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

DECIDED ON : 3rd MAY, 2018

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CRL.REV.P. 24/2018

THE STATE GOVT OF NCT OF DELHI Petitioner
Through : Mr.Tarang Srivastava, APP.

versus

MOHD KAMRUL & ANR Respondents
Through : None.

**CORAM:
HON'BLE MR. JUSTICE S.P.GARG**

S.P.GARG, J. (Oral)

1. Present revision petition has been preferred by the petitioner to challenge the legality and correctness of an order dated 09.10.2017 of learned Addl. Sessions Judge in case FIR No.247/2015, Police Station Mayur Vihar whereby the respondents were discharged of the offences.

2. I have heard the learned Addl. Public Prosecutor and have examined the file. The instant FIR was lodged on the statement of the prosecutrix 'X' (assumed name). On 13.04.2015, she was medically examined; she recorded her 164 Cr.P.C. statement. Statements of the witnesses conversant with the facts were recorded. Upon completion of investigation, a charge-sheet was filed against the

respondents for commission of offences punishable under Sections 376/506/34 IPC read with Section 109/366A IPC and Section 6 read with Section 17 POCSO Act.

3. The Trial Court, however, did not find sufficient material to proceed against the respondents for the commission of the aforesaid offences. It is not in dispute that the prosecutrix and the respondents were acquainted since long and were related to each other. The respondents had started living in the neighbourhood of the prosecutrix for the last around 5 or 6 months prior to the lodging of the FIR in a rented accommodation. In the complaint lodged on 13.04.2015, the victim disclosed that respondent Mohd.Kamrul - husband of respondent No.2 Firoza used to sexually assault her at his house after criminal intimidation. Firoza used to instigate and assist her husband in the crime. She did not disclose the incident to her parents due to fear. Finally, when she became pregnant and her parents came to know about it, she divulged her ordeal to them.

4. From perusal of the contents of the complaint given to the police at the first instance, it reveals that the prosecutrix was aged around 17 years. Physical relations were allegedly established with her on several occasions at the residence of the respondent No.1 in the presence of her wife - respondent No.2. At no stage, however, the prosecutrix raised any alarm or informed her parents or relatives. There was no occasion for the prosecutrix to visit the respondents' residence time and again once she had undergone the trauma of alleged commission of rape. The respondent No.1 was not armed with any weapon to cause real apprehension in the victim's mind to

maintain complete silence for such a long time. At the time of her medical examination, no injuries whatsoever were found on her body including private parts. She declined to undergo internal medical examination. It further reveals that the victim did not inform anyone about her pregnancy and when it was detected by her sister Firoza on seeing her abdomen, the incident was informed to the family members and the respondents were named in the FIR for the sexual assaults. No plausible explanation has been offered by the victim or her parents for not reporting the incident promptly to the police.

5. During investigation, the victim delivered a child. DNA test was conducted. However, as per the DNA report, respondent No.1 was not the biological father of the child delivered by the victim. Apparently, the victim had physical relations with someone else and she did not disclose it in her complaint. Seemingly, when victim's pregnancy emerged and came in the notice of her family members, she to avoid legal proceedings against the actual perpetrator of the crime put blame upon the respondents for establishing physical relations with her on several occasions.

6. The Trial Court has noted various deficiencies and discrepancies in the statements of the victim in her 161 Cr.P.C. and 164 Cr.P.C. statements. It is highly unbelievable that respondent No.2 would permit her husband to have physical relations in her presence with the victim related to her repeatedly.

7. The impugned order does not suffer from any illegality or irregularity and is based upon fair appreciation of facts and law.

8. The revision petition is unmerited and is dismissed in limine.

9. Trial Court record be sent back forthwith with the copy of the order.

(S.P.GARG)
JUDGE

MAY 03, 2018 / *tr*

