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

+ CRL.A. 819/2018

STATE (NCT OF DELHI)

..... Appellant

Through: Ms. Kusum Dhalla, APP with SI
Sandeep, PS Begumpur

versus

ARJUN @ SATENDER

..... Respondent

Through: Mr. Aditya Vikram with Mr. Avinash,
Advocates

CORAM:

HON'BLE MR. JUSTICE VIPIN SANGHI

HON'BLE MR. JUSTICE I.S.MEHTA

ORDER

01.10.2018

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1. The State has preferred the present appeal only insofar as the respondent/ convict has been sentenced under Section 6 read with section 5(m) and section 18 of the Protection of Children from Sexual Offences Act, 2012 (the Act), to the sentence of imprisonment already undergone by him in jail.

2. The respondent stands convicted under the aforesaid provisions vide judgment dated 16.05.2018 rendered in SC No.203/2014 arising out of FIR 846/2014 under Section 376/ 511/ 324/ 457 IPC with section 6/18 of the Act registered at PS Begumpur.

3. The respondent, admittedly, had undergone a sentence of less than five years at the time when he was sentenced. The limited grievance raised by the State is that under Section 6 read with Section 18 of the Act, the minimum sentence that the respondent/ convict could have been awarded

was five years and by sentencing him to the period already undergone—which is about four years, the minimum sentence which should have been awarded to the respondent/ convict has not been adhered to. We may observe that so far as the sentence awarded under Section 457 Part I IPC (3 years with fine of Rs.1,000/-) and under Section 324 IPC (1 year with fine of Rs.500/-) are concerned, the respondent/ convict had already undergone the same, since all the sentences were directed to run concurrently and he was given the benefit of section 428 Cr PC.

4. The submission of Ms. Dhalla, learned APP is that section 6 prescribes the punishment for aggravated penetrative sexual assault. The same provides that a person who commits aggravated penetrative sexual assault, shall be punished with rigorous imprisonment for a term which shall not be less than ten years, but which may extend to imprisonment for life and shall also be liable to fine. Section 18 of the Act prescribes the punishment for attempt to commit an offence under the Act. The said section reads as follows:

“18. Punishment for attempt to commit an offence.-

“Whoever attempts to commit any offence punishable under this Act or to cause such an offence to be committed, and in such attempt, does any act towards the commission of the offence, shall be punished with imprisonment of any description provided for the offence, for a term which may extend to one-half of the imprisonment for life or, as the case may be, one-half of the longest term of imprisonment provided for that offence or with fine or with both.”

5. The submission of Ms. Dhalla that even if the respondent/ convict

were to be awarded the minimum sentence, the same should have been five years rigorous imprisonment.

6. On the other hand, the submission of counsel for the respondent/ convict is that section 18 provides that the punishment of either description would be for a term which may extend to one half of the imprisonment for life, or, as the case may be, one half of the longest term of imprisonment provided for that offence. The submission is that section 57 of IPC prescribes that in calculating fraction of terms of punishment, imprisonment for life shall be reckoned as equivalent to imprisonment for 20 years. Thus, while stipulating that the term of imprisonment “*may extend to one half of the imprisonment for life*”, the legislature intended that the term of imprisonment could extend to 10 years.

7. The further submission is that the use of the words “*which may extend ...*” shows that there is no minimum prescribed and, therefore, even a term of imprisonment for 4 years would satisfy the requirement of section 18 of the Act.

8. Having heard learned counsels and considered the aforesaid submissions, we are of the view that there is no merit in the submission of learned counsel for the respondent. The interpretation sought to be advanced by the respondent defeats the purpose and intent of both section 6 and section 18 of the Act. Section 6, in clear terms, states that the offender found guilty of penetrative sexual assault shall be punished with rigorous imprisonment for a term “*which shall not be less than ten years, but which may extend to imprisonment for life and shall also be liable to fine*”. Thus,

the law very clearly provides that the term of imprisonment shall be at least ten years. The imprisonment for life is, obviously, a longer term than even ten years. This is clear from not only section 57 of IPC but also the judgment of the Supreme Court in *Duryodhan Rout v. State of Orissa*, (2015) 2 SCC 783.

9. What section 18 provides is that for a case involving attempt to commit an offence under the Act, the imprisonment would be for a term which is half of the term of imprisonment prescribed for the commission of the offence; which is attempted to be committed. By awarding a sentence, which is less than five years, the express language of section 6, which provides that the term of rigorous imprisonment “*shall not be less than ten years*” is breached. The only meaning which could be ascribed to the expression “*for a term which may extend to one half of the imprisonment for life*” used in section 18, is that the sentence would be in excess of five years of imprisonment, so that the express term of section 6 of the Act— taken note of herein above, is preserved and not violated.

10. Learned counsel for the respondent has sought to place reliance on the judgment of a Division Bench of the High Court of Judicature at Madras rendered in CrI A No.718/2016 on 09.12.2016 titled *Raman v. State*. In this case, the Division Bench of the Madras High Court, in appeal, converted the conviction of the appellant to one for attempt to commit an offence under Section 6 read with section 5(k) of the Act, and awarded a sentence of rigorous imprisonment for a period of 4 years with fine. The submission of learned counsel for the respondent is that, similarly, the respondent also stands convicted and sentenced by the Trial Court.

11. In our view, there is no discussion on the aspect of award of sentence of 4 years in *Raman* (supra). That is not the ratio of the case. We, therefore, do not find the said decision to be useful. In fact, it appears to us, that the Division Bench, with respect, failed to notice the peremptory language in which section 6 is couched.

12. Consequently, we allow the appeal and substitute the sentence awarded to the respondent/ convict under Section 6 read with section 5(m), read with section 18 of the Act to 5 years rigorous imprisonment. In all other respects, the order on sentence is maintained.

13. The respondent, who is present in court, shall surrender within two days to undergo the remaining sentence.

14. We are informed that after the issuance of notice in the present appeal, the respondent has preferred his statutory appeal to assail his conviction and sentence. We are informed that the said appeal is lying under office objections and has not been listed. It is made clear that this order is subject to the orders that may be passed in the said appeal, if and when listed.

15. The appeal stands disposed of in the aforesaid terms.

VIPIN SANGHI, J

I.S.MEHTA, J

OCTOBER 01, 2018 sr