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

+ **CRL.L.P. 729/2018**

STATE

..... Petitioner

Through: Mr. Rajat Katyal, APP with SI Manisha
Sharma, PS Aman Vihar.

versus

MOHD. SHAHID

..... Respondent

Through:

CORAM:

HON'BLE MR. JUSTICE NAJMI WAZIRI

ORDER

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03.12.2018

This petition seeks leave to appeal against the order dated 20.08.2018 passed by the Ld. Addl. Sessions Judge, North-West acquitting the respondent of charges under Section 12 of POCSO Act and Section 363/354-B IPC. The impugned order has reasoned as under:

“.. Coming to the main incident, the victim though supported the prosecution case regarding the incident in her examination in chief but in the cross examination, she admitted each and every suggestion of the defence counsel creating doubts about her veracity. It is settled law the conviction on the testimony of child victim without any corroboration should be recorded only and only if the testimony of the victim is unimpeachable and trustworthy. In the cross examination, the victim stated that whatever she had stated to the court or to the police or to the Ld. M.M. was at the instance of her father and police. It is difficult to convict the accused on the sole testimony of the child victim who in her cross examination denied any such incident having taken place. Further, the most crucial eye witness i.e. one lady and two boys who rescued the victim were not examined or inquired by the IO. IO specifically admitted that a big crowd had gathered there but he did not record statement of any person who saw the

incident. The only public witness examined by the prosecution was PW-5 the PCR caller who admittedly was not an eye witness. PW-5 rather stated for the first time in the court that both the victim and the accused were seen without clothes by him. It was never the case of the prosecution that even the accused took off his clothes and was naked at the time of his apprehension. Further the victim in her statement given to the police Ex. PW2/A and the one given to Ld. M.M. Ex. PW2/B stated that accused took her to a vacant plot and removed her clothes and whereas in the court she stated that accused took her to a room in a vacant plot. The site plan Ex. PW7/B does not reflect any such room on the plot where the victim was allegedly taken by the accused. For the reasons that the testimony of the victim is not of unimpeachable quality and further is not corroborated by any independent witness specially the lady and two boys who rescued her and further there was material variations regarding the place of incident, the prosecution has failed to prove the guilt of the accused beyond reasonable doubt. Benefit of doubt is given to the accused. Accused is acquitted accordingly. He is in judicial custody. He be released forthwith, if not wanted in any other case.”

The entire case of the prosecution would depend upon the statement of the prosecutrix. She has been examined before the court on different dates and insofar she has herself changed her statement against the accused about the manner, motive and place of the offence, thereby rendering her statement not credible enough to, without doubt hold the accused guilty, her prevaricating stand would enure to the benefit of the accused. Therefore, he could not have been held guilty and was rightly acquitted.

In the circumstances, no case is made out for modifying the impugned order. The petition is without merit. It is, accordingly, dismissed.

NAJMI WAZIRI, J

DECEMBER 03, 2018/kk