

\$~5

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

+ CRL.REV.P. 1028/2018

STATE (GNCT OF DELHI)

..... Petitioner

Through: Mr. Mukesh Kumar, Advocate with
SI Surender, P.S.: Begumpur

versus

LALIT JOSHI & ANR

..... Respondents

Through: Counsel (appearance not given)

CORAM:

HON'BLE MR. JUSTICE A.K. PATHAK

ORDER

%

24.01.2019

Petitioner is aggrieved by the order dated 27.09.2018 of the Learned Session Judge-01/Special Court-POCSO Act, Rohini Court, Delhi, whereby respondents have been discharged for the offences under sections 363/376/120B IPC & 6/17 POCSO Act.

The trial court has noted that in her statement under section 164 Cr.P.C., prosecutrix did not utter anything against any of the accused/respondents. Trial Court has relied on the order dated 16.01.2017 in CRL. Revision Petition no. 9/2017 and CRL. Revision Petition no. 10/2017 both titled as State Vs. Gajraj Singh to conclude that no prima facie case was made out to frame charges against the petitioner.

Learned APP submits that prosecutrix has alleged in her statement under section 161 Cr.P.C. that respondent no.1 had developed physical relations with her forcibly. Accordingly, trial court ought to have framed the charge despite the prosecutrix exonerating the respondents in her statement under section 164 Cr.P.C. Statement under Section 161 Cr.P.C. is sufficient to frame charges.

In State Vs. Gajraj Singh 2017(1)JCC511, Gajraj Singh was involved in two FIRs, that is FIR No. 387/2015 and FIR No. 388/2015, both under section 354 IPC and Section 10 POCSO Act. The prosecutrix had separately alleged in their statements under Section 161 Cr.P.C. that Dr. Gajraj Singh, while checking her stomach had pulled up her top and thereafter pulled down her pyjama and started touching her private parts. However, in their statement under section 164 Cr.P.C. they completely exonerated Mr. Gajraj Singh.

In Gajraj Singh (Supra), learned Single Judge held as under:-

7. The present is not a case where there are some material changes or improvements or differences from the statements on the basis of which FIR was registered and recorded under Sections 161 Cr.P.C. Statements under Section 164 Cr.P.C. were recorded by the Magistrate after verifying the voluntariness of both the prosecutrix to make the statements and that they were under no threat or coercion. As per the statements recorded under Section 164 Cr.P.C. the police was

called after the doctor scolded both the prosecutrix and their mother for not following the line. Even during trial the two statements, that is, one recorded under Section 161 Cr.P.C. and other under Section 164 Cr.P.C. are not reconcilable. The distinction between the two being so severe that even without a roving and fishing inquiry it can safely be held that at this stage itself there is no strong suspicion to proceed against the respondent. As held by the Supreme Court, even at the stage of framing of charge, the Court has not to act as the mouthpiece of the prosecution but should examine the broad probabilities of case.

In this case also prosecutrix has stated in her statement under section 161 Cr.P.C. that respondent had developed physical relations with her forcibly. However, in her statement under section 164 Cr.P.C. prosecutrix stated that she was working in the factory of respondent no.1, where she developed friendship with her colleague, namely, Mr. Vikas. On discovering this fact, the Manager, namely, Ms. Seema informed about their relations to respondent no.2, who told her that she would have to leave the job and further that he will inform about her relations with Vikas to her mother. Out of anger, she levelled allegations against the respondents in her FIR. She categorically stated that nobody had committed any wrong act with her.

For the foregoing reasons, I do not find any illegality or irregularity in the impugned order.

Petition is dismissed.

A.K. PATHAK, J.

JANUARY 24, 2019
savita