respondents were convicted by the learned Magistrate was a roll-number slip which was exhibited as Exhibit PW-2/D-1, by which criminal liability was sought to be foisted upon the respondents, without any other material or evidence having been brought on record in that respect.
10. In view of the foregoing, this court finds no basis or justification for granting to the State leave to appeal against judgment dated 20.10.2022 passed by the learned Sessions Court, whereby the respondents have been acquitted.
11. The present leave petition is accordingly dismissed.
12. Pending applications, if any, also stand disposed-of.

ANUP JAIRAM BHAMBHANI, J

FEBRUARY 3, 2025/ak