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IN THE HIGH COURT OF DELHI AT NEW DELHI

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CRL.REV.P. 445/2018 & CRL.M.A. 9542/2018

STATE

..... Petitioner

Through: Mr. Ashish Dutta, APP

versus

WASIM @ BASIM

..... Respondent

Through: None

CORAM:

HON'BLE MR. JUSTICE CHANDER SHEKHAR

ORDER

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31.01.2019

1. This is a petition filed under Sections 401/397/377 read with Section 482 of the Code of Criminal Procedure, 1973 ('Cr.PC', in short) against the order dated 15.2.2018 ('impugned order', in short) passed by the learned Additional Sessions Judge-01, Special Court POCSO, North-West Rohini Courts, Delhi (hereinafter, the 'Trial Court').

2. The alleged brief facts of the case are that, on 19.12.2015 DD No.9-B was recorded at P.S. Aman Vihar and the SI and two other constables reached the spot, i.e. SBI ATM booth, Kalka Devi Mandir, Inder Enclave Phase- II, Delhi, where they met the prosecutrix along with her father and the father of the prosecutrix produced the accused. The SI recorded the statement of the prosecutrix, wherein she stated that, on 19.12.2015, at about 7:20 a.m., she was going to school and when she reached near the SBI ATM booth, the accused came there by following her and then he threw small stones towards her and thereafter, the accused slapped on her face and waist.

On the basis of the said statement, an FIR was registered.

3. Learned APP admitted that the statement of the prosecutrix under Section 164 of the Cr.PC was recorded, wherein she clearly stated that when she was going to her school, she noticed that the accused, under the influence of liquor, was beating some children and when she objected to it, the accused also gave beatings to her.

4. The Trial Court after going through the material placed on record passed the impugned order dated 15.2.2018 holding that no offence under Section 12 of the Protection of Children from Sexual Offences Act, 2012 ('POCSO', in short) as well as under Section 354-D of the Indian Penal Code, 1860 ('IPC', in short) is made out against the accused and he is discharged from the said offence. The Trial Court further held that, *prima facie*, the case against the accused is made out only under Section 323 IPC.

5. Learned APP for the State submitted that the Trial Court committed grave error while passing the impugned order thereby discharging the accused for offence under Section 12 of the POCSO Act as well as under Section 354-D of the IPC.

6. A perusal of the statement under Section 164 Cr.PC and also taking into consideration the scope and applicability of Section 12 of the POCSO Act and Section 354-D IPC as well as the complaint made by the complainant, *prima facie* no case can be said to have been made out against the accused under

Section 12 of the POCSO Act and under Section 354-D of the IPC against the accused.

7. Accordingly, I do not find any flaw or infirmity in the impugned order. The petition is dismissed.

CHANDER SHEKHAR, J

JANUARY 31, 2019

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