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

+ **CRL.L.P. 291/2022**

THE STATE (NCT OF DELHI)

.....Petitioner

Through: Mr. Sunil Kumar Gautam,
APP for the State with SI
Ambika, PS SB Dairy.

versus

RANJEET

.....Respondent

Through:

CORAM:

HON'BLE MR. JUSTICE AMIT MAHAJAN

ORDER

18.03.2025

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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 10.02.2022 (hereafter '**the impugned judgment**'), passed by the learned Additional Sessions Judge ('ASJ'), Rohini Courts, Delhi in Sessions Case No. 27/2017 arising out of FIR No. 769/2016.

2. The FIR was registered on a complaint given by the victim under Sections 354D/506 of the Indian Penal Code, 1860 ('IPC') and Section 12 of the Protection of Children from Sexual Offences Act, 2012 ('POCSO') It was alleged that the respondent stalked the victim, sexually harassed her and also threatened to kill her brother.

3. The respondent was charged with the offences under Sections 354D/506 of the IPC and Section 12 of the POCSO Act.

4. By the impugned judgment, the learned ASJ acquitted the respondent of the charged offences. It was noted that undisputedly, at the time of the commission of the alleged offence, the victim was around the age of 16 years thereby falling



within the definition of the term “child” under Section 2(d) of the POCSO. It was noted that the subject FIR was registered on 24.10.2016, however, the victim had herself stated that the respondent had been allegedly stalking and sexually harassing her for the past 1 year. It was noted that the prosecution had failed to explain the delay in lodging the FIR, which though did not affect the merits of the case, did create a grave doubt in the story of the prosecution.

5. The learned ASJ noted that the prosecution, in order to bring home the guilt of the respondent, had produced the victim (PW-1) as witness. It was noted that the victim in her statement under Section 164 of the Code of Criminal Procedure, 1973 had categorically named the respondent and had levelled the allegations of stalking and threat against him. It was however noted that the victim had taken a completely different stand in her cross examination, and had completely denied the allegations against the respondent and had stated that the respondent had never threatened, stalked or committed sexual harassment against her. It was noted that the victim could not depose about the date or time when the alleged incident took place and had stated that it was not the respondent but his friends who used to threaten her. She further stated that since the name of the accused persons were not known to her, she levelled false allegations against the respondent.

6. In order to seek corroboration to the story of the prosecution, the learned ASJ further took into consideration the testimony of the father of the victim (PW-3). It was noted that in the cross examination by the counsel for the respondent, PW-3 categorically deposed that the respondent never stalked or



sexually harassed his daughter, and that the name of the respondent was taken by mistake. Contrarily, in the cross examination by the learned Special Public Prosecutor, PW-3 deposed that the respondent did stalk his daughter but never said or did anything to sexually harass the victim. However, upon the cross examination conducted by the counsel for the respondent again, PW-3 reiterated that he never saw the respondent stalking his daughter. The learned ASJ noted that from the testimony of PW-3, it could not be said that the guilt of the respondent stood proved beyond reasonable doubt. It was further noted that the witness had failed to support the case of the prosecution.

7. Upon a consideration of the totality of circumstances, the learned ASJ noted that the respondent had successfully rebutted the presumption of culpable mental state raised against him under Section 30 of the POCSO. It was noted that the victim had herself not supported the case of the prosecution. It was further noted that the charge under Section 506 of the IPC was not made out against the respondent as no cogent evidence had been brought forth by the prosecution. The learned ASJ noted that there existed no whisper of any specific word, gesture or manner in which the respondent allegedly threatened the victim. Consequently, the learned ASJ acquitted the respondent of the charged offences.

8. The learned Additional Public Prosecutor for the State submits that the impugned judgment is based on conjectures and surmises and is liable to be set aside. He submits that the learned ASJ erred in appreciating the testimony of the material witnesses. He submits that in accordance with Section 30 of the POCSO, the respondent was bound to dislodge the presumption of culpable



mental state raised against him. He submits that the learned ASJ did not take into consideration the fact that the victim, in her cross-examination, volunteered and deposed before the Court that the respondent had married and that she did not want to proceed against the respondent.

9. He submits that the learned ASJ failed to take into consideration that in cases involving sexual harassment, minor contradictions or insignificant discrepancies ought to be ignored, and the same should not be a ground to disbelieve the case of the prosecution.

Analysis

10. 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 ***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”. 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.

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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 reappreciation, 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)

11. Before delving into the evidence relied upon by the prosecution to showcase the guilt of the respondent, the learned ASJ noted that there had been a delay of one year in lodging the FIR. It was noted that while it had been alleged that the respondent had been harassing and stalking the victim for the past one year, the FIR was only registered on 24.10.2016, and that the said delay in lodging the FIR remained unexplained.

12. In order to establish the guilt of the respondent, the prosecution relied upon the testimony of 09 witnesses out of which PW-1 victim ‘K’, and PW-3 ‘SJ’ (father of the victim) were material witnesses. The learned ASJ briefly considered the testimonies of the formal witnesses being PW-2 Anita (teacher



from victim' school) who deposed regarding the admission of the victim in the school, and the date of birth of the victim, PW-4 (learned Metropolitan Magistrate) who recorded the statement of the victim under Section 164 of the CrPC, and the other witnesses who formed part of the investigation.

13. The learned ASJ considered the evidence of the material witnesses being PW-1 'K' (the victim), and PW-3 'SJ' (the father of the victim), on the basis of which, the prosecution attempted to bring home the guilt of the respondent.

14. As the entire case of the prosecution as well as the grounds of challenge are based on the statements of the material witnesses, including the victim and her father, it is imperative to consider their evidence before determining whether leave ought to be granted to the State.

15. In her statement, the PW-1 victim stated that the respondent and his friends used to follow her whenever she was going or returning from school. She stated that since she was not aware of the name of the friends of the respondent, she only gave the name of the respondent to the police. She stated that when she asked the respondent and his friends to not follow her, they threatened her of dire consequences. Thereafter, she stated that when her family members decided to give the said information to the police, the respondent sought an apology and undertook to not engage into any such activity in the future. She further stated that on 24.10.2016, the respondent and his friends once again followed her. She also stated that the respondent's friends asked her to talk to them on phone which should the victim fail to do so, they would harm the victim's brother.

16. This Court has duly considered that the victim is a child,



and minor contradictions in her statement would not adversely impact the matter. It is trite law that the accused can be convicted solely on the basis of evidence of the complainant / victim as long as same inspires confidence and corroboration is not necessary for the same [Ref. *Nirmal Premkumar v. State* : 2024 SCC OnLine SC 260].

17. However, having noted so, it is imperative to examine whether the contradictions, if any in the present case, were such so as to adversely impact the matter. From a bare perusal of the material on record, it is evident that the victim herself retreated from her stance during her cross-examination. As rightly also appreciated by the learned ASJ, the victim when cross-examined by the learned counsel for the respondent, stated that the respondent never threatened, stalked or sexually harassed her. The relevant portion is reproduced as under:

“Mujhe ghatna ki tariq aur samay yaad nahi hai. Mujhe mulzim ne dhamki nahi dee thee. Vol. Uskey doston ne dee thee. Mulzim ne mere sath kabhi badtameezee nahi ki thee. Mujhe dhyan nahi ki police ne mera bayan kahan likha tha. Ye baat sach hai ki mulzim ne kabhi bhi na mera peeche kiya aur na kabhi dhamki dee uskey dost ye sab kartey they. Mai sirf Ranjeet ko janti hoon isliye maine uska naam liya. Vol. Mulzim bhi sath mai hota tha lekin boltey uskey dost they.”

18. It is evident that the victim has completely denied the allegations against the respondent, and has herself categorically stated that the respondent never threatened or stalked her. The learned ASJ rightly noted that the victim could not even depose regarding the date and time of the alleged incident and herself maintained that it was not the respondent but his friends who used to threaten her, and that the name of the respondent was only taken because the respondent was known to the victim. Considering that the stance taken by the victim was not without



blemish, the learned ASJ sought to delve upon the testimony of PW-3 (father of the victim).

19. In his statement, PW-3 stated that on 24.10.2016 her daughter had informed that the respondent used to follow her, and had followed her even on that day. He stated that the victim had further informed him that along with the respondent, there were 4-5 other boys who also used to follow her, and also harass her.

20. When cross-examined by the learned counsel for the respondent, PW-3 stated that the name of the respondent was mistakenly taken by the victim. The relevant portion is reproduced as:

“Yeh thik hai ki muljim Ranjeet ne meri beti ko kabhi nahi cheda aur na hi kuch kaha. Yeh thik hai ki Jab hamne apni ladki se pucha to usne bataya ki Ranjeet ka maine gaiti se le diya tha.”

21. Thereafter, the respondent was re-examined by the learned Special Public Prosecutor for the State. At the stage, PW-3 stated that the respondent only stalked the victim but did not say anything to her. However, when PW-3 was again cross examined by the learned counsel for the respondent, he stated that he never saw the respondent stalking his daughter. The relevant portion is reproduced as:

“Yeh thik hai ki maine kabhi muljim Ranjeet ko kabhi apni beti ka picha karte hue nahi dekha”

22. From a perusal of the testimony of PW-3, it is evident that he took contradictory stands when examined by the SPP and the counsel for the respondent. The learned ASJ rightly noted that the testimony of PW-3 was as such hearsay, and not much weightage could be given to the testimony of PW-3, since admittedly he never saw the respondent stalking or sexually



harassing his daughter. It was noted that PW-3 stated that he was told by the victim herself that the respondent never stalked or harassed her. Consequently, the learned ASJ rightly noted that even from the testimony of PW-3, it cannot be said that the guilt of the respondent stood proved beyond reasonable doubt, and that the witness did not support the case of the prosecution.

23. The learned ASJ further noted that the present case was one where there existed repeated allegations of stalking. It was noted that the victim, in her statement under Section 164 of the CrPC, stated that one of her friends had given the phone number of the victim to the respondent, and the respondent for the past 1 year had allegedly been sending obscene messages to the victim which were deleted by her own brother. It was noted that neither the said friend nor the brother of the victim had been produced by the prosecution in the witness box.

24. The learned ASJ rightly noted that there would have been multiple public persons in the vicinity or other school friends or neighbours who would have been present in the area, and could have deposed regarding the incident. It was noted that from the testimony of the police party, it transpired that no efforts had been made to join any public witness or take the statements of the neighbours in the vicinity.

25. Upon a perusal of the material on record, this Court does not find any infirmity in the observations made by the learned ASJ. It is evident that the inconsistencies in the stance taken by the victim and her father are material in nature, and cast a doubt on the case of the prosecution which consequently led to the acquittal of the respondent. When the prosecution seeks to base its entire case on the testimony of material witnesses, the same



ought to be examined minutely.

26. Much emphasis has also been laid upon Section 30 of the POCSO to contend that there exists a presumption of culpable mental state on the part of the accused. Section 30 of the POCSO reads as:

30. Presumption of culpable mental state.—

(1) In any prosecution for any offence under this Act which requires a culpable mental state on the part of the accused, the Special Court shall presume the existence of such mental state but it shall be a defence for the accused to prove the fact that he had no such mental state with respect to the act charged as an offence in that prosecution.

(2) For the purposes of this section, a fact is said to be proved only when the Special Court believes it to exist beyond reasonable doubt and not merely when its existence is established by a preponderance of probability.
Explanation.— In this section, “culpable mental state” includes intention, motive, knowledge of a fact and the belief in, or reason to believe, a fact.

27. In accordance with Section 30 of the POCSO, for any offence committed under the POCSO requiring a culpable mental state on the part of the accused, there is a presumption of existence of culpable mental state on the part of the accused. However, Section 30 of the POCSO also clarifies that the said presumption *albeit* mandatory is also rebuttable in nature [Ref. ***Just Rights for Children Alliance & Anr. V. S. Harish & Ors. : 2024 INSC 716***].

28. In the present case, as rightly noted by the learned ASJ, the respondent had been successful in rebutting the presumption of culpable mental state raised against him for commission of offence under Section 12 of the POCSO as the victim herself had denied all the allegations and had not supported the case of the prosecution. As rightly appreciated by the learned ASJ, no other cogent evidence could be brought on record to establish the guilt of the respondent.



29. Insofar as Section 506 of the IPC is concerned, the only allegation made against the respondent is that he intimidated and threatened the victim that should she not speak with the respondent over phone despite her disinterest, the respondent would harm her brother.

30. A bare perusal of Section 506 of the IPC makes it clear that before an offence of criminal intimidation is made out, it must be established that an accused had an intention to cause alarm to the complainant. Mere threats given by the accused not with an intention to cause alarm to the complainant would not constitute an offence of criminal intimidation.

31. In the present case, the allegations made against the respondent have not been proved by way of any cogent evidence. It is pertinent to note that nothing has been stated in relation to the manner in which the victim was threatened by the respondent. As rightly noted by the learned ASJ, both the material witnesses, being the victim and her father, have deposed that the respondent did not say anything to the victim nor did he sexually harass her.

32. 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.

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

AMIT MAHAJAN, J

MARCH 18, 2025