

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

% Judgment delivered on:28.05.2025

+ **CRL.L.P. 210/2018**

STATE

.....Petitioner

versus

DEEPAK GARG

.....Respondent

Advocates who appeared in this case:

For the Petitioner : Mr. Aashneet Singh, APP for the State.
SI Suresh Kr. Meena, PS New Usman Pur.

For the Respondent : Mr. Ramesh Gupta, Sr. Adv. along with Mr.
Shailendra Singh, Mr. Harsh Choudhary, Mr.
Ishaan Jain & Mr. Surya Pratap Singh, Advs.

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HON'BLE MR JUSTICE AMIT MAHAJAN

JUDGMENT

1. The present petition is filed under Section 378 of the Code of Criminal Procedure, 1973 ('CrPC') seeking leave to challenge the judgment dated 03.08.2017 (hereafter '**impugned judgment**') passed by the learned Additional Sessions Judge ('ASJ'), Karkardooma Courts, Delhi in SC No. 44780/15.

2. The brief facts of the case are that on 29.03.2008, a DD No. A was received at Police Station Usmanpur in relation to collapse of a building at Street No. 8, Bhramपुरi, Delhi. The collapse of the building claimed the life of 9 persons, and left 13 injured.



Subsequently an FIR No. 75/2008 was registered at Police Station New Usmanpur for offences under Sections 288/337/304A/427 of the Indian Penal Code, 1860 ('IPC').

3. During the course of investigation, the examination of witnesses revealed that the respondent/owner of the building used substandard material and also carried out the construction up to the fourth floor despite objections by the neighbours that the building had developed cracks.

4. During the course of investigation, the collected construction material samples were also sent to FSL and the respondent along with the contractors namely Azam@Alam and Kuddus were chargesheeted under Sections 288/304/337/338/427/34 of the IPC. The contractors namely Azam@Alam and Kuddus were declared proclaimed offenders. Respondent was the owner of the building.

5. Subsequently, the respondent was charged with the offences under Sections 288/304/338/337 of the IPC.

6. By the impugned judgment, the learned ASJ acquitted the respondent of the charged offences. It was noted that as per the case of the prosecution, one building bearing no. C-85 situated at Braham Puri, Delhi had collapsed during construction which claimed the life of a few persons and left some injured. The case of the prosecution was that the respondent had carried out the construction without exercising care and caution by using defective material which led to the collapse of the building. The learned ASJ noted that an agreement was executed between the respondent and the contractors for carrying



out of repair work in the said building. It was noted that admittedly the building was being constructed under the supervision of independent contractors.

7. PW-3, in his statement deposed that he witnessed cracks in the wall and had objected to the respondent about such construction work being carried out. It was noted that PW-3, in his evidence, failed to prove that he had ever brought it to the notice of the respondent that the wall of the building had developed cracks. It was noted that contrarily, PW-3 admitted during cross examination that the respondent never came to the building and might have visited only once or twice during construction. It was noted that in his previous statement, PW-3 had stated that the building had collapsed due to poor quality of cement which was against the version PW-3 narrated before the Court. It was consequently noted that it appeared that the respondent was sought to be prosecuted on account of him being the owner of the property.

8. PW49, in his statement stated that there existed no evidence against the respondent to show that he was directly involved in the activity of the building. It was noted that the allegation against the respondent was also that he used substandard material which led to the collapse of the building. It was noted that as per the deposition of PW49, the construction was being supervised by the contractors. It was consequently noted that the fact that the respondent was responsible for the supervision of the construction could not be proved.



9. It was noted that an allegation had also been raised that the respondent put undue pressure on the workers to complete the work of the building within 05 days due to which the alleged incident took place. It was noted that from the deposition of the workers PW-8, PW-9, PW-29, PW-34 and PW-48 it was clear that the respondent had not put any pressure on the workers to complete the work in haste.

10. It was further noted that as per the statements of the witnesses, and the agreement between the respondent and the contractors, it was clear that it was the responsibility of the contractors to purchase the construction material and supervise the construction. The only responsibility of the respondent was to pay the amount as per the agreement and nothing more. Consequently, the learned ASJ acquitted the respondent of the charged offences.

11. The learned Additional Public Prosecutor for the State submitted that the learned ASJ erred in acquitting the respondent of the charged offences. He submitted that the respondent being the owner of the building was responsible to ensure that the construction was carried out in a proper manner. He submitted that PW-3 had categorically asked the respondent not to carry out the construction work owing to development of cracks despite which the respondent continued with the work which led to the collapse of the building that claimed the lives of 9 victims.

12. *Per contra*, the learned Senior Counsel appearing for the respondent submitted that the impugned judgment warrants no interference by this Court. He submitted that the quality of material



used for construction and the construction work itself was supervised by independent contractors and that the respondent had no role to play in the same. He consequently submitted that the present leave petition be dismissed.

Analysis

13. 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 reappraisal, 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)

14. The prosecution, in order to establish its case, examined 49 witnesses.

15. PW-3 deposed that the respondent had been constructing a building at C-85, Gali No. 8. Delhi which collapsed during construction. He stated that he was in possession of 40 square yards portion of the property and was running a garment shop therein for the last 20 years. He stated that the construction work was being carried out by the contractors Azam@Alam and Kuddus. He further stated



that two months prior to the incident, he had asked the respondent not to carry out the construction as he had observed cracks in the wall opposite to his shop. On being cross-examined, PW-3 admitted that his property and that of the respondent were different. He admitted that the construction work was being carried out by the contractors, and that the respondent never visited the spot. He further stated that he might have asked the respondent not to carry on with the construction work but does not recall if any other person was present at such time. He further stated that the fact that the building collapsed due to the fault of the respondent was only a personal opinion of PW-3 and there was nothing else to suggest that the respondent had been negligent.

16. PW-8, PW-9, PW-29, PW-34 and PW-48 worked in the construction of the building and denied that the collapse of the building occurred on account of the fault of the respondent.

17. PW-49 conducted further investigation in the present case. He admitted that the construction was being carried out by the contractors Azam@Alam and Kuddus as per the contract between the respondent and the contractors in relation to repair of the building. He stated that while the said building required repairing, he was not aware whether the respondent had any knowledge of any such repair or construction activities being carried out in the building. He stated that no neighbour had made any complaint against any illegal construction in the building. He admitted that the respondent was not directly involved in the repairing activity of the subject property.

18. It is pertinent to note that the respondent had been charged with



the offences under Sections 288/304/338/337 of the IPC. In order to attract the offence under Section 304 of the IPC, it is relevant that the act by which death is caused is either done with an intention of causing death or knowledge that the act is likely to cause death. Section 288 of the IPC imputes liability on the part of the accused when the accused, while repairing or pulling down any building, knowingly or negligently omits to take such order with the building as is sufficient to guard against any probable danger to human life. Further, Section 337/338 of the IPC attributes liability on the accused when the accused does any act in a rash or negligent manner as a consequence of which the victim sustain injuries. The gravamen of the offences under Sections 279/338 of the IPC, thus, is that the act of the respondent is done rashly or negligently.

19. In the present case, the material on record falls short of establishing the guilt on the part of the respondent beyond reasonable doubt. The allegation against the respondent is that he used substandard material to carry out construction activities, and that he continued with the construction work despite being asked not to carry on with the same which led to the collapse of the building. It is the case of the prosecution that the respondent being the owner of the building failed to exercise due care and caution which led to the accident.

20. It is pertinent to note that a contract of construction/repair work was executed between the respondent and the contractors as per which the contractors were independently carrying out the repair and



construction work. It is not disputed that the contractors were responsible for the purchase of material and supervision of the construction work. In the opinion of this Court, and as rightly appreciated by the learned ASJ, the responsibility was on the contractors to carry out and supervise the construction/repair work. Even otherwise, it is borne out from the record that during the course of the investigation, the material from the site were sent for FSL and the same could not be proved to be defective. Thus, in the opinion of this Court, the liability cannot be extended to the respondent to state that the accident occurred on account of the negligence of the respondent.

21. It is further the case of the prosecution that despite protest by the neighbours, the respondent continued with the construction work which led to the collapse of the building. In that regard, it is pertinent to note that PW-3, in his evidence deposed that he had asked the respondent not to carry on with the construction since the building had developed cracks. However, as rightly noted by the learned ASJ, such fact was not proved by PW-3. Infact, on being cross-examined, PW-3 stated that he might have informed the respondent about the same and did not remember if any other person was present at such time. PW-3 admitted that the repair work was being carried out by the contractors and that the respondent never visited the site. PW-3 further stated that it was his personal opinion that the building collapsed on account of the negligence of the respondent.

22. PW-49 who conducted further investigation in the present case



stated that no neighbour had made any complaint against any illegal construction in the building. He further admitted that the respondent was not directly involved in the repairing activity of the subject property. PW-8, PW-9, PW-29, PW-34 and PW-48 who worked in the construction of the building categorically denied that the collapse of the building occurred on account of the fault of the respondent, and stated that they were working under the directions of the contractors.

23. As rightly appreciated by the learned ASJ, the prosecution failed to prove the presence of the respondent at the time of the construction of the building. Further as rightly noted, after engaging an independent contractor for carrying out the repair work, the respondent was not responsible for repairing or maintenance of the building. As noted above, the material from the site were sent for FSL and the same could not be proved to be defective.

24. 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.

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

AMIT MAHAJAN, J

MAY 28, 2025