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

CNR No. DLHC014599652017

+ **CRL.L.P. 605/2017**

STATE OF NCT OF DELHI

.....Petitioner

Through: Mr. Naresh Kumar Chahar, APP with
SI Sachin, PS Karol Bagh.

versus

VIJAY KUMAR

.....Respondent

Through: Mr. Sunil Lalwani, Advocate along
with Respondent present.
(Through VC)

CORAM:

HON'BLE MR. JUSTICE PURUSHAINDRA KUMAR KAURAV

ORDER

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02.09.2026

1. This application under Section 378(1)(b) of the Code of Criminal Procedure, 1973 (Cr.P.C.) has been preferred by the State seeking leave to appeal against the judgment dated 11.05.2017 passed by the learned Special Judge (POCSO Act)/ASJ (Central), Tis Hazari Courts, Delhi, in FIR No.237/2014 registered at PS Karol Bagh, Delhi under Section 354 of the Indian Penal Code, 1860 and Section 10 of the Protection of Children from Sexual Offences Act, 2012.
2. By the impugned judgment, the respondent/accused Vijay Kumar has been acquitted of the offences with which he was charged.
3. The genesis of the prosecution case lies in DD No.42-A recorded on 19.04.2014 regarding molestation of a girl near Khalsa College. The



information was entrusted to PW-9 SI Bijender Singh, who contacted the first informant and reached Gali No.60, near House No.4301, Regarpura, Karol Bagh, Delhi. The complainant Jugal Kishore, father of the twelve-year-old victim, met the police and his statement was recorded. On the basis of his statement, FIR No.237/2014 came to be registered.

4. During investigation, the statement of the victim was recorded and her statement under Section 164 Cr.P.C. was also recorded. The respondent was arrested on 20.04.2014. After completion of investigation, chargesheet was filed.

5. Charges under Section 354 IPC and Section 10 of the POCSO Act were framed against the respondent. The prosecution examined nine witnesses. The statement of the respondent under Section 313 Cr.P.C. was recorded, and no defence evidence was led.

6. The Trial Court, however, acquitted the respondent. The Trial Court, *inter alia*, found the prosecution version improbable on the ground that the alleged incident had taken place in a residential gali in the presence of the victim's parents and other children and residents. It also noticed the absence of independent public witnesses.

7. The Trial Court also took note of the alleged previous dispute between the complainant and the respondent and the inconsistencies between the version of the victim and that of her father regarding the raising of alarm by the victim and other children.

8. The Trial Court in paragraph nos.8 and 9 has rendered the following findings:

“8. Skin is very sensitive and human skin responds to the slightest of the touch of any foreign object. If any object comes into the slightest contact of the human skin, a message is sent to the mind and the person in question



becomes alert. Such is the sensitiveness of the skin that even the breeze is felt by the skin as to whether it is there or not, it is hot or cold so on and so forth. In these circumstances, is it possible for anybody to remain unaffected unperturbed a touch which is purportedly vicious and negative that too at the private parts of a female child and it will remain unnoticed by the child in question, who is not an infant and for that matter even an infant too responds and reacts to the touch. In the instant case, the victim happens to be a girl of about 12 years of age, not too young nor too mature, but certainly of such an age where she has this consciousness, given the exposure in the society, to at least feel the touch, if not ascertain or judge the nature of it. But it cannot be believed that she would remain unaffected and would not notice at all if her private parts are being caressed. This fact itself puts a big question mark on the prosecution's case and the crisis of the credibility starts looming over the case right from the very inception.

9. It has come on record in the testimony of the complainant that incident took place in the summer months i.e. on 19.04.2014 when not only the complainant, but almost all the residents of the 'gali' preferred to sit outside their houses in the 'gali' in order to mitigate the impact and severity of the heat. On the fateful day, the complainant too was sitting in his gali alongwith his wife, when he noticed the accused touching his daughter at her private parts. The child was unmindful of such a touch and so were the other children who were playing alongwith her, so much so that none of the children or the victim noticed or reacted to it, but the father of the victim i.e. the complainant could see it and caught hold of the accused. Even if it is presumed that accused was indulging in such activities, but on the scale of probability, it does not find favour that a person would molest or try to molest a girl in the presence of her parents who were sitting very close to the place where the children were playing and there were other persons in the gali, besides the children playing with the victim. In any case, if the accused was caught hold of by the complainant, and was not permitted to leave that place for about 15 minutes or so, then in that case there must be some independent, public witnesses to the incident or post incident apprehension/altercation, but none is there. It is a matter of common knowledge and has been admitted by the complainant that the gali in which the incident in question took place is in a residential area which is thickly populated. Judicial notice of this fact can be taken that the area of Karol Bagh is an area which is densely populated and presence of the persons on the streets can be very well visualized till late in the evening, whereas the incident has taken place at about 7.30 P.M. when a lot of movement must be there on the roads. In such circumstances, how any person can dare to tease a female child that too practically in front of her house where her parents are sitting and there are certain more persons and children who were also playing. Even, if it is presumed that the accused dared to do something like



that, how the victim would remain unaffected and would not notice of her own rather her parents would. On the parameters of human conduct and behaviour in a given circumstance, the narration does not fit and seem highly improbable, rather nearly impossible.

10. Against the backdrop of these facts and circumstances, the other aspects which have been pointed out by the Counsel for the accused becomes relevant and potent, for instance the complainant has stated that the accused belongs to the same vicinity which fact was there in his knowledge who managed to flee on the day of incident shoes address was not known to the complainant, before the arrival of the police. But the tehir / the statement on which the FIR has been registered, contains not only the name of the accused, but his address as well, to the precision of not only the house number but the floor of the house. It has come on record that accused was apprehended on the next date i.e. 20.04.2014 whereas the FIR was came into existence on 19.04.2014, then how come the name and address of the accused figures in the statement of the complainant, who was not aware of his address etc. On the other hand, the victim has stated that none of the children noticed the misdeeds of the accused nor, for that matter, she had and therefore, there is no question of raising hue and cry and alarm wheres the complainant has taken a different stand and has stated in his cross examination that the victim as well as the children playing with her raised alarm upon the act of the accused. Where is the question of raising alarm by the victim or the children when even the victim did not notice and felt the touch, as has been deposed by her and for that matter, none of the children noticed the same, according to her. In these circumstances, the case of the prosecution starts groaning under its own weight”

9. Learned APP appearing for the State submits that the impugned judgment of acquittal is contrary to the evidence on record. It is submitted that the testimony of the victim, her father and PW-2 Neeraj sufficiently corroborates the prosecution case and that the discrepancies noticed by the Trial Court are minor and inconsequential.

10. In view of the facts and circumstances on record, along with the nature of the evidence adduced by the prosecution, the respondent cannot be held guilty of the alleged offence.

11. The Supreme Court in ***Chandrappa and Others v. State of***



Karnataka¹ has defined the parameters to entertain the appeals against the acquittal:

"6.2. the following general principles regarding powers of appellate Court while dealing with an appeal against an order of acquittal emerge:

(1) An appellate Court has full power to review, reappreciate and reconsider the evidence upon which the order of acquittal is founded; (2) The Code of Criminal Procedure, 1973 puts no limitation, restriction or condition on exercise of such power and an appellate Court on the evidence before it may reach its own conclusion, both on questions of fact and of law;

(3) Various expressions, such as, 'substantial and compelling reasons', 'good and sufficient grounds', 'very strong circumstances', 'distorted conclusions', 'glaring mistakes', etc. are not intended to curtail extensive powers of an appellate Court in an appeal against acquittal. Such phraseologies are more in the nature of 'flourishes of language' to emphasize the reluctance of an appellate Court to interfere with acquittal than to curtail the power of the Court to review the evidence and to come to its own conclusion.

(4) An appellate Court, however, must bear in mind that in case of acquittal, there is double presumption in favour of the accused. Firstly, the presumption of innocence available to him under the fundamental principle of criminal jurisprudence that every person shall be presumed to be innocent unless he is proved guilty by a competent court of law. Secondly, the accused having secured his acquittal, the presumption of his innocence is further reinforced, reaffirmed and strengthened by the trial court.

(5) If two reasonable conclusions are possible on the basis of the evidence on record, the appellate court should not disturb the finding of acquittal recorded by the trial court."

12. In **Bhupatbhai Bachubhai Chavda & Anr. v. State of Gujarat**², the Supreme Court has held as under:-

"It is true that while deciding an appeal against acquittal, the Appellate Court has to reappreciate the evidence. After re-appreciating the evidence, the first question that needs to be answered by the Appellate Court is whether the view taken by the Trial Court was a plausible view that could have been taken based on evidence on record. Perusal of the impugned judgment of the High Court shows that this question has not been adverted to. Appellate Court can interfere with the order of acquittal only if it is

¹ (2007) 4 SCC 415, para 6.2

² 2024:INSC:295.



satisfied after reappreciating the evidence that the only possible conclusion was that the guilt of the accused had been established beyond a reasonable doubt. The Appellate Court cannot overturn order of acquittal only on the ground that another view is possible. In other words, the judgment of acquittal must be found to be perverse. Unless the Appellate Court records such a finding, no interference can be made with the order of acquittal. The High Court has ignored the well-settled principle that an order of acquittal further strengthens the presumption of innocence of the accused. After having perused the judgment, we find that the High Court has not addressed itself on the main question.”

13. The Supreme Court in ***Mallappa and Others v. State of Karnataka***³, held that:

“42. Our criminal jurisprudence is essentially based on the promise that no innocent shall be condemned as guilty. All the safeguards and the jurisprudential values of criminal law, are intended to prevent any failure of justice. The principles which come into play while deciding an appeal from acquittal could be summarised as:

- (i) Appreciation of evidence is the core element of a criminal trial and such appreciation must be comprehensive — inclusive of all evidence, oral or documentary;*
- (ii) Partial or selective appreciation of evidence may result in a miscarriage of justice and is in itself a ground of challenge;*
- (iii) If the court, after appreciation of evidence, finds that two views are possible, the one in favour of the accused shall ordinarily be followed;*
- (iv) If the view of the trial court is a legally plausible view, mere possibility of a contrary view shall not justify the reversal of acquittal;*
- (v) If the appellate court is inclined to reverse the acquittal in appeal on a reappreciation of evidence, it must specifically address all the reasons given by the trial court for acquittal and must cover all the facts;*
- (vi) In a case of reversal from acquittal to conviction, the appellate court must demonstrate an illegality, perversity or error of law or fact in the decision of the trial court..”*

14. It is trite law that the appellate 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 Supreme Court in the case of ***State of Maharashtra v. Sujay Mangesh Poyarekar***⁴ held as under:

“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. 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 *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. 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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“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

³ (2024) 3 SCC 544, para 42

⁴ (2008) 9 SCC 475.



scrutiny and re-appreciation, 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.”

15. Tested against the aforesaid principles, the Court finds that the view taken by the Trial Court cannot be said to be perverse or a view that no reasonable court could have arrived at on the material on record. The Trial Court has considered the testimony of the victim, her father and the other prosecution witnesses and has noticed the inconsistencies regarding whether the victim and the other children had raised an alarm, the absence of independent public witnesses despite the alleged occurrence having taken place in a densely populated gali, and the circumstances in which the respondent was allegedly apprehended on the following day. The Trial Court also took note of the previous dispute between the complainant and the respondent while assessing the reliability of the prosecution version.

16. These findings are based on an appreciation of the oral and documentary evidence on record and cannot be said to be founded on conjectures or surmises. Even if another view were possible on the same set of facts, that by itself would not furnish a ground for interference with the acquittal, particularly when the view taken by the Trial Court is a reasonable and possible view on the evidence available on record.

17. Bearing in mind the overall facts and circumstances, no justification to grant leave to the State to file an appeal.

18. Accordingly, the application fails and is hereby dismissed.

PURUSHAINDR KUMAR KAURAV, J

SEPTEMBER 2, 2026/P/nk