



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

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*Reserved on: 01st August, 2025
Pronounced on: 07th August, 2025*

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W.P.(CRL) 486/2020

ADITYA RAI GUPTA

S/o late Shri Subhash Rai Gupta
R/o 5, Vaishali, Pitampura, Delhi

.....Petitioner

Through: Appearance not given

versus

STATE

.....Respondent

Through: Ms. Rupali Bandhopadhyaya, ASC with
Mr. Abhijeet Kumar and Ms. Amisha
Gupta, Advocates alongwith SI Vikas
Yadav, P.S. Rajouri Garden

CORAM:

HON'BLE MS. JUSTICE NEENA BANSAL KRISHNA

J U D G M E N T

NEENA BANSAL KRISHNA, J.

1. Petition under Article 226 of Constitution of India read with Section 482 of the Code of Criminal Procedure, 1973 (*hereinafter referred to as the "Cr.P.C."*) has been filed for quashing of Judgment dated 23.04.2018 and the Order on Sentence dated 23.04.2018 of learned MM.

2. *Briefly stated*, FIR No. 0119/2018 dated 24.02.2018 was registered against the Petitioner under *Section 3 Delhi Prevention of Defacement of Property Act, 2007* (*hereinafter referred to as the "DPDP Act"*). He was informed by one police official on 03.04.2018 to appear before the Court on



20.04.2018. Accordingly, he appeared before the learned MM and was not represented by any Counsel. He again appeared before the Court on 23.04.2018. He was completely uninformed about the proceedings that took place before the learned MM. On 23.04.2018, he was asked to deposit a fine of Rs.1,000/- before the Court. He duly complied with the directions despite the fact that he was not aware of the nature of the proceedings.

3. In October, 2019, he applied for renewal of his Passport and upon verification; his conviction under DPDP Act was recorded. He was completely shocked and surprised on this information as he was unaware of the conviction. He inspected the Court records through his Counsel and found that he had been *released on probation* under Probation of Offenders Act, 1958.

4. It is submitted that the entire trial from the passing of a Bail Order to framing of Notice and recording of evidence was done on one date. His statement under Section 313 Cr.P.C. and pronouncement of judgment was done on the second date.

5. The impugned Judgment and the Order on Sentence are challenged ***on the grounds*** that the Trial Court had conducted the trial in undue haste as no time was granted to the Petitioner to engage a Counsel to defend him before the Trial Court on the first date i.e. 20.04.2018, on which date cognizance was taken. Moreover, even the copy of the Charge-sheet was not provided to him. He was not given an opportunity to engage an Advocate. The entire prosecution evidence was also recorded without giving an opportunity to him to cross-examine the witnesses. On 23.04.2018, the entire trial was concluded and the sentence was also pronounced.



6. It is contended that the procedure followed by the learned MM was completely in violation of the principles of natural justice as he was not given any right to defend himself. Furthermore, the Judgment is completely contrary to the record. In Paragraph 5 of the Judgment, it is stated that Petitioner has admitted the allegations in his statement under Section 313 Cr.P.C. when in fact, he had stated that he had been implicated falsely in this case. Reliance is placed on Zahira Habibulla H. Sheikh vs. State of Gujarat, (2004) 4 SCC 158 wherein it was held that the charge has to be proved beyond reasonable doubt after judicial evaluation of the evidence, oral and circumstantial and not by an isolated scrutiny. Failure to accord fair hearing either to the Accused or the Prosecution violates even minimum standards of due process of law.

7. The condemnation under law should be rendered only after the trial in which hearing is a real one and not sham or a mere farce and pretence. Since the fair hearing requires an opportunity to preserve the process, it may be vitiated and violated by an overhasty, stage-managed, tailored and partisan trial.

8. Furthermore, the Notice under Section 251 Cr.P.C. was framed on the same day on which evidence had been recorded. No opportunity was given either to cross-examine or to lead evidence in his defence. He was even not provided with the copy of the Judgment.

9. It is submitted that the Appeal against such conviction is barred under Section 376 Cr.P.C. as neither any sentence nor any fine has been imposed upon the Petitioner and has been released on admonition. *Therefore, the*



present Writ Petition has been filed for quashing of the Judgment dated 23.04.2018 and the Order on Sentence dated 23.04.2018.

10. ***The Status Report*** has been filed on behalf of the State wherein the details about the filing of the Complaint and the Order of the learned Trial Court are mentioned.

Submissions heard and record perused.

11. In the present case, the Petitioner was convicted under Section 3 DPDP Act vide Judgment dated 30.04.2018 and was sentenced to admonition under Probation of Offenders Act *vide* Order dated 23.04.2018.

12. ***The first question*** which arises is in regard to maintainability of this Appeal. ***Section 376 Cr.P.C.*** provides that *No Appeal lies in petty cases*. It provides that where the sentence passed is for imprisonment for a term not exceeding 03 months or a fine not exceeding Rs.200 or both, then no Appeal is maintainable.

13. The predicament of the Petitioner is evident from the fact that the sentence awarded to him even if of admonition, by virtue of Section 376 Cr.P.C., he is prevented from challenging the Judgment by way of an Appeal.

14. While a sentence of admonition may not be challengeable under Section 376 Cr.P.C., but ***Section 11(2) of Probation of Offenders Act*** provides that notwithstanding anything contained in the Court or any other law, against an Order under Section 3 or Section 4 of this Act by any Court trying the offender, an Appeal would lie to the Court to which Appeals ordinarily lie from the sentence of the Court. This Section though permits filing *an Appeal to challenge the sentence of admonition* imposed under



Section 3 of the Probation of Offenders Act, but this also has been limited to challenging the Order of admonition and not the Judgment of conviction. Petitioner herein is not aggrieved by the sentence of admonition but by the Judgment of conviction, which is patently against the principles of law.

15. The Petitioner has no other alternate remedy but to challenge his conviction under Article 226 of Constitution of India since he claims that denying him the opportunity to be heard and not permitting him engage an Advocate for his representation, is violative of principles of nature justice and his constitutional right under Article 21.

16. To appreciate his contentions, facts of the case may be considered. A fresh challan under Section 3 DPDP Act was filed before the learned MM on 20.04.2018. Pertinently, he took cognizance of the offence against the Petitioner and passed an Order for grant of Bail. He directed that “*the Accused is admitted to bail on furnishing his bail bond for a sum of Rs.10,000/- with one surety in the like amount. Personal bond has been furnished and accepted today in the Court.*”

17. Pertinently, though the direction has been given for furnishing a bail bond and a surety bond but on that day, only the personal bond of the Petitioner/Accused is accepted. It only reflects the haste in the mind of the learned MM in concluding the trial. It is not understandable that if the learned MM wanted to proceed with further trial on the same date, he could have asked for furnishing of a *Personal Bond* rather than directing the furnishing of bail bond and the surety bond. This discrepancy itself reflects the non-application of mind and also undue haste in denying an opportunity to the Petitioner to be sufficiently represented.



18. Further, on the same date i.e. 20.04.2018, the Notice under Section 3 DPDP Act was framed to which the Accused/Petitioner pleaded not guilty. Thereafter, there and then, PW-1 is examined and the Prosecution evidence was closed. All this has been done in one day on which the Charge-sheet was filed, which clearly speaks of the hurry in which the learned MM wanted to conclude the trial.

19. One interesting fact which emerges from the record is that one witness i.e. PW-1 HC Shiv Prasad who was examined, was the IO who had carried out investigations on Complaint dated 12.01.2018 received from Suresh Kumar Yadav, AISTMC in regard to defacement of property. It has been rightly contended that no opportunity whatsoever was given to the Petitioner either to engage the Counsel or to cross-examine the Prosecution witness.

20. Further, PW-1 was not a witness to the punishable act but was only an IO. The most material witness to prove the contents of the Charge-sheet was Suresh Kumar Yadav/ the Complainant, but interestingly, he has not been examined. In his absence, it cannot be said that the case of the Prosecution, stood proved. The IO was not a competent witness to prove the case of the Prosecution. Infact, the evidence of the Prosecution did not prove the commission of offence.

21. On the next date i.e. 23.04.2018, the statement of the Accused was recorded under Section 313 Cr.P.C. wherein he denied the entire incriminating evidence. But interestingly, in Paragraph 7(iv) of the Judgement, it has been observed that “*Moreover Accused has also admitted the allegations of putting a board in the statement recorded under Section*



313 Cr.P.C.” This is patently against the record as nowhere did the Petitioner admitted the incriminating evidence in his statement under Section 313 Cr.P.C.

22. From the entire record, it is evident that not only has the Petitioner been denied a right of fair hearing and to defend himself but the Judgment itself is based on circumstances which have neither been proved by the Prosecution nor admitted by the Petitioner.

23. Reference may also be made to **Section 12 of Probation of Offenders Act**, which provides that notwithstanding anything contained in any other law for person found guilty of an offence and dealt with under provisions of Section 3 and 4, shall not suffer any disqualification, if any, attached to the conviction of an offence under such law.

24. The contention of the Petitioner is that this conviction came in his way when he sought the renewal of his passport. While Section 12 of Probation of Offenders Act clearly provides that any sentence of admonition under Probation of Offenders Act would not lead to any disqualification attached to the conviction for an offence, but here is a case of blatant denial of right to fair hearing and the Judgment, patently on the face of it, is against the law.

25. Though, the legislation in its wisdom had thought it appropriate to not let the conviction resulting in petty sentence to be challengeable, but in the present case of patent illegality, this Court deems it appropriate to set aside the Judgment dated 23.04.2018 as well as the Order on Sentence dated 23.04.2018.



26. The Petitioner is directed to appear before the Trial Court on 18.08.2025 and the entire trial be conducted afresh in accordance with procedure, after giving an opportunity to the Petitioner to engage a counsel and right of fair trial.

Relief:

27. The Judgment as well as the Order on Sentence is set aside.

28. The Petition is allowed and disposed of accordingly, along with pending Application(s), if any.

**(NEENA BANSAL KRISHNA)
JUDGE**

AUGUST 07, 2025

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