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

+ **CRL.L.P. 295/2018**

STATE OF NCT OF DELHI

.....Petitioner

Through: Mr. Aashneet Singh, APP
for the State for the State
along with SI Manish
Kumar, P.S.-Daryaganj

versus

PAPU BABA & ANR

.....Respondents

Through: None

CORAM:

HON'BLE MR. JUSTICE AMIT MAHAJAN

ORDER

% **09.04.2025**

CRL.M.A. 8274/2018 (Delay)

1. This is an application seeking condonation of delay of 16 days in filing the present leave to appeal.
2. For the reasons stated in the application, the same is allowed and the delay of 16 days in filing the present leave to appeal is condoned.
3. Accordingly, the application stands disposed of.

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4. 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 18.12.2017 (hereafter 'the **impugned judgment**'), in Sessions Case No. 28928/2016 arising out of FIR No. 246/2016, registered at Police Station Daryaganj, whereby the learned Trial Court had acquitted the accused/respondents for the offence under Section 397 of the Indian Penal Code, 1860 ('IPC').

5. The FIR, in the present case, was registered pursuant to a statement made by the complainant/ victim alleging that, on 19.06.2016, at about 1:30 a.m. while he was going towards New

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Delhi Railway station, 4 boys including the respondents herein held him from his hands and feet. Respondent No. 1 had inflicted injuries on his leg with a danda and Respondent No. 2 had stabbed him with a knife on his back. Thereafter, they took out a sum of ₹11,000/- from his pocket and also took away the bag of clothes that was in his possession.

6. It is further alleged that, two unknown people on a motorcycle rescued him from the spot and advised him to get admitted in a hospital. On the way to the Hospital, he became unconscious, where he fell on the ground in front of Gate No. 2 of Lok Naryan Jai Prakash Naryan Hospital.

7. It is noted by the learned Trial Court that one security guard who was on duty, took the complainant/ victim inside the hospital and got him admitted. He had also informed the PCR staff.

8. The police thereafter reached the hospital, who after recording the statement of the complainant/ victim, apprehended the accused/ respondents from whom recovery of a danda and knife was made.

9. Thereafter, the learned Trial Court framed charges under Sections 397 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 and on the date of the incident they saw the complainant/ victim raising a hue and cry for being saved and nothing else had happened in front of them. Police had subsequently come to the place and had taken them to the police station.

11. The learned Additional Public Prosecutor for the State
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submits that the learned Trial Court has wrongly acquitted the accused/ respondents for the offense under Section 397 of the IPC, despite there being ample material on record to prove that the respondents had committed the offence charged with.

12. He further submits that the minor contradictions in the statement of the complainant/ victim are not grave in nature. He states that complainant/ victim had categorically deposed the entire series of events and the specific acts and role of the accused/ respondents in the commission of offense as well as he had identified them before the learned Trial Court.

13. I have heard the learned Additional Public Prosecutor for the State and perused the record.

Analysis

14. 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 ~~vict~~er 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)

15. The learned Trial Court had acquitted the accused/ respondents on the ground that the complainant/ victim had not supported the case as made out by the Prosecution.

16. The deposition of PW – 11, Sub Inspector Mahipal Singh was noted by the learned Trial Court, who deposed that the complainant/ victim after getting discharged from the hospital, had accompanied him and Constable Rajesh, to the spot of the incident where he had pointed towards Respondent No. 1, who was apprehended from inside of the park and Respondent No. 2, who was apprehended from outside of the park. Pursuant to which Arrest Memos and personal search memos of the accused/ respondents were prepared.

17. He further deposed that during interrogation, *vide* the disclosure statements made by Respondent Nos. 1 and 2, a danda and a knife was recovered and seized.

18. The learned Trial Court notes that the complainant/ victim had not supported the case of the prosecution in the manner in which the accused/ respondents were arrested, and recoveries of the weapons were made, and no reliance can be placed on the statement made by Sub Inspector Mahipal Singh.



19. PW – 8, the complainant/ victim had deposed that, after he had been discharged from the hospital, he accompanied the police to the police station where he was present till the next day.

20. He further deposed that three persons were brought to the police station the next day, from where he identified the accused/ respondents as the offenders. Thereafter, five more persons were brought to the police station, where none of them were identified as offenders by him.

21. The learned Trial Court further notes that Constable Rajesh who was one of the attesting witnesses to the preparation of the Arrest memos and the personal search memos, had been absenting himself from duty and the prosecution was not able secure his appearance despite issuance of warrants.

22. The learned Trial Court also notes that no other police officials had been examined and thus, it remained unexplained as to who had brought the accused/ respondents to the police station and how did they come to know of their involvement in the present case.

23. The learned Trial Court notes that the complainant/ victim had deposed that except the recording of his statement, the police had already prepared the other documents, which he had signed after reaching the police station. Further no statement had been made by him regarding the recovery of knife and danda from the accused/ respondents in his presence.

24. Therefore, from a perusal of the statements made by the complainant/ victim and Sub Inspector Mahipal Singh, there is a doubt created regarding the involvement of the two accused/ respondents in the commission of the crime under Section 397 of the IPC. Further, Constable Rajesh who was the attesting witness to the preparation of Arrest memos and personal search warrants



had not been examined, and the victim had not deposed regarding any disclosure statement being made in his presence and none of the stolen property had been recovered at their behest.

25. 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.

26. The leave petition is dismissed in the aforesaid terms.

AMIT MAHAJAN, J

APRIL 9, 2025

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