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

+ CRL.L.P. 347/2018

STATE (GNCT OF DELHI)

..... Petitioner

Through: Ms. Aashaa Tiwari, Additional Public
Prosecutor for the State with SI
Rahul, PS – Seema Puri

versus

PANNA LAL

..... Respondent

Through:

CORAM:

HON'BLE MR. JUSTICE VIPIN SANGHI

HON'BLE MR. JUSTICE P.S.TEJI

ORDER

% **18.05.2018**

CRL.M.A. 9594/2018 (Exemption)

Exemption allowed subject to just exceptions.

Application stands disposed of accordingly.

CRL.M.A. 9595/2018

By this application, the State seeks condonation of 5 days' delay in filing the leave petition.

For the reasons stated in the application and considering that the delay is only 5 days, the application is allowed. Delay stands condoned.

CRL.L.P. 347/2018

The State has preferred the present leave to appeal against the judgment dated 15.02.2018 passed by the learned Additional Sessions Judge +1/Special Judge (POSCO), Shahdara District, Karkardooma Courts, Delhi in Sessions Case No. 187/2016, arising out of FIR No. 248/13, registered at PS – Seemapuri, under Sections 363/376 (2)(i) IPC and 7 POCSO Act.

By the impugned judgment dated 15.02.2018, the respondent has been convicted under Section 354 IPC read with Section 8 of POCSO Act. However, he has been acquitted of the charge under Section 376 IPC and Section 4 of the POCSO Act. By the order on sentence dated 21.02.2018, he has been sentenced to 3 years RI with fine of Rs.5000/-. The prosecutrix has also been awarded compensation of Rs.10,000/-.

The present leave petition is preferred so as to assail the acquittal of the respondent under Sections 376 IPC and Section 4 of the POCSO Act. The brief facts of the taken note of in the impugned judgment read as follows:

“1) Accused Panna Lal was sent up for trial by the police of PS Seemapuri for the offences punishable under Section 363/376(2)(i) of Indian Penal Code, 1860 (herein after referred to as “IPC” in short) and Under S.6 of Protection of Children from Sexual Offences Act, 2012 (hereinafter referred to as “POCSO” in short) on the allegations that on 10.05.2013 complainant alongwith her daughter and husband came to police station and given her statement that she is housewife and

her husband is labour and she has three children. On 09.05.2013, one 'Barat' has come to park nearby her jhuggi. At about 11:00 p.m. her daughter aged about 4 years (name withheld) has gone to see the Barat and after 10-20 minutes she returned while crying. When complainant asked her reason for crying, her daughter told her that one boy after taking her in his lap has licked her lips and tongue. Thereafter complainant and her husband made inquiry from her regarding the boy and then her daughter told that the boy is standing near shop of Sagar and then they took her daughter to shop of Sagar where their daughter pointed out towards a boy whose name is Panna s/o Sh.Ram Dulare and told that he is same boy who licked her. On being asked by complainant, Panna told that 'voh pyar se bachchi ko dulra raha tha' (he did so in love and affection). Thereafter they took her daughter to home. In the morning, her daughter told complainant that the boy/accused had also taken her to his home and inserted his finger inside her vagina after opening her pant. Thereafter she alongwith her husband again went to accused Panna, who met on the way near park, and when her husband asked accused Panna as to why he did so then accused started abusing (gali galoch) and when her husband said about reporting the matter to police then accused started praying sorry after holding leg of her husband and said he has committed mistake and when her husband asked accused to accompany them to police station, thereafter accused ran away. She stated that accused Panna has committed rape upon

her minor girl child and sought necessary legal action against him. She also requested that medical examination of her daughter be conducted. Thereafter counselling of the victim was carried out by NGO and victim alongwith her parents were taken to GTB Hospital for her medical examination. Later on IO made endorsement on the statement and got the FIR registered. Site plan was prepared at the instance of victim. Statement of victim u/s 161 Cr.PC was recorded and she was again counselled by NGO. On 11.5.2013, statement of victim u/s 164 Cr.PC was got recorded from Ld. MM. Victim was produced before CWC. Exhibits were deposited to FSL.

2) Accused surrendered before the court concerned and with the permission of the court accused was arrested. One day police custody remand of accused was taken and he was medically examined and exhibits were collected and deposited to FSL. After completion of investigation, charge-sheet was filed.

The reason for acquittal of the respondent under Section 376 IPC and Section 4 POCSO Act is that there was no cogent evidence brought on record, in so far as, the charge under the said provisions are concerned. The medical examination of the prosecution does not reveal any signs that the prosecutrix had been subjected to rape. The hymen was found intact and there was no injury found on the private parts of the prosecutrix. Moreover, the allegations of rape (the allegation being that the accused had inserted his finger inside the vagina of the prosecutrix) did not surface in the first

instance. The reasoning adopted by the trial court is found in Para 30 of the impugned judgment which reads as follows:

“... 30) *The mother of victim has stated that victim told her that accused took her in his lap and licking her mouth and on the next morning, her daughter told her that said boy Panna also touched with (sic) his hand on her Pant and also shown his private part (penis) to her (victim). She also stated that accused was not known to her prior to incident. Whereas father of the victim has stated that her victim daughter informed her wife who in turn informed him that her daughter was taken by accused at his house where he removed her panty and entered his finger into her private part. He stated that accused was known to him and to his wife prior to this incident. The doctor concerned has recorded alleged history as told by mother of victim which finds mentioned that the girl was taken to his house and removed the girl’s undergarments and touched the girl’s private parts with his hands and thereafter the man removed his own clothes and then the girl ran away from his house. Therefore, keeping in view above inconsistencies, the testimony of the witnesses cannot be relied upon for proving that accused has inserted his finger inside vagina of victim girl child.”*

In view of the aforesaid, we find no infirmity in the impugned judgment. In our view, the same does not call for interference at this stage.

Accordingly, we dismiss this leave petition.

VIPIN SANGHI, J

P.S.TEJI, J

MAY 18, 2018

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