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

+ **CRL.L.P. 360/2018**

STATE

.....Petitioner

Through: Mr. Ajay Vikram Singh,
APP for the State.
SI Priyan Kumar, PS
Anand Vihar.

versus

HASEEN MIYA @ ASEEN

.....Respondent

Through: Mr. Adit S. Pujari,
(DHCLSC) & Mr.
Manvendra Singh, Advs.

CORAM:

HON'BLE MR. JUSTICE AMIT MAHAJAN

ORDER

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17.07.2025

1. The present petition is filed under Section 378 of the Code of Criminal Procedure, 1973 ('CrPC') seeking leave to challenge the judgment dated 19.02.2018 (hereafter '**impugned judgment**') passed by the learned Trial Court, Karkardooma Courts, Delhi in SC No. 152/2017 whereby the respondent was convicted of the offence under Section 384 of the Indian Penal Code, 1860 ('IPC') and was acquitted of the offences under Section 392/397/411 of the IPC.

2. Briefly stated, the case of the prosecution is that on 04.01.2017 at around 12:30 PM when Munna (hereafter 'victim') was going to the Railway Reservation Counter, he was accosted by two persons. It is alleged that the said two persons including the respondent demanded beedi from the victim, and also placed



a knife on his stomach and took away a cash of ₹3,300/- and other papers including the victim's ID proof and mobile phone. Thereafter, when the said persons tried to flee, the victim chased and caught hold of the respondent. The respondent was thereafter arrested and one knife (paper cutter) was recovered from him.

3. The respondent was charged with the offences under Sections 392/397/411/34 of the IPC.

4. By the impugned judgment, the learned Trial Court convicted the respondent of the offence under Section 384 of the IPC and acquitted him of the offences under Sections 392/397/411 of the IPC. By the order on sentence dated 19.02.2018, the respondent was sentenced to undergo the period of sentence already undergone. It was noted that the presence of the respondent on the spot and his act of engaging in the commission of robbery was not in doubt. It was however noted that the testimony of the victim/PW-2 in relation to the wielding of the knife was doubtful. It was noted that in the initial complaint made to the police, the victim stated that two persons had approached him asking for a *beedi* and that thereafter both the said persons had wielded a knife on the victim. It was noted that in his evidence however, the victim stated that it was only the respondent who had shown a knife to him. It was further noted that the victim failed to mention anything in relation to the other person also wielding a knife as was stated by the victim in his initial complaint.

5. The learned Trial Court noted that the allegations made by the victim were further placed under a shadow considering the fact that the victim failed to raise an alarm immediately when the two intruders surrounded him. It was noted that the usage of the



weapon was not forthcoming but the victim was only put in fear to deliver the valuables. It was noted that the prosecution failed to prepare a sketch of the weapon. It was noted that mere seizure memo in the absence of sketch of the weapon could not be believed. It was noted that since the weapon had not been used to cause grievous hurt or attempt to death, the essentials of Sections 392/397 of the IPC were not met. Consequently, the learned Trial convicted the respondent of the offence under Section 384 of the IPC and acquitted him of the offences under Sections 392/397/411 of the IPC.

6. The learned Additional Public Prosecutor submits that the learned Trial Court erred in acquitting the respondent of the charged offences. He submits that the learned Trial Court failed to consider that the accused was apprehended on spot at the instance of the victim. He further submits that the case property, that is, the knife was recovered at the instance of the respondent. He submits that mere non preparation of sketch of the said knife does not affect the case of the prosecution.

7. *Per contra*, the learned counsel for the respondent submits that the impugned judgment warrants no interference by this Court. He submits that the victim, in his evidence, stated that the respondent took away the victim's mobile and purse and tried to run away. He submits that the phone and wallet were not recovered at the instance of the respondent. He submits that even the recovery of the knife at the instance of the respondent is doubtful since no sketch of the weapon was prepared and the seizure memo was also prepared without the sketch of the weapon.



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 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)

9. In the present case, in order to establish its case, the prosecution examined five witnesses out of which PW-2/the victim deposed regarding the manner in which the alleged incident occurred and the other witnesses deposed regarding the manner of the conduction of the investigation.

10. PW-2/the victim, in his evidence stated that on 04.01.2017, at about 12:30 PM when he went to the Railway Reservation Counter, Manglam Road, two persons came to him and demanded ‘beedi’ from him and asked him to come on the side. He stated that one of the two persons caught hold of him, and the other one placed a knife on his waist and took out his purse containing ₹3,300/- and other papers including the victim’s ID proof and also a mobile phone. He stated that after robbing him, the accused persons started running away when the victim raised an alarm, chased the accused persons and apprehended the respondent. PW-2/the victim further stated that the respondent was the one who had wielded a knife and had taken away his mobile phone and purse. He stated that he was able to apprehend the respondent with the help of public persons, and that someone



from the public had dialled on 100 number.

11. Upon being cross-examined by the learned *amicus curiae* for the respondent, PW-2/the victim stated that both the accused persons had used the knife in robbing him. He further stated that he had raised an alarm after being robbed.

12. From a perusal of the impugned judgment, it is apparent that the respondent was acquitted of the charges under Sections 392/397 of the IPC on account of the *inter se* contradiction in the statement of the victim with regard to the accused person who had pointed a knife at him. It is apparent that in the initial complaint, the victim stated that both the accused persons had pointed a knife at him. However, in his evidence, the victim stated that it was the respondent who had pointed a knife at him. Further, on being cross examined by the learned *amicus curiae* for the respondent, the victim stated that both the respondent and his associate had used a knife in robbing him. The other accused person had fled the spot and was not arrested or tried in the present case.

13. It is also pertinent to note that as per the testimony of the victim, the respondent had taken the victim's purse. However, it is borne out from the record that the purse of the victim was not recovered from the respondent. The purse was instead found lying on the road, and was not found in the possession of the respondent.

14. It is also the case of the prosecution that the knife (which is a paper cutter) was recovered at the instance of the respondent. However, as noted by the learned Trial Court, the sketch of the weapon was not prepared by the investigation thereby casting a shadow on the case of the prosecution.



15. Moreover, despite the fact that the robbery took place in a public area and as per the victim, public persons helped him nabbing the respondent, no public witness was examined.

16. Upon a consideration of the peculiarity of the facts and circumstances of the present case, this Court does not find any ground to accede to the State's request to grant leave to appeal in the present case.

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

AMIT MAHAJAN, J

JULY 17, 2025