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

+ CRL.L.P. 72/2019, CRL MA No. 1695-96/2019

STATE (GNCT OF DELHI) Petitioner

Through Mr. Amit Gupta, APP

versus

SACHIN SINGH Respondent

Through None

CORAM:

HON'BLE MS. JUSTICE HIMA KOHLI

HON'BLE MR. JUSTICE MANOJ KUMAR OHRI

ORDER

31.01.2019

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1. The present leave to appeal has been filed by the State under Section 378 (1) Cr.P.C. seeking leave to appeal against the acquittal order dated 05.09.2018 passed by the learned ASJ in SC No.27205/2016 in FIR No.322/2014 dated 14.07.2014, P.S. Civil Lines for offences under Sections 377/323 IPC and Section 4 of the POCSO Act.

2. The learned Sessions Court, after going through the testimonies of the witnesses and evidence on record, has acquitted the respondent, Sachin Singh. As per the prosecution case, the allegations levelled against the Respondent are that on 14.07.2014, he sodomized the minor victim 'A' inside his truck bearing No.HR-55H-2989, which was parked outside the school of the child victim. It was also alleged that he had kissed the minor child and gave him beatings while committing the aforesaid offence.

3. The prosecution has examined 15 witnesses including material witness, PW-3 Bhupal Singh, who produced the school record as per which the date of birth of the child victim 'A' is 13.09.2003. The child victim 'A' was examined as PW-5. The mother of the child victim 'A' was examined as PW-6. Public witness, Dharmender Singh was examined as PW-7. Counsellor, Ms. Neha Khurana, was examined as PW-11 who proved her counselling report as Ex PW-11/A. PW-8, Dr. Anubha proved the MLC of the child victim 'A' as Ex. PW-8/A. PW-10, Dr. Prashant Sikarwar proved his noting on the MLC of the child victim 'A', as Ex. PW-10/A.

4. Police witnesses were also examined to prove various steps taken during the investigation. The initial investigations were carried out by PW-15, SI Laxman and later on investigations were completed by PW-14 SI Pawan Kumar who had filed the charge sheet before the trial court.

5. We have heard the learned APP for the State and also gone through the grounds of the leave petition as well as the records of the case. During the course of the arguments, learned APP has handed over copies of the MLC and FSL report.

6. The story put forth by the child victim 'A' was that on 14.07.2014, he sought permission from his teacher to leave the school as he was feeling pain in his stomach and wanted to go home. When he stepped out from the school, the respondent, who was sitting in a truck parked outside the school, asked him to bring a cold drink and gave him Rs.500/- note. When the child victim 'A' brought the cold drink, the respondent after removing his pants and underwear, also removed the victim's pants and committed sexual intercourse with him. The respondent also kissed the victim and gave him Rs.100/-. The

child victim 'A' further deposed that he got down from the truck and narrated the above facts to PW-7, who was standing nearby.

7. The trial court has disbelieved the version of the child victim 'A' on the basis of the inconsistencies between his statement and that of the public witness, PW-7. During his testimony, PW-7 had deposed that when he asked the respondent the reason for beating the child victim 'A', he had replied that the child was smoking inside the truck. The testimony of the child victim 'A' was also disbelieved on account of the fact that no one from his school was examined to prove that any permission was given to him to leave before the school time.

8. Further, the MLC of the child victim 'A' did not reveal any injury marks on his private parts. The testimony of PW-10, Dr. Prashant Sikarwar also shows that in his examination, during the endoscopy of the child victim, he did not find any injury marks inside his anus. As per the noting of Dr. Prashant Sikarwar on the MLC (Ex.PW-10A), no external injury was found "*on the person of the child victim and his digital rectal examination was not having abnormality and anal tone was normal*". PW-10 confirmed that no bruises or abrasion marks were found in the anus of the child. The child victim 'A' also did not complain about any pain while walking. Further, as per the FSL report, Ex. PA, no semen or blood could be detected either on the underwear of the child victim 'A' or his perianal swab gauze or his pant. Similarly, no semen was detected on the penile swab of the accused and on the seat cover of the truck.

9. The Trial Court also disbelieved the seizure of the currency note of Rs.100/- stated to have been given by the respondent to the victim child as in

the seizure memo, no serial number of the said currency was noted and as such, planting of the same could not be ruled out. The Trial Court found inconsistencies between the testimony of PW-5 vis-a-vis his earlier statement recorded under Section 164 Cr.P.C. (Ex. PW-5/I). It was noted that on the other hand, the respondent has taken a consistent stand that he had given beatings to the child as he was smoking in his truck.

10. The law with regard to grant of leave is well settled by a catena of judgements. Leave to appeal can be granted only where it is shown that the findings of the Trial Court are perverse and that there are very substantial and compelling reasons to set aside the same. In this context, reference is made to the decision in *Syed Peda Aowlia vs. Public Prosecutor, High Court of Andhra Pradesh, Hyderabad, (2008) 11 SCC 394*.

11. From the evidence which has emerged on the record, we concur with the conclusion arrived at by the Trial Court that the prosecution has failed to prove its case beyond reasonable doubt. We do not find any infirmity in the impugned judgement for interference. The present leave petition is accordingly dismissed along with the pending applications.

HIMA KOHLI, J.

MANOJ KUMAR OHRI, J.

JANUARY 31, 2019

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