

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

% Decided on: 25th September, 2018

+ **CRL.L.P. 566/2017**

STATE GNCT DELHI

..... Petitioner

Represented by: Ms. Meenakshi Chauhan, APP
for the State.
Mr. Ajay M. Lal, Advocate for
Complainant

versus

MOHD. FAISAL

..... Respondent

Represented by: Mr. Mohd. Sajid, Advocate

CORAM:

HON'BLE MS. JUSTICE MUKTA GUPTA

MUKTA GUPTA, J. (ORAL)

CrI.M.A. No.16104/2017 (Delay)

For the reasons stated in the application delay of 22 days in filing the leave to appeal petition is condoned.

Application is disposed of.

CRL.L.P. 566/2017

1. Aggrieved by the judgment dated 31st May 2017 whereby the learned Additional Sessions Judge acquitted the respondent for offences punishable under Sections 354B/354D IPC and Sections 8/12 of Protection of Children from Sexual Offences Act (in short POCSO Act), State has preferred the present leave petition.

2. Brief facts of the case are that on 10th December 2013, the victim/complainant along with her parents went to the police station and made a written complaint (Ex.PW-6/A) wherein she stated that the respondent had been following her for about 2 weeks. On 7th December

2013 the respondent caught hold of her hands while she was on her way to school and pushed her against the wall and molested her. She raised an alarm which dissuaded the respondent as a result of which she escaped, went back to her house and informed about the said incident to her mother. Due to these circumstances, her mother accompanied her to the school on 9th and 10th December 2013. On her way to school on 9th December 2013, the respondent was standing at the same place where he molested her earlier, but when he saw the mother of the victim, he ran away. On 10th December 2013, on her way to school, her mother was following her at a little distance, the respondent picked her up in his arms and started pressing her chest. She started screaming and shouting and on seeing her mother, the respondent ran away. On the basis of the above complaint, FIR No. 213/13 (Ex.PW-5/A) was registered at PS Haus Qazi for offences punishable under Sections 354B/354D IPC and Sections 8/12 POCSO Act.

3. SI Ali Sher went to the spot along with the victim and her parents where he prepared the site plan at her instance vide Ex.PW-6/B. On 11th December 2013, statement of the victim was recorded under Section 164 Cr.P.C. vide Ex.PW-6/C. He collected the birth certificate of the victim which was verified vide Ex.PW-8/B wherein the date of birth of the victim was mentioned as 5th April 1999.

4. On 11th December 2013, at around 8:00 P.M., W/SI Pushpa apprehended the respondent at the instance of the mother of the victim outside his house. He was arrested vide arrest memo Ex.PW-1/A. His personal search was conducted vide Ex.PW-3/A and his disclosure statement was recorded vide Ex.PW-8/A.

5. After completion of investigation, charge sheet was filed. Charge was

framed for the offences punishable under Sections 354B/354D IPC and Sections 8/12 POCSO Act.

6. Victim was examined as PW-6 who deposed in sync with the complaint made by her to the police. During her cross-examination, she denied the suggestion that she did not meet her uncle Sarfaraz. She also stated that it was correct that school going children and their parents used to be there at that time but not in the gali where the incident took place rather outside the gali.

7. Mother of the victim (PW-1) corroborated the testimony of the victim.

8. Mohd. Faisal in his statement under Section 313 Cr.P.C. stated that the FIR in the present case was registered as a counter blast to FIR No.202/2013 under Sections 323/341/354 IPC which was registered on the complaint of his real sister Mehnaz against one Sarfaraz who is the paternal uncle of the victim. Sarfaraz had been arrested in FIR No.212/13 and was in judicial custody. He further stated that the family of the victim had got the present FIR registered in order to pressurize him and his family to compromise the matter. A day after the registration of FIR No.202/2013, the family members of Sarfaraz had threatened him regarding which a complaint was lodged on 3rd December 2013.

9. From the evidence on record it is evident that since the place of incident was a thickly populated residential area where many people would be present and the time of incident was when children go to school yet no independent public witness has been examined. The allegations against the respondent are not improbable as it would not be possible for a boy to lift a girl in his arms and caress her breast at the same time. The prosecution has not given any reasonable explanation to rebut the contentions that the

present case was nothing but a counter blast to the FIR which was registered by the sister of the respondent. The present case was registered on 10th December 2013 whereas the sister of the respondent got a FIR registered against the uncle of the victim on 2nd December 2012 and a subsequent complaint on 3rd December 2013 wherein she specifically mentioned that the family of the victim had threatened to kill her and falsely implicate her brothers and sisters. Sarfaraz was living in the same house as that of the victim and it is difficult to believe that the victim and her mother were not aware about his arrest. There was a delay of 12 hours in lodging the FIR. The mother of the victim in her statement before the police stated that she had seen the victim in the arms of the respondent after the victim raised an alarm while in her statement recorded under Section 161 Cr.P.C. she stated that she had stopped to buy milk while she was going to drop her daughter to school. Versions of the victim and her mother are thus not credible.

10. Hence, the impugned judgment acquitting the respondent cannot be said to be perverse warranting interference by this Court.

11. Leave to appeal petition is dismissed.

12. Trial Court record be sent back.

(MUKTA GUPTA)
JUDGE

SEPTEMBER 25, 2018

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