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

+ **CRL.L.P. 353/2018**

STATE (NCT OF DELHI)

.....Petitioner

Through: Mr. Raj Kumar, APP for
the State.
Insp. Brij Mohan with ASI
Rukesh Kr. PS ODRS.

versus

SANTOSH KUMAR

.....Respondent

Through:

CORAM:

HON'BLE MR. JUSTICE AMIT MAHAJAN

ORDER

28.03.2025

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1. The present petition is filed under Section 378 of the Code of Criminal Procedure, 1973 ('CrPC') seeking leave to challenge the judgment dated 06.03.2018 (hereafter '**impugned judgment**') passed by the learned Additional Chief Metropolitan Magistrate ('ACMM'), Tis Hazari Courts, Delhi in New Case No. 512602/2016 whereby the respondent was acquitted of the offences under Sections 279/338/325 of the Indian Penal Code, 1860 ('IPC').

2. The FIR No. 40/2010 dated 27.03.2010 was registered at Police Station Railway Station Delhi Main on a complaint given by the victim/K. K. Dutta for offences under Sections 279/337 of the IPC. It is alleged that on 27.03.2010 at about 1:45 pm when the victim was standing at the parking entry gate, the respondent who was allegedly driving his Wagon R in a rash and negligent manner, hit the victim's vehicle from behind on his right side as a consequence of which the victim fell down. It is alleged that thereafter despite the cries of the victim to stop the vehicle, the

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respondent ran over his vehicle on the right leg of the victim as a consequence of which the victim sustained injuries.

3. The respondent was charged for the offences under Sections 279/338/325 of the IPC.

4. By the impugned judgment, the learned ACMM acquitted the respondent of the charged offences. It was noted that the victim, in his cross examination, stated that the accident occurred due to the rash and negligent driving of the respondent. He stated that the respondent was driving the vehicle at the speed of 40 Kmph.

5. The learned ACMM also took into account the evidence of the Parking Attendant/PW-12 who deposed that the respondent was driving his car in a rash and negligent manner, and that the respondent drove over the foot of one aged person while overtaking. In his cross examination, PW-12 admitted that the parking consisted of a ramp and further admitted that the vehicle could not be driven through the ramp at a very high speed. He further stated that the speed of the said vehicle was about 5 Kmph.

6. It was noted that the testimony of the victim and the parking attendant does not establish that the respondent was driving his vehicle in a rash and negligent manner. It was noted that from the perusal of the record, it was highly improbable that the respondent would have been driving his car at a speed of 40 Kmph as had been alleged by the victim. It was consequently noted that while the respondent was driving his vehicle when the accident took place, it could not be proved that the accident was caused on account of the rash and negligent driving of the respondent.

7. Insofar as the charge under Section 325 of the IPC was



concerned, it was noted that in order to establish an offence under Section 325 of the IPC, it was imperative that the respondent caused grievous hurt as materialised under Section 320 of the IPC, and that such hurt was caused voluntarily. The learned ACMM noted that from the testimony of the witnesses, it is manifest that the respondent had no intention of causing any grievous hurt to the victim. Consequently, the learned ACMM acquitted the respondent of the charged offences.

8. The learned Additional Public Prosecutor for the State submits that the learned ACMM erred in acquitting the respondent of the charged offences. He submits that the impugned judgment is based on surmises and conjectures, and is liable to be set aside. He submits that from the testimony of the victim/PW-1 and the parking attendant/PW-12, it is evident that the respondent hit the victim from behind. He submits that had the respondent was responsible for the injury caused to the victim, and consequently prays that the impugned judgment be set aside.

Analysis

9. 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” ¹⁸ 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)

10. In the present case, in order to establish its case, the prosecution examined 12 witnesses out of which PW-1 was the victim, PW-12 was the parking attendant, and the other witnesses deposed regarding the manner of conduction of the investigation,



and the medical report of the

11. PW-1/victim deposed that on 27.03.2010, the victim had gone to the cloth market, Novelty Cinema after parking his scooter at the railway station parking. He deposed that at about 1:15 pm, when he returned to the parking to take his scooter, the respondent hit his vehicle from behind as a consequence of which the victim fell down on the ground. He deposed that despite the victim's cries, the respondent did not stop his vehicle, and ran over the car on the right leg of the victim on account of which the victim sustained injuries.

12. On being cross-examined by the learned counsel for the respondent, the victim categorically denied that there existed any ramp at the railway station through which the vehicle could go inside the parking area. He stated that the respondent was driving his car at a speed of more than 40 Kmph at the time of the incident.

13. PW-12/the parking attendant deposed that the respondent was driving his Wagon-R in a rash and negligent manner, and that while overtaking, the respondent drove over the foot of one old age person. On being cross examined by the learned counsel for the respondent, PW-12 admitted that the parking consisted of a ramp, and that any vehicle cannot be driven through the ramp in a very high speed, and that the maximum speed of the entering vehicle is around 5 Kmph.

14. It is pertinent to note that the respondent has been charged for the offence of rash driving on a public way, and causing grievous hurt by such rash or negligent act. In order to bring home the guilt of the accused under Sections 279/338 of the IPC, the prosecution ought to prove that the accused was driving the vehicle in a rash or negligent manner as a consequence of which



the victim sustained 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.

15. While delineating the meaning of the term rashness, the Hon'ble Apex Court in the case of **Mohd. Aynuddin v. State of A.P. : (2000) 7 SCC 72** observed as under:

"9. A rash act is primarily an overhasty act. It is opposed to a deliberate act. Still a rash act can be a deliberate act in the sense that it was done without due care and caution. Culpable rashness lies in running the risk of doing an act with recklessness and with indifference as to the consequences. Criminal negligence is the failure to exercise duty with reasonable and proper care and precaution guarding against injury to the public generally or to any individual in particular. It is the imperative duty of the driver of a vehicle to adopt such reasonable and proper care and precaution."

16. Additionally, in the case of **Ravi Kapur v. State of Rajasthan : (2012) 9 SCC 284**, the Hon'ble Apex Court while examining the scope of Section 279 of the IPC, and the meaning of the term "negligence" observed as under:

"12. Rash and negligent driving has to be examined in the light of the facts and circumstances of a given case. It is a fact incapable of being construed or seen in isolation. It must be examined in light of the attendant circumstances. A person who drives a vehicle on the road is liable to be held responsible for the act as well as for the result. It may not be always possible to determine with reference to the speed of a vehicle whether a person was driving rashly and negligently. Both these acts presuppose an abnormal conduct. Even when one is driving a vehicle at a slow speed but recklessly and negligently, it would amount to "rash and negligent driving" within the meaning of the language of Section 279 IPC. That is why the legislature in its wisdom has used the words "manner so rash or negligent as to endanger human life". The preliminary conditions, thus, are that (a) it is the manner in which the vehicle is driven; (b) it be driven either rashly or negligently; and (c) such rash or negligent driving should be such as to endanger human life. Once these ingredients are satisfied, the penalty contemplated under Section 279 IPC is attracted."

13. "Negligence" means omission to do something which a reasonable and prudent person guided by the considerations which ordinarily regulate human affairs would do or doing



something which a prudent and reasonable person guided by similar considerations would not do. Negligence is not an absolute term but is a relative one; it is rather a comparative term. It is difficult to state with precision any mathematically exact formula by which negligence or lack of it can be infallibly measured in a given case. Whether there exists negligence per se or the course of conduct amounts to negligence will normally depend upon the attending and surrounding facts and circumstances which have to be taken into consideration by the court. In a given case, even not doing what one was ought to do can constitute negligence.”

17. In the present case, the prosecution has not been able to establish that the respondent, at the time of the occurrence of the accident, was driving his car in a rash and negligent manner. The victim, in his cross examination, stated that the accident occurred on account of the rash and negligent driving of the respondent, and that the respondent was driving his vehicle at the speed of 40 Kmph.

18. PW-12/the parking attendant on the other hand deposed that the respondent while driving his vehicle in a rash and negligent manner, drove over the foot of one aged person. On being cross-examined by the learned counsel for the respondent, PW-12 admitted that the parking area consists of a ramp, and also admitted that the vehicle could not be driven through the ramp at a very high speed, and that the speed of the vehicle was about 5 Kmph.

19. From a perusal of the testimony of the victim and the parking attendant, it cannot be made out that the respondent was driving his vehicle in a rash or negligent manner. Mere allegation that the respondent was rash or negligent in the absence of attendant circumstances, does not suffice to prove that the respondent was driving his vehicle in a rash or negligent manner. It is apparent from the material on record that the accident occurred in a parking area. Further, contrary to what has been



alleged by the victim that the respondent was driving his car at the speed of 40 Kmph, PW-12 himself admitted that no car/vehicle can be driven at a high speed through the ramp.

20. Insofar as the charge under Section 325 of the IPC is concerned, an offence under Section 325 of the IPC is made out only when the accused voluntarily causes grievous hurt. From a perusal of the testimony of the witnesses, it cannot be said that the respondent voluntarily caused grievous hurt to the victim.

21. 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.

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

AMIT MAHAJAN, J

MARCH 28, 2025