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

DECIDED ON : 19th FEBRUARY, 2018

+ **CRL.REV.P.No. 137/2018**

THE STATE OF DELHI Petitioner

Through : Mr.Amit Chadha, APP with ASI Puran
Singh, PS Gokul Puri.
versus

MUKEEM Respondent

Through : None.

CORAM:
HON'BLE MR. JUSTICE S.P.GARG

S.P.GARG, J. (Oral)

CRL.M.A.No. 3084/2018 (Exemption)

Exemption allowed subject to all just exceptions.

The application stands disposed of.

CRL.REV.P.No. 137/2018

1. Present revision petition has been preferred by the State to challenge the legality and correctness of an order dated 09.11.2017 of learned Addl. Sessions Judge in case FIR No.6/2017 PS Gokal Puri (SC No.122/2017) whereby it was held that the offence prescribed under Section 6 of POCSO Act was not attracted, the prosecutrix being major.

2. I have heard the learned APP for the State and have examined the file. The prosecution did not collect any credible

evidence during investigation to ascertain the age of the prosecutrix. Her ossification test was conducted to ascertain her age. The doctor opined her age to be in between 17 to 18 years. The Trial Court after considering various judgments of this Court as well as of the Hon'ble Supreme Court came to the conclusion that the prosecutrix being above 18 years of age giving margin of error of two years, the provisions of POCSO Act were not attracted. During the course of arguments, it was specifically enquired from the learned APP if the investigating agency was in possession of any other clinching evidence in the form of school record or birth certificate to infer the exact age of the prosecutrix; it was informed that no such document was available.

3. Since the prosecution relied upon the ossification report for determination of the age of the prosecutrix, the Trial Court did not commit any error to come to the conclusion that the prosecutrix seemingly over 18 years of age, was not covered under the provisions of POCSO Act.

4. The revision petition is unmerited and is dismissed.

5. It is, however, made clear, if at any stage, the prosecution is able to collect any other material in the form of school certificate or the birth certificate, State will be at liberty to move the proper application before the Court for consideration on merits.

(S.P.GARG)
JUDGE

FEBRUARY 19, 2018 / tr