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

+ **W.P.(CRL) 2580/2018**

MS. POONAM & ORS. Petitioners
Through Ms. Petal Chandhok, Adv.

versus

STATE OF NCT OF DELHI & ORS. Respondents
Through Ms. Kamna Vohra, ASC for State.
Mr. Rakesh Kumar, Advocate for R2.
Inspector Ghanshyam Kishore, P.S.
Mayapuri.

CORAM:
HON'BLE MR. JUSTICE VIBHU BAKHRU

ORDER
% **03.03.2020**

1. The petitioners have filed the present petition, *inter alia*, praying that FIR bearing No. 0471/2017 under Section 10 of the Protection of Children from Sexual Offences Act, 2012 (POCSO Act) registered with PS Dwarka South and all proceedings emanating therefrom, be quashed.
2. The chargesheet has been filed, which indicates that an offence under Section 75 of the Juvenile Justice (Care and Protection of Children) Act, 2015 (JJ Act) has also been included.
3. The said FIR was registered at the instance of the father of the child (girl aged four years). He had alleged that a canteen boy had kissed the said child on her lips. The chargesheet indicates that the statement of the child under Section 164 of the Cr.P.C. was recorded wherein she had made a

statement that the canteen boy had kissed her on her lips. However, none of the teachers/staff nor any student could confirm the said incident. Besides this, the child could also not identify the person (canteen boy) against whom the allegations were made. The prosecution has not been able to gather any evidence against the accused and therefore, he has not been arrested. Despite the above, the chargesheet has also been filed against the Head Mistress and the Class Teacher of the pre-school where the child was studying on the premise that they were in charge and control over the child victim and had neglected the child resulting in her unnecessarily suffering mental and physical trauma.

4. This Court has reservations whether a charge in this matter can be framed considering that the accused has not been identified by the child as the person who had committed the offending act. Her statement is not supported by any of the children or teachers.

5. Apart from the above, this Court had also noted in the order dated 31.08.2018, that in terms of the proviso to Section 75 of the Juvenile Justice (Care and Protection of the Children) Act, 2015, if the child is subjected to wilful neglect, abandonment, assault and abuse when the custody of the child is entrusted to a management or an organization; only the person who is entrusted with the care and protection can be punished, which would be concerned teacher responsible at the relevant time. The sweep of the proviso to Section 75 of the JJ Act would not extend to the Head Mistress or the Class Teacher, who were not present personally and were not required to be personally present when the alleged incident had taken place.

6. The complainant (father of the child), is present in Court and he states

that he does not wish to pursue the said FIR and prays that the same be quashed.

7. Ms. Vohra, learned ASC appearing for the State states that since the charge-sheet under Section 10 of the Protection of Children from Sexual Offences Act, 2012 and Section 75 of the Juvenile Justice (Care and Protection of Children) Act, 2015 has been filed, it would be appropriate for the petitioners to urge their contentions before the concerned court.

8. This Court finds the said contention merited and therefore, is refraining from interfering at this stage. It would be apposite that if the petitioners appear before the trial court and urge their contentions. The Trial Court is expected to consider the material on record as well as provisions of law and take an informed decision.

9. If any application for exemption is made on behalf of the Head Mistress or the concerned teachers, the same would be considered sympathetically. The petitioners are at liberty to file afresh in case any adverse order is passed.

10. The petition stands disposed of.

11. Order *dasti* under signatures of the Court Master.

VIBHU BAKHRU, J

MARCH 03, 2020

dr