



2024:DHC:8469



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

Date of decision: 29th OCTOBER, 2024

IN THE MATTER OF:

+ **CRL.A. 739/2024 & CRL.M.As. 24289/2024, 24290/2024, 24291/2024, 24294/2024**

XXX

.....Appellant

Through: Mr. Sujeet Kumar Gupta and Mr.
Sanjiv Kumar, Advocates.

versus

STATE NCT OF DELHI AND ANR.

.....Respondents

Through: Mr. Aman Usman, APP for the State.
SI Salman Ahmed, PS Hauz Khas

CORAM:

HON'BLE MR. JUSTICE SUBRAMONIUM PRASAD

JUDGMENT

1. Aggrieved by the Order dated 20.04.2023 passed by the Ld. Metropolitan Magistrate-02, Mahila Court, South, Saket Court, Delhi acquitting Respondent No.2/accused herein in FIR No.799/2015 dated 21.07.2015, registered at Police Station Hauz Khas for offences punishable under Sections 323/452/354/427/506 IPC, the Appellant/Complainant has approached this Court by filing the present appeal.

2. The facts as stated by the Ld. Magistrate in the Impugned Order dated 20.04.2023 are that on 21.07.2015 some repairing work was going on in the house of the Appellant/Complainant and when she was alone in the house, the Respondent No.2/accused came to the house of the Appellant/Complainant and started threatening her and asked her to stop repairing work else he would kill her. It is stated that when the



Appellant/Complainant refused, the Respondent No.2/accused forcefully entered the house of the Appellant/Complainant and twisted her hands, caught hold of her breast and started beating her. It is stated that when the Appellant/Complainant shouted, the Respondent No.2/accused pushed the Appellant/Complainant and ran away from the spot and went down stairs. It is stated that, thereafter, the Respondent No.2/accused started damaging things kept for repairing and damaged three pots. It is stated that Respondent No.2/accused abused the Appellant/Complainant and at the same time threatened her and asked her to stop the repair work otherwise he would kill the Appellant/Complainant and her son. On the said complaint, the present FIR was registered against the Respondent No.2/accused. After investigation, chargesheet was filed against the Respondent No.2/accused for offences punishable under Sections 323/452/354/427/506/34 IPC.

3. The prosecution examined 07 witnesses. PW-1 is the Complainant and PW-2 is the son of the Complainant. PW-3 to PW-6 are police witnesses and PW-7 is a doctor who has prepared the MLC. The statement of Respondent No.2/accused was recorded. The Ld. learned Metropolitan Magistrate, after analysing the depositions and the material before him, acquitted the Respondent No.2/accused *vide* the Impugned Order by stating that there are contradictions between the deposition given by PW-1 in Court and statement given by PW-1 under section 164 Cr.P.C. It was held that there are also contradictions between the statement of PW-1 and PW-2. It was held that there is a complete absence of corroboration of statements as there is no documentary or electronic evidence to support the allegations and there are no independent witnesses. It was held that there is presence of previous enmity between the family of the Appellant/Complainant and



family of the Respondent No.2/accused. The Ld. MM was, therefore, of the opinion that there is a big doubt upon the prosecution story and the benefit of the doubt should be given to the Respondent No.2/accused.

4. It is this Order dated 20.04.2023 passed by the Ld. MM which is under challenge in the present appeal.

5. The Appellant/Complainant has chosen to file the present appeal directly before this Court. The proviso to Section 372 gives a right to the victim to prefer an appeal against any order passed by the Court acquitting the accused or convicting for a lesser offence or imposing inadequate compensation, and such appeal shall lie to the Court to which an appeal ordinarily lies against the order of conviction of such Court.

6. Section 378 of Cr.P.C provides for an appeal in case of acquittal. Section 378 Cr.P.C reads as under:

"378. Appeal in case of acquittal.—[(1) Save as otherwise provided in sub-section (2), and subject to the provisions of sub-sections (3) and (5),—

(a) the District Magistrate may, in any case, direct the Public Prosecutor to present an appeal to the Court of Session from an order of acquittal passed by a Magistrate in respect of a cognizable and non-bailable offence;

(b) the State Government may, in any case, direct the Public Prosecutor to present an appeal to the High Court from an original or appellate order of acquittal passed by any Court other than a High Court [not being an order under clause (a)] or an order of acquittal passed by the Court of Session in revision.]

(2) If such an order of acquittal is passed in any case



in which the offence has been investigated by the Delhi Special Police Establishment constituted under the Delhi Special Police Establishment Act, 1946 (25 of 1946), or by any other agency empowered to make investigation into an offence under any Central Act other than this Code, [the Central Government may, subject to the provisions of sub-section (3), also direct the Public Prosecutor to present an appeal—

(a) to the Court of Session, from an order of acquittal passed by a Magistrate in respect of a cognizable and non-bailable offence;

(b) to the High Court from an original or appellate order of an acquittal passed by any Court other than a High Court [not being an order under clause (a)] or an order of acquittal passed by the Court of Session in revision].

(3) [No appeal to the High Court] under sub-section (1) or sub-section (2) shall be entertained except with the leave of the High Court.

(4) If such an order of acquittal is passed in any case instituted upon complaint and the High Court, on an application made to it by the complainant in this behalf, grants special leave to appeal from the order of acquittal, the complainant may present such an appeal to the High Court.

(5) No application under sub-section (4) for the grant of special leave to appeal from an order of acquittal shall be entertained by the High Court after the expiry of six months, where the complainant is a public servant, and sixty days in every other case, computed from the date of that order of acquittal.

(6) If, in any case, the application under sub-section



(4) for the grant of special leave to appeal from an order of acquittal is refused, no appeal from that order of acquittal shall lie under sub-section (1) or under sub-section (2)."

7. The appeal against the Impugned Order dated 20.04.2023 passed by the Ld. MM which is sought to be challenged by the Appellant/Complainant before this Court lies to the Sessions Court. The present case is not a complaint case and the Complainant, therefore, cannot approach this Court directly by filing the present appeal. The remedy of the Complainant is to file an appeal before the Court of Sessions.

8. No doubt, Section 397 Cr.P.C gives power to the High Court to *suo moto* call for and examine the records of any proceeding before any inferior criminal Court situated within its local jurisdiction for the purpose of satisfying itself as to the correctness, legality or propriety of any finding, Sentence or order but such a power has to be exercised sparingly.

9. This Court, after looking at the material before it, is of the opinion that the present case is not a case where the High Court can exercise its powers under Section 397 Cr.P.C, especially, when an appeal is provided under the Cr.P.C. This Court does not find any serious infirmity in the reasoning given by the Ld. MM in the Impugned Order so as to exercise its *suo motu* power under Section 397 Cr.P.C more so because as stated earlier that an appeal is provided under the Cr.P.C.

10. In view of the above, the present appeal is dismissed, along with pending application(s), if any, on the ground of maintainability

11. It is always open for the Appellant/Complainant to file an appeal before the Sessions Court. In case an appeal is filed by the



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Appellant/Complainant, the Sessions Court is directed not to take into account the time taken between filing of the present appeal till its disposal by this Court.

12. It is made clear that this Court has not expressed any opinion on the merits of the case as it will have the effect to prejudice the right of the Appellant/Complainant to file an appeal.

SUBRAMONIUM PRASAD, J

OCTOBER 29, 2024

S. Zakir