

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

% *Date of Judgment :23.09.2015*

+ CRL.A. 1482/2014

STATE

..... Appellant

Through Ms.Meenakshi Dahiya, APP

versus

JAGAT RAM @ PAVVA

..... Respondent

Through None.

CORAM:

HON'BLE MS. JUSTICE INDERMEET KAUR

INDERMEET KAUR, J. (Oral)

1 This appeal has been filed by the State impugning the judgment and order on sentence dated 09.01.2014 and 20.01.2014 respectively wherein the respondent stands convicted under Section 354 of the IPC as also under Section 8 of the POCSO Act. The Judge while sentencing the accused has noted that Section 354 of the IPC provides a punishment which shall not be less than one year but which may extend to 5 years. Section 8 of the POCSO Act provides punishment which shall not be less than 3 years but may extend to 5 years. The Trial Judge has

sentenced the accused for a period of 3 years and to pay a fine of Rs.1,000/- and in default of payment of fine to undergo SI for a period of 15 days for his conviction under Section 8 of the POCSO Act. Separate sentence under Section 354 of the IPC had not been imposed. The plea of the accused that he should be released on probation had been declined.

2 The State is aggrieved by the order on sentence. It is submitted that no separate sentence has been awarded for the offence punishable under Section 354 of the IPC.

3 The impugned order on sentence has been noted. The judgment pronounced on 09.01.2014 had specifically held that the offence committed by the accused falls squarely within the parameters of Section 354 of the IPC as also Section 8 of the POCSO Act and as noted supra, both the punishments prescribed under both the Sections had also been detailed. This was mentioned in the judgment dated 09.01.2014. While passing the order on sentence which was 11 days later i.e. on 20.01.2014, the Trial Judge had overlooked the fact that the conviction of the accused was also founded under Section 354 of the IPC as the order on sentence merely speaks of conviction of the accused under

Section 8 of the POCSO Act. This could only be an inadvertent error. Moreover, the offence under Section 8 of the POCSO Act has prescribed a punishment which shall not be less than 3 years but which may extend to 5 years. The intention of the Legislature is clear. Intention being that the punishment shall not be less than 3 years but may not extend over and above 5 years. The Trial Judge has sentenced the respondent for a minimum period of 3 years. The submission of the convict that he was a man aged 30 years having wife and two children had also been considered. The fact that he was a rickshaw puller and illiterate man was also considered. In this background, the minimum sentence of 3 years had been imposed. The Trial Judge while passing the impugned judgment has noted that for a conviction under Section 354 of the IPC, the minimum sentence is one year but which may extend to 5 years. The minimum and maximum had been noted by the Trial Judge but it was obviously due to inadvertence, no separate sentence was awarded for his conviction under Section 354 of the IPC.

4 Noting the factual matrix, the offence for which the respondent stands convicted and the reasoned order passed by the Trial Judge while passing the order on sentence; noting the fact that the respondent was an

illiterate man and a rickshaw puller; he being a first time offender aged 30 years having two children and wife to support, the sentence of 3 years which has been imposed upon him for his conviction under Section 8 of the POCSO Act does not call for any interference. Even presuming that no separate sentence has been awarded under Section 354 of the IPC, this Court notes the minimum and maximum prescribed for such an offence; in all cases normally benefit of Section 428 of the Cr.PC is also granted; in this background, the inadvertent error on the part of the Trial Judge in not passing a separate order of sentence for the conviction of the respondent under Section 354 of the IPC also suffers from no infirmity.

5 Appeal is without any merit. Dismissed.

INDERMEET KAUR, J

SEPTEMBER 23, 2015

A