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

+ CRL.L.P. 570/2016

STATE (NCT OF DELHI)

..... Petitioner

Through : Mr. Mukesh Kumar, APP with SI
Parshant PS New Usman Pur.

versus

SHAHZAD

..... Respondent

Through : None.

CORAM:

HON'BLE MR. JUSTICE A.K. PATHAK

ORDER

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25.10.2016

Crl.M.A.16679/2016 (Exemption)

Allowed, subject to all just exceptions.

Application is disposed of.

Crl.M.A.16678/2016 (Delay)

For the reasons as stated in the application, delay is condoned.

Application is disposed of.

CRL.L.P. 570/2016

Petitioner seeks leave to appeal against the judgment dated 29th February, 2016 passed by learned Additional Sessions Judge-01 (North East District), Karkardooma Courts, Delhi; whereby respondent has been acquitted of the offence under Section 457 IPC and Section 8 of POCSO Act.

As per the prosecution, on 26th June, 2013, respondent went to the roof of Manjoor Alam at about 3:30 am and laid aside the prosecutrix, who was

sleeping there and placed his hand on her chest, thus, molested her. Prosecutrix woke up and raised alarm, at which respondent started running. Manjoor Alam, father of prosecutrix chased him and caught him in the gali.

Trial court has carefully scrutinized the statement of prosecutrix PW-1, mother of prosecutrix, namely, PW4 Shabana and father of prosecutrix PW5 Manjoor Alam. Trial court has concluded that their statements suffered from contradictions, inasmuch as, made the defence of respondent plausible. In his statement under Section 313 Cr.P.C. respondent had taken the defence that he was falsely implicated. He was wrongly identified by the prosecutrix in order to save the real culprit, that is, son of the bakery owner, who was neighbour of Manjoor Alam (father of prosecutrix). Respondent further stated that he was working in the said bakery.

It is noted that in her deposition, PW-1 has deposed that her brother was sleeping besides her on one side and her mother on the other side when the accused came and pushed her brother away, laid by her side and thereafter, started touching her breast. As against this, PW-4 mother of prosecutrix has deposed that on one side of the prosecutrix, her father was sleeping on the other side, she was sleeping with her younger daughter. As against this, PW-5 father of prosecutrix has deposed that he was sleeping on the one side, his wife (mother of prosecutrix) was sleeping on the other side and in between his

children were sleeping. In this scenario, trial court has rightly noted that how the respondent crept in between the two persons by pushing the brother of prosecutrix aside, was not understood. It is quite improbable that respondent would have remained unnoticed had he laid himself besides the prosecutrix, while her parents were sleeping on both the sides. It may further be noted that PW-1 in her examination in chief stated that she did not know Shahzad (respondent) prior to the incident and had seen him at the time of incident only. However, in her cross examination, she has stated that there is a bakery shop adjacent to her house and there are several workers in the shop including the accused (respondent); meaning thereby she knew the identity of petitioner; inasmuch as she has named the respondent in the FIR. All this, creates a doubt about the prosecution story. The view taken by the trial court is a possible view and does not suffer from any perversity.

For the foregoing reasons, I am of the view that petitioner has failed to make out a case for grant of leave to appeal against the acquittal of respondent.

Petition is dismissed.

A.K. PATHAK, J.

OCTOBER 25, 2016/dk