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

+ CRL.REV.P. 86/2016 & CrI.M.A.1984/2016 and CrI.M.B.228/2016
RAM BHAWAN Petitioner

Through : Mr. Habibur Rahman, Adv.
versus

STATE Respondent
Through : Mr. Tarang Srivastava, APP.

CORAM:

HON'BLE MR. JUSTICE A.K. PATHAK

ORDER

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22.02.2017

Petitioner was convicted by the trial court under Sections 377 IPC as well as 506(ii) IPC and sentenced to undergo rigorous imprisonment for three years each for the above offences with fine of ₹10,000/- each and in default of payment of fine to further undergo rigorous imprisonment for 9 months each. The sentences were directed to run consecutively.

Petitioner preferred appeal before the Learned Additional Sessions Judge-02, South East District, Saket Courts, New Delhi, which has been disposed of by the impugned judgment dated 4th November, 2015. Conviction of petitioner was upheld, however, sentences have been modified only to the extent that these were directed to run concurrently instead of consecutively.

There are concurrent findings of the trial court and the appellate court, on appreciation of evidence. I have perused the judgments and find that both the courts have concluded that prosecution had succeeded in proving the guilt of petitioner under Sections 377/506 (ii) IPC on meticulous scrutiny of evidence on record. It is trite to say that in exercise of revisional jurisdiction, High Court is not to sift and weigh the evidence on record as if hearing an appeal and substitute a finding against what has been arrived at by the two courts after marshalling the evidence afresh. Only gross perversity in the findings as well as the procedural illegality, if any, has to be considered. High Court can interfere only if petitioner is able to demonstrate any flagrant violation or misuse of procedure in the order or when the settled legal position has been ignored. In the present case, it cannot be said that the findings returned by the courts below are without any evidence and/or are perverse.

During the course of hearing, learned counsel for petitioner has failed to point out any flagrant violation of the settled legal position. It is also not the case that the findings are based on no evidence.

PW-1 Master Abhay has categorically deposed that petitioner took him to the roof of the quarter of one boy namely L. P. Thereafter, he put off

his underwear and sexually assaulted him. Thereafter, petitioner left him. He went to the park. He was weeping. His mother came there. He disclosed her the entire story. Her mother called his father, grandfather and maternal uncle and thereafter, his sister called the police at 100 number. Police took him to the hospital where he was medically examined and treated by the doctor. PW-1 has identified the petitioner in Court. PW-1 was cross examined at length but his testimony has remained unshaken. PW-1 was only 10 years of age. Trial court as well as appellate court have found the testimony of PW-1 to be trustworthy and reliable. PW-2 Smt. Raj Kumari is the mother. She has corroborated the PW-1, on material points. She has deposed that on 3rd November, 2011, her son Master Abhay PW-1 was playing in the park. When he did not return for long, she went out to search him. She found him weeping in the park. When she asked him as to why he was weeping he took the name of petitioner and narrated the incident. He also said that stated that he was feeling pain in his anus. Thereafter, the police was informed. She was also cross examined and her testimony has remained unshaken on material points.

Trial court and appellate court have also noted that the medical evidence, that is, MLC Ex.PW-9/A of the victim corroborated the victim's

version. As per the MLC, there was a tear and a wedge shape present over the anal region extending into the canal base outside the anal canal. It was further observed that the insertion of finger was painful. As per that final opinion of PW-9, insertion of penis or penis like object into the anal canal was likely. As per the MLC of petitioner, he was found capable of performing intercourse under normal circumstances. Medical evidence also corroborated the trustworthy and reliable version of PW-1.

For the foregoing reasons, revision petition is dismissed being devoid of merits. Miscellaneous applications are disposed of as infructuous.

A.K. PATHAK, J.

FEBRUARY 22, 2017/dk