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

+ **CRL.L.P. 636/2018**

STATE

.....Petitioner

Through: Mr. Ritesh Kumar Bahri,
APP for the State with Ms.
Divya Yadav & Mr. Lalit
Luthra, Advs.
SI Kailash, PS- Karol Bagh

versus

AWADESH NARAYAN

.....Respondent

Through: Mr. Hemant Kumar &
Mr. Venkatesh Joshi,
Advs. with Respondent in
person

CORAM:

HON'BLE MR. JUSTICE AMIT MAHAJAN

ORDER

% **12.11.2025**

1. The present petition is filed seeking leave to appeal against the judgment dated 10.07.2018 (hereafter '**the impugned judgment**') passed by the learned Special Judge in CC No. (1/15) 532215/2016 arising out of FIR No. 187/2013 registered at Police Station Karol Bagh whereby the learned Trial Court acquitted the respondent of offences under Sections 7/13(1)(d)/13(2) of the Prevention of Corruption Act, 1988('PC Act').

2. Briefly stated, the complainant's maid informed her that there was a foul smell coming from the house where her husband was residing. The door of the said house was opened in the presence of police officials and the complainant's husband was found dead. Thereafter, the dead body was taken to the morgue where the respondent, who was the investigating officer, allegedly



expressed his inability to get the postmortem of the body done before 72 hours. Upon resistance of the family members of the complainant for the same, the respondent allegedly demanded and received Rs.10,000/- from the complainant's son in law in order to expedite the postmortem. Further, the respondent allegedly demanded Rs.15000/- from the complainant's son in law if he wanted an early closure of the case without any dispute.

3. The Learned Trial Court framed charges under Sections 7/13(1)(d) of the PC Act against the respondent to which he pleaded not guilty and claimed trial.

4. The learned Trial Court, by the impugned judgment, acquitted the respondent of the charged offences and noted that prosecution charges were based on hearsay evidence and not admissible in evidence. The learned Trial Court further noted that there were several contradictions in the testimonies of the witnesses.

5. The learned trial court noted that the sanction in the present case has been vitiated as the CCTV footage of Canara Bank, Karol Bagh was not sent to the sanctioning authority for perusal.

6. The learned Additional Public Prosecutor ('APP') for the State submits that the impugned judgement is based on presumptions, conjectures and surmises, and cannot stand the scrutiny of law and thus, deserves to be set aside.

7. He submits that the learned Trial Court failed to appreciate that the complainant/PW-3 has fully supported the case of the prosecution. He submits that the learned Trial Court has erred in not appreciating the testimonies of PW-5 and PW-6 as they have supported and corroborated the testimony of the complainant.

8. Per contra, the learned counsel for the respondent



vehemently opposes the arguments as raised by the learned APP for the State and consequently prayed that the present petition be dismissed.

ANALYSIS

9. 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 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.”

(emphasis supplied)



10. It is the case of the prosecution that the respondent demanded a bribe of Rs.10,000/- from PW-3 (son in law of the complainant) to expedite the post mortem of his father in law which was paid to him. It is alleged that the respondent thereafter, further demanded another sum of Rs.15,000 for a speedy disposal of the case without any dispute. It is further alleged that upon receiving the bribe, the respondent continued to harass the complainant's family members, on 29th or 30th July the respondent went to Canara Bank, Karol Bagh with the complainant's daughter and insisted on seeing the contents of her bank locker which was denied by the bank manager.

11. The prosecution examined 3 material witnesses to prove its case being PW-3(son in law of the complainant), PW-5(daughter of the complainant), PW-6(the complainant).

12. The respondent in his statement section 313 of Code of Criminal Procedure, denied all the allegations of prosecution witnesses and stated that he was innocent. He further stated that PW-6 and PW-3 had told him that one of the daughters of the deceased was to come from America and therefore, they wanted the body to be preserved for three days.

13. He further stated that an oral request was made by the family of the deceased to preserve the body of the deceased as one of the daughters of the deceased would be travelling from USA to attend the last rites, however, the postmortem was done on the very next day as the body of the deceased was in an extremely decomposed condition and this fact was well communicated to the family of the deceased.

14. The learned Trial Court noted various inconsistencies and contradictions in the testimonies of the material witnesses. PW-6



in her complaint stated that the respondent had demanded Rs. 10,000/- from PW-3 at the mortuary and the same was paid to him. She further stated that the accused had demanded another sum Rs.15,000/- but did not state whether any further payment was made to the respondent. On the other hand, PW-3 deposed in his examination in chief that the accused had demanded Rs.20,000/- at the mortuary from him on the intervening night of 26-27.07.2013.

15. PW-6 in her statement had further stated that PW-3 had made a payment of Rs. 10,000/- to the accused in the intervening night of 26-27.07.2013, at the mortuary as he had the said amount in his possession, whereas PW-3 in his examination in chief deposed that he had paid Rs. 10,000/- to the accused at the mortuary at the time of postmortem on the the next day.

16. PW-3 had deposed that the amount of Rs.10,000/- was paid to the accused in the presence of his wife (PW-5) on 28.07.2013 whereas PW-5 deposed that she was sitting in the adjacent room when the accused had visited the house of the deceased and could not hear anything properly but could only see the accused and her husband speaking to each other.

17. The learned Trial Court further noted that there were two calls on 28.07.2013 at 10:30:38 AM and 10:31:33 AM between the numbers used by PW-3 and PW-5 and thus, these calls make it clear that the two could not have been together because had they been together there would have been no need to communicate telephonically.

18. PW-6 had admitted that her deposition was based on what had been told to her by PW-3 and PW-5. PW-3 though had admitted that the complaint was lodged by the complainant on the



information provided by him but as per PW-3, PW-6 was herself present most of the time.

19. Thus, the learned Trial Court rightly noted that none of the witnesses have corroborated the other's stand and their testimonies are liable to be discarded.

20. The learned Trial Court rightly noted that the evidence of the complainant in the present case qua both the instances of bribery are only of hear-say nature and she had only deposed that her son-in-law informed her that the accused demanded Rs.20,000/-.

21. The learned Trial Court rightly noted that there was no evidence on record to show that the accused had pressurised the complainant's family to see the contents of their locker at Canara Bank Karol Bagh. PW-9, The Senior Manager, Canara Bank, Karol Bagh Branch had deposed that PW-5 had attempted to operate the locker of the deceased by misleading him and by concealing the fact of his demise. PW-9 had also failed to identify the accused to have visited the bank on 30.07.2013.

22. It is pertinent to note that PW-14, Inspector Brijesh Mishra had deposed that the family members of the deceased had informed him that one of the daughters of the deceased was abroad and enquired whether the post-mortem could be delayed. In view of the same, it is likely that the family members of the deceased had themselves requested the respondent to delay the post mortem. However, the post mortem could not be delayed as the dead body had been extremely decomposed. In view of the above, the possibility of the respondent having been falsely implicated cannot be ruled out.

23. Moreover, in the present case the respondent was acquitted



by the impugned judgment on several grounds including that the sanction in the present case was vitiated as a CCTV footage which concededly was relevant evidence, was relied upon by the prosecution and was also exhibited before the learned Trial Court was not sent to the sanctioning authority for perusal.

24. The said fact remains undisputed.

25. Once it is an admitted position that the material piece of evidence which was relied upon by the prosecution being the CCTV footage which created doubt on the story of the prosecution, was not placed before the sanctioning authority, the grant of sanction, *ex facie* was without application of mind.

26. 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.

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

AMIT MAHAJAN, J

NOVEMBER 12, 2025

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