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

CNR No. DLHC015342392017

+ **CRL.L.P. 736/2017**

THE STATE GOVT OF NCT OF DELHI Petitioner

Through: Mr. Naresh Kumar Chahar, APP for
State with SI Akash Kumar

versus

DILHABAR Respondent

Through: None.

CORAM:

HON'BLE MR. JUSTICE PURUSHAINDR KUMAR KAURAV

ORDER

% **11.08.2026**

CRL.M.A. 21270/2017 (Condonation of delay)

1. For the reasons stated in the application, the same stands allowed. The delay of 68 days in filing the application for leave to appeal stands condoned.
2. The application stands disposed of.

CRL.L.P. 736/2017

1. By way of the present application, the applicant seeks leave to file an appeal against the judgment of acquittal dated 24.07.2017 passed by the learned Judge Special Court (POCSO Act), ASJ-01 (North-East) Karkardooma Courts, Delhi ("**Impugned Judgement**").
2. As per the allegations, on 31.01.2016, the complainant/victim's father



stated that his daughter had been missing since 30.01.2016 and that despite searching for her, he had not been able to trace her. On 10.02.2016, the complainant produced the victim before the police, after which her statements under Section 161 Code of Criminal Procedure (**‘Cr.P.C.’**) and Section 164 Cr.P.C. were recorded, wherein the victim alleged that the respondent/accused, a relative of hers. The victim alleged that the accused gave her a cold drink and after consuming the same, she became unconscious. Thereafter, it was alleged that the accused took the victim to a room where he confined and raped her. The respondent was prosecuted for offences punishable under Sections 363,366,328,342 and 376 of the Indian Penal Code, 1860 (**‘IPC’**) and Section 6 of the Protection of Children from Sexual Offences Act, 2012 (**‘POCSO’**) Act *qua* which investigation was carried out. After completion of the investigation, the charge sheet was filed. Both the parties have adduced their evidences.

3. It is well settled that while an appellate Court possesses wide powers in an appeal against acquittal, however, such powers are to be exercised with circumspection, bearing in mind the double presumption of innocence attaching in favour of an accused who has secured an acquittal at trial. In ***Chandrappa v. State of Karnataka***¹, the Supreme Court laid down the following principles:

“42. From the above decisions, in our considered view, the following general principles regarding powers of the appellate court while dealing with an appeal against an order of acquittal emerge:

(1) An appellate court has full power to review, reappraise and reconsider the evidence upon which the order of acquittal is founded.

(2) The Code of Criminal Procedure, 1973 puts no limitation,

¹ (2007) 4 SCC 415.



restriction or condition on exercise of such power and an appellate court on the evidence before it may reach its own conclusions, 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 emphasise 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 is 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.”

4. It is settled 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***² 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

² (2008) 9 SCC 475.



"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 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."

5. The Court below in the Impugned Judgement vide paragraph nos. 25



to 29 has rendered following findings: -

“25. It is further to be noticed that in her statement u/s 161 Cr.P.C, the victim had stated that accused gave her cold drink which was laced with something and after drinking that, she started feeling dizzy and then accused took her with him. However, in her testimony before the court, she stated that accused asked her to accompany him. She initially refused but then on insistence of accused, she agreed to go with him.

26. In these circumstances, the testimony of the victim, who has already resiled from the material part of her statement, becomes unreliable and on her testimony alone, it will be unsafe to reach at a conclusion that accused had kidnapped her.

27. As far as the testimony of father of victim is concerned, I find that the only part of his testimony, which is important for the purposes of the present case, is regarding the recovery of the victim. According to the father of the victim, after 8 days of the victim being missing, wife of accused Dilbahar, in presence of his father Ayub Khan, had brought victim in the house of their neighbor namely Shahid. However, neither Shahid nor Ayub Khan have been examined to corroborate the testimony of father of the victim. Thus, this part of the testimony of father of the victim is based upon hearsay. Thus, the fact that the victim was brought by wife of accused Dilbahar, which could lead to an inference that she was in possession of the accused, has also not been proved.

28. Contrary to this, the victim had deposed that after pressure had been put upon the accused, accused called Manni on phone whereafter, Manni brought her back at the house of the lady wherefrom, the accused had brought her and handed her to her parents. Therefore, according to the victim, she was brought to her parents by accused. Contrary to this, in her statement u/s 164 Cr.P.C, victim had stated that the accused had left her in a street in Yamuna Vihar wherefrom she went to her house. In her statement u/s 161 Cr.P.C also, she stated the same fact.

29. Therefore, I find that the prosecution has failed to prove its case. Accused is accordingly acquitted of all the charges framed against him. His bail bond stands cancelled. Surety stands discharged. File be consigned to record room.”

6. Bearing in mind the overall facts and circumstances, more importantly, the testimony of the victim herself, there is no ground to allow the State to file the appeal.



7. For the reasons aforesaid, the Court does not find any reason to grant leave to file an appeal against the Impugned Judgment dated 24.07.2017.
8. Accordingly, the instant application seeking leave to appeal stands dismissed.

PURUSHAINdra KUMAR KAURAV, J

AUGUST 11, 2026

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