

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

% Decided on: 26th February, 2018

+ **CRL.L.P. 68/2017**

STATE NCT OF DELHI

..... Petitioner

Represented by: Mr. Amit Gupta, APP with SI
Dinesh PS Aman Vihar.

versus

RAJEEV YADAV @ RAJU

..... Respondent

Represented by: Ms. Manika Tripathy Pandey,
Adv.

CORAM:

HON'BLE MS. JUSTICE MUKTA GUPTA

MUKTA GUPTA, J. (ORAL)

Crl.M.A. 1969/2017

For the reasons stated in the application delay of 238 days in filing the leave to appeal petition is condoned. Application is disposed of.

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1. State seeks leave to appeal against the judgment dated 30th January, 2016 acquitting the respondent for offences punishable under Sections 354A/509/323/34 IPC and Section 12 of the Protection of Children from Sexual Offences Act (in short POCSO Act).
2. FIR No. 1021/2014 was registered at PS Aman Vihar on the written complaint of the prosecutrix who stated that she was a student of 9th standard and she along with her friends was returning home after taking tuition when the accused came near her and started singing a song in an indecent manner

and on her scolding, he caught hold of her hand and told her that he would come to her house on which she got scared, she along with her other friends rushed back to her tuition teacher and narrated the entire incident. Thereafter, her tuition teacher came along with her, gave beatings to him and then her teacher sent them to their houses.

3. During the course of trial 7 prosecution witnesses including the prosecutrix were examined where after statement of the petitioner under Section 313 Cr.P.C. was recorded who claimed that he was falsely implicated. In the Court the prosecutrix deposed as under:

“On 18.09.2014 when I was coming back from my tuition class with my above said friends, accused Raju, who was present in the gali of my tuition center, came near to me and started singing a song in indecent manner. I scolded him on which he tried to caught hold of me by my hand. He also uttered that, “main abhi tumhare ghar aa raha hu”. I got scared and rushed back to my tuition center with my friends and narrated the incident to Deepak Sir, who came along with us to see as to who was the person. When Deepak Sir started talking with the accused Raju. Thereafter Deepak sir had asked all of us to go back to home. Later on we came to know that accused Raju had beaten him. Earlier also the accused had been passing comments upon me while my going to the tuition, which I used to ignore. I narrated the entire incident to my mother also, who called the police at 100 number.”

4. In her cross-examination the prosecutrix admitted that the song sung by the respondent was from a common and known Hindi film and anybody could have sung that song anywhere. She also admitted that the respondent might have been singing the said song in a routine manner and she might have mistook him to be directed towards her. She also admitted that she had started quarreling with the accused where after he got angry and a scuffle

took place between them and during the said scuffle the accused stated that he would go to her house to complain about her misbehavior. In her cross-examination the prosecutrix further admitted that she had not seen the accused beating her tuition teacher and that prior to the incident accused had never teased her.

5. The tuition teacher appeared as a witness and stated that on his advice all the children went back home and later in night when he was present in his gali, accused and his associates gave beatings to him.

6. From the cross-examination of the prosecutrix it is evident that the alleged incident by the respondent was the only incident and even in this incident she was not sure whether the respondent was singing the song which was a prevalent Hindi song in order to tease or sexually harass her or in a routine manner not directed towards her. The learned Trial Court in the impugned judgment also noted that though the alleged incident took place at 6.30 PM, PCR call was made at around 9.00 PM and the FIR was recorded at 12.35 AM the next day i.e. after a gap of 6 hours from the alleged incident and the prosecutrix had not even specified the spot of incident.

7. Be that as it may, the admission of the prosecutrix that she could be under a mistaken belief that the song was directed towards her is sufficient to grant benefit of doubt to the respondent, particularly in view of the conduct of the respondent immediately thereafter as a quarrel ensued in between them and he threatened the prosecutrix that he would complain about her misbehavior at her house. The view expressed by the learned Trial Court on the evidence of the prosecutrix and the attending circumstances cannot be said to be a non-plausible view warranting interference. Leave to appeal is thus declined.

8. Petition is dismissed. Trial Court Record be sent back.

(MUKTA GUPTA)
JUDGE

FEBRUARY 26, 2018
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