

\$~26

*

IN THE HIGH COURT OF DELHI AT NEW DELHI

RESERVED ON : APRIL 18, 2016

DECIDED ON : MAY 03, 2016

+

CRL.REV.P. 103/2016 & Crl. M (B) No. 287/2016

KRANTI KIRAN @ K.K

..... Petitioner

Through

Mr. Manjit Singh Ahluwalia & Ms.
Dona Dutta, Advocates

VERSUS

STATE OF NCT DELHI

..... Respondent

Through

Mr. Vinod Diwakar, APP.
SI Neeraj Kumar, Police Station
Mandawali, Delhi.

CORAM:

HON'BLE MR. JUSTICE S.P.GARG

S.P.GARG, J.

1. Present criminal revision petition has been filed by the petitioner to challenge the legality and correctness of a judgment of learned Additional Sessions Judge in Crl.A.No.76/16 by which judgment dated 18.03.2015 of learned Metropolitan Magistrate in case FIR No.514/2004 under Section 354 and 506 II IPC registered at police station Mandawali by which he was convicted was upheld. The revision petition is contested by the State.

2. Learned counsel for the petitioner urged that the Trial Court did not appreciate the evidence in its true and proper perspective. The petitioner

has been falsely implicated by the prosecutrix at the behest of her parents who defaulted in making due payment of the dues/charges. The petitioner had lodged complaints against the victim's parents prior to the lodging of the instant FIR. The victim was never threatened by a knife and no such knife was recovered during investigation. The victim was tutored to make the statement and a number of discrepancies have emerged. No complaint was ever lodged by any other student at the institute against the petitioner's conduct any time. No independent public witness was associated at any stage of the investigation. Learned Additional Public Prosecutor urged that there are no sound reasons to disbelieve the testimony of the prosecutrix who has categorically implicated the petitioner without any ulterior motive.

3. Admitted position is that the petitioner was running a 'Sangeetalaya' at Gali No.19, Madhu Vihar. The victim and her brother had taken admission in the said institute to learn music and dance in April, 2004. Allegations against the petitioner were that in between April, 2004 to 30 September, 2004, he outraged the modesty of the victim 'X'(assumed name) aged around 13 years and also criminally intimidated her. The incident was reported to the police on 30.08.2004 when complaint (Ex.PW2/A) was lodged by the victim's father. The Investigating Officer after recording victim's statement (Ex.PW-1/A) lodged First Information Report on 3.10.2004. In her complaint (Ex.PW-1/A), the victim gave detailed account as to how and in what manner, the petitioner outraged her modesty by alluring her in his house on the pretext to give extra classes. She was criminally intimidated. The petitioner used to have conversation with her on telephone. On 30.07.2004, the said conversation was heard by her mother and the petitioner was scolded. On 30.09.2004 when she was going to the

market in the evening to purchase bread at about 6.30 p.m., the accused met her and criminally intimidated her for disclosing the incident to her mother.

4. In her Court statement, the prosecutrix proved the version given to the police without any variation. She deposed that in the mid of June 2004, the accused had called her to attend extra classes of dance telling that she was very talented. He used to call her at his house to give notes. During extra classes, the accused used to kiss her; press her breast; and, touch her private parts. When she objected to it, the accused threatened her with knife; she was scared. She further deposed that the accused also visited her school 2-3 times and forced her to come along with him. On 30.07.2004 the accused forced her to call him and when she was talking to him, her mother saw and rebuked the accused on phone. She was prohibited from going to the Sangeetalaya. She further stated that the accused used to put off her cloths whenever he took her to his house. She proved the letter (Ex.PW-1/C) given to her on 27.08.2004 by the accused. She also proved 'mafinama' (apology-letter) (Ex.PW1/B) written by the accused on 10.08.2004. In the cross-examination, she elaborated that she alone was asked to attend extra classes. She attended the extra classes for about 8/10 times. She denied the suggestion that she always called the accused voluntarily on phone with her free will. She denied the suggestion that no such incident as reported above had taken place or that she was not given any extra classes at the residence. The accused denied 'mafinama' (Ex.PW1/B) to have been written by him.

5. PW-2 (Beena Bajaj), victim's mother, has supported the victim on material aspects. She deposed that on 29.07.2004 she had heard conversation on phone between the accused and her daughter. She came to

know that the accused used to talk indecent. After snatching the phone from her daughter, she scolded the accused for misbehaving with her daughter. On 10.08.2004 the accused apologized and gave a written statement that he would never tease her in future. For that reason, they did not take any action. However, on 30.08.2004, 'X' apprised her that the accused had again started committing indecent activities and had given her a letter. She confronted the accused at the Sangeetalaya' and he escaped from there. On 2.10.2004 when she returned from official visit from Lucknow, she found her daughter in feared condition. On enquiry, she disclosed that on 30.09.2004 when she was going to take bread in the market, she was threatened to withdraw the complaint. In the cross-examination, she was confronted with her statement Mark 'A' where certain facts disclosed in the examination-in-chief did not find mention. PW-4 (Pradeep Bajaj), victim's father, has deposed on similar lines.

6. On scanning the testimonies of the prosecution witnesses including that of the prosecutrix, it stands established that 'X's modesty was outraged by the petitioner. No material discrepancies could be extracted in the cross-examination of the prosecutrix to suspect her version. No ulterior motive was assigned to the child witness to make false allegations against an individual from whom she used to get lessons. 'X' has given graphic detail as to when and where on the pretext to provide extra classes at his house, she was criminally intimidated and sexually harassed. In the absence of any prior animosity or ill-will a child, aged around 13 years student of 7th standard is not expected to make false allegations of sexual harassment to bring herself in disrepute. It is highly unbelievable that the victim's parents

would implicate the accused falsely at the cost of honour of their unmarried girl to avoid payment of petty charges as claimed.

7. The accused has admitted to have conversation with the prosecutrix on phone. He did not explain as to what prompted him to have conversation with the child without any permission or consent from her parents. Mafinama (apology letter) Ex.PW-1/B has been proved to have been written by the accused. FSL report (Ex.PW6/A) confirms it. The accused did not furnish plausible explanation as to why a child was misguided by him and why he used to visit her in her school.

8. The Courts below have discussed all the relevant aspects in the impugned judgment. Concurrent findings of the Courts below based on fair and proper appreciation of evidence deserve no intervention. The sentence order is also based upon fair reasoning. The petitioner exploited the innocence of the child on the pretext to provide her extra classes. He outraged her modesty in various indecent manners. The Court can well understand the trauma suffered by the victim and her parents due to petitioner's objectionable activities at the place of learning.

9. The revision petition lacks merits and is dismissed. Pending application(s) also stand disposed of. Trial Court record be sent back forthwith along with the copy of the order. Copy of the order be sent to Superintendent Jail for information.

(S.P.GARG)
JUDGE

MAY 03, 2016/sa