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

+ **CRL.L.P. 811/2018**

STATE OF NCT OF DELHI

.....Petitioner

Through: Ms. Richa Dhawan, APP
for the State
SI Sangeeta, PS-
Mukherjee Nagar

versus

SHIV @ RAJ

.....Respondent

Through:

CORAM:

HON'BLE MR. JUSTICE AMIT MAHAJAN

ORDER

% **19.08.2025**

1. The present petition is filed under Section 378 of the Code of Criminal Procedure, 1973 ('CrPC') seeking grant of leave to challenge the judgment dated 29.08.2018 (hereafter '**the impugned judgment**'), in Sessions Case No. 58874/2016 arising out of FIR No. 1675/2015, registered at Police Station Mukherjee Nagar, whereby the learned Trial Court acquitted the accused/respondent for the offence under Section 397 of the Indian Penal Code, 1860 ('IPC').

2. The brief facts are that on 12.11.2015, the complainant Salman along with his friend had gone to Indira Vikas Colony Gurudwara to eat food.

3. It is alleged that as soon as they reached a nearby gali, they saw a group of boys standing there. It is alleged that two persons out of the group caught hold of the complainant and gave fist blows to his mouth as well as allegedly kept a knife at his neck, whereafter, the friend of the complainant got scared and ran from



the spot of the incident in order to inform the police.

4. It is alleged that the accused persons, thereafter, snatched a sum of ₹700/- from the complainant and ran away from the spot of the incident.

5. It is alleged that the complainant requested some nearby people to help him, however, they refused and told him to take assistance of the police.

6. The complainant, thereafter, reached the nearby Police Station and pursuant to his complaint, police registered FIR No. 1675/2015 under Sections 392/394/397/34 of the IPC.

7. Subsequently, the accused/respondent was arrested in the present case. The learned Trial Court *vide* order dated 21.04.2016 framed charges under Section 392 read with Section 34 of the IPC, Section 397 of the IPC, Section 394 read with Section 34 of the IPC to which he pleaded not guilty and claimed trial.

8. The accused/respondent in his statement under Section 313 of the CrPC, denied the entire evidence against him and stated that he has been falsely implicated in the present case.

9. The learned Trial Court after appreciating the entire evidence on record by the impugned judgment, convicted the accused/respondent for the offence under Sections 392/394/34 of the IPC, however, acquitted the accused/respondent for the offence under Section 397 of the IPC.

10. The impugned judgment is challenged to the extent of seeking conviction under Section 397 of the IPC.

11. The learned Additional Public Prosecutor for the State submits that the impugned judgment is based on imaginations, presumption, conjectures and is liable to be set aside.

12. She submits that the learned Trial Court failed to



appreciate the evidence that surfaced during the course of trial, which clearly shows that the accused/respondent ought to have been convicted for the offence under Section 397 of the IPC.

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 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)

15. The learned Trial Court *vide* the impugned judgment acquitted the accused/respondent on the ground that the prosecution failed to prove that the accused/respondent had committed an offence under Section 397 of the IPC.

16. The learned Trial Court noted that PW-1, complainant during his examination-in-chief had deposed on the lines of his statement given at the time of registration of the present FIR.

17. During his cross-examination, the complainant stated that the accused/respondent had allegedly used a vegetable knife, which was rusted and had no handle. He further stated that at the time of arrest of the accused/respondent no such knife had been recovered at his instance.

18. PW-7, Sub-Inspector Subhash Chandra who was the Investigating Officer in the present case, during his cross-examination also admitted to the fact that no knife had been recovered from the accused/respondent at the time of his arrest.

19. It is the contention of the learned Additional Public Prosecutor for the State that the vegetable knife used by the accused/respondent is a deadly weapon and the accused/respondent ought to have been convicted under Section 397 of the IPC.

20. Section 397 of the IPC reads as under:

“397. Robbery or dacoity, with attempt to cause death or grievous hurt.—*If, at the time of committing robbery or dacoity, the offender uses any deadly weapon, or causes grievous hurt to any person, or attempts to cause death or grievous hurt to any person, the imprisonment with which such offender shall be punished shall not be less than seven years.”*



21. From a perusal of Section 397 of the IPC, the accused has to commit the offence using a deadly weapon in order to be convicted under the said provision.

22. This Court in the case of ***Manoj Kumar v. State (Govt. of NCT of Delhi) : CRL. A. 965/2017*** while dealing with the issue of whether a vegetable knife can be considered as a deadly weapon observed as under:

“8. The version of the prosecution itself is that the weapon in the instant case is a vegetable cutting knife, it cannot really be considered as a “deadly weapon”. This is taking into account the size of the blade as also the nature of injury suffered by the victim.

9. The prosecution thus having failed to prove that the knife which was used fell within the four corners of the definition of a “deadly weapon”;”

23. In the present case, it is alleged that the accused/respondent at the time of the alleged offence used a vegetable knife, however, in view of the judgment passed by this Court in the case ***Manoj Kumar v. State (Govt. of NCT of Delhi)*** (**supra**) a vegetable knife cannot be considered as a deadly weapon.

24. Further, it is undisputed, that the alleged knife used by the accused/respondent was not recovered at the time of his arrest, neither any evidence was led nor any public witnesses were examined by the prosecution in order to corroborate the allegations levelled against the accused/respondent.

25. Therefore, the contention of the Additional Public Prosecutor for the State that the accused/respondent used a deadly weapon and ought to have been convicted for the offence under Section 397 of the IPC is bereft of any merit.

26. 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.

27. The leave petition is dismissed in the aforesaid terms. Pending application(s), if any, also stand disposed of.

AMIT MAHAJAN, J

AUGUST 19, 2025