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

+ CRL.REV.P. 85/2018

COURT ON ITS OWN MOTION

..... Petitioner

Through: Mr. Rajat Katyal, Additional Public
Prosecutor for the State

versus

KARAN

..... Respondent

Through: Mr. Kuldeep Singh Grewal, Advocate

CORAM:

HON'BLE MR. JUSTICE VIPIN SANGHI

HON'BLE MR. JUSTICE P.S.TEJI

ORDER

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14.05.2018

Upon the judgment dated 31.08.2016, passed by the learned Additional Sessions Judge -01, South East District, Saket Courts, New Delhi in Case No. 1821/2016, Sessions Case No. 43/2015 arising out of FIR No. 1210/2014 registered at PS – Govind Puri under Sections 363/366/376 IPC and Section 4 of POCSO Act titled *State versus Karan* being brought to our notice, and upon this Court prima facie finding that the same appears to have suffered from manifest error of law and demonstrative of glaring illegality resulting in miscarriage of justice, this Court suo moto took cognizance of the matter under Sections 397/401 Cr.P.C. and issued notice to the respondent.

We have heard Mr. Rajat Katyal, Additional Public Prosecutor for the State as well as learned counsel for the respondent at some length. The impugned judgment is a three page judgment. The trial Court has acquitted the respondent/ accused on the premise that the prosecutrix, upon her examination stated that she does not know the accused. Trial court has observed that the victim is the only material witness in the case, who has turned hostile and since she has not supported the case of prosecution, there is no need to examine the other witnesses. He observed that the other witnesses are formal in nature.

We are shocked and dismayed to observe the highly casual and cavalier manner in which the trial Court has preceded to deal with the matter involving such a serious offence. As per the charge, the prosecutrix was under 15 years of age on the date of occurrence i.e. 18.11.2014.

The prosecution has sought to rely upon the medical examination to prove her date of birth. The prosecution has also sought to rely upon the school record of the school where she was initially admitted. All that evidence including the medical evidence have been prevented from being brought on record on the premise that the prosecutrix has not supported the case of the prosecution. Pertinently, in her statement recorded under Section 164 Cr.P.C., the prosecutrix has claimed that she was 18 years of age and that her relationship with the respondent / accused was consensual. Merely, because the prosecutrix may have chosen not to support the case of the prosecution, was not a sufficient ground to prevent bringing on record the other germane evidence and to summarily acquit the respondent / accused.

In these circumstances, we set aside the judgment dated 31.08.2016 rendered by the learned Additional Sessions Judge -01, South East District, Saket Courts, New Delhi in Case No. 1821/2016, Sessions Case No. 43/2015 arising out of FIR No. 1210/2014 registered at PS – Govind Puri under Sections 363/366/376 IPC and Section 4 of POCSO Act and remand the matter to the trial court for conducting a fresh trial in the matter.

The respondent / accused is directed to surrender before the trial court on 24th May, 2018.

Trial court record be sent back forthwith.

VIPIN SANGHI, J

P.S.TEJI, J

MAY 14, 2018

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