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

+ **CRL.L.P. 649/2017**

STATE OF NCT OF DELHI

..... Petitioner

Through: Ms.Kusum Dhalla, APP

Versus

SUBHASH & ANR.

..... Respondents

Through: None.

**CORAM: JUSTICE S.MURALIDHAR
JUSTICE I.S. MEHTA**

ORDER

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10.11.2017

Crl.M.A.No.18457/2017 (exemption)

1. Allowed subject to all just exceptions.

Crl.M.A.No.18456/2017 (delay in filing)

2. For the reasons explained in the application, the delay in filing is condoned. The application is disposed of.

CRL.L.P. 649/2017

3. The State seeks leave to appeal against a judgment dated 27th April, 2017 whereby the Respondents who are the father and elderly relative of the prosecutrix of the were acquitted by the trial Court of the offences under Section 376/354 IPC and Sections 4, 6(n) and 8 of the Protection of Children from Sexual Offences Act, 2012 ('POCSO').

4. The case of the prosecution was based entirely on the statement of the child victim. She alleged that on one occasion when she was in 6th class, i.e. two years prior to her giving the statement to the police, when her mother had gone to visit her native place and she remained with her siblings at home, in the night her father (A-1) took her to the roof of the house and tried to put his penis in her mouth and touched her breast. Subsequently, when she started weeping, he left her. As far as A-2 is concerned, she stated that he was residing behind their house, used to call her on the pretext of tea and used to touch and press her breast.

5. A significant feature of this case was that it hinged entirely on the version of the prosecutrix without any corroborating evidence including medical evidence. The Court while analysing her evidence notes that during her deposition in the Court she made two improvements- one that A-1 put a bedsheet upon her while committing the aforementioned act and the other by stating that he actually put his penis in her mouth whereas in her previous statement, she had stated that he “tried to put” his penis in her mouth. One of the sisters of the prosecutrix was examined as a defence witness where she spoke about the prosecutrix being found with two love letters in her bag some time in 2011 written by the prosecutrix to another boy as a result of which her parents warned her to focus on her studies. This witness also stated that the prosecutrix is a patient of epilepsy and that there were complaints received about her from the school.

6. The trial Court noted that the Investigating Officer (‘IO’) in her

deposition admitted that she had not recorded the statement of the mother to whom the prosecutrix is stated to have shared the details of the incidents. The IO admitted that she was told not only by the mother but also by their neighbours that the prosecutrix was of unsound mind. Yet the IO did not record their statements. She also did not make any efforts to cross check the statements of the victim with those persons whose statements she did not record. The trial Court, having regard to the circumstances, and rightly so in our view, observed that "if only the IO had cross checked the facts, the truth might have emerged."

7. The trial Court rightly concluded "In the absence of such material the uncorroborated testimony of victim having inconsistencies and improvements does not appear trustworthy and cannot be relied. There appears every possibility that as her conduct was not admissible to her family she has levelled allegations against the person who used to scold her".

8. The approach of the trial Court cannot, in the circumstances, be said to be perverse. While the evidence of the child victim has to generally be given the highest weightage, the trial Court would have to be cautious in ensuring that all angles of the case have in fact been investigated, particularly, when the sole testimony has received no corroboration whatsoever even in the form of medical evidence. When members of the child's family, including her mother and sisters, do not appear to support her, the IO would have to make an extra effort just to rule out the possibility of any contrary set of facts emerging that might discredit the victim's version. In the present case,

apart from the improvements that the victim obviously made in the Court while deposing, the evidence of the IO herself points to the lack of a proper investigation in the case to bring out the truth. Consequently, the Court is not inclined to grant leave to appeal in the matter.

9. The petition is dismissed.

S. MURALIDHAR, J.

I.S. MEHTA, J.

NOVEMBER 10, 2017

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