



#S-3

NEUTRAL CITATION NO: 2022/DHC/001410

IN THE HIGH COURT OF DELHI AT NEW DELHI

Judgment Delivered On: 11.04.2022

CRL.L.P.192/2021

THE STATE (GNCT OF DELHI)

..... Petitioner

versus

ASHOK @ SHANKY

.....Respondent

Advocates who appeared in this case:

For the petitioner : Mr. Ashish Dutta, APP for the State along with
S.I. Saachin, P.S.: Nand Nagari.

For the respondent : None

CORAM:

HON'BLE MR. JUSTICE SIDDHARTH MRIDUL

HON'BLE MR. JUSTICE RAJNISH BHATNAGAR

J U D G M E N T

SIDDHARTH MRIDUL, J. (OPEN COURT)

1. The present Leave Petition under Section 378(1) of the Code of Criminal Procedure (Cr.P.C.), 1973, has been instituted on behalf of the petitioner/State, praying as follows:-

“It is therefore, most respectfully prayed that:

The trial court record of Sessions Case No 527/2016 in case FIR No. 1075/2014 dated 01.11.2014, PS: Nand Nagri for offences under section 376 of IPC & sections 4 of POCSO Act, be called for,

- (i) The impugned judgment dated 22.12.2020 by Ms. Bhawani Sharma, Additional Sessions Judge+1/Special Judge, POCSO ACT, Shahdara District, Karkardooma Courts, Delhi in Sessions Case No. 527/2016 in case FIR No. 1075/2014 dated 01.11.2014, PS: Nand Nagri for offences under section 376 of IPC & sections 4 of POCSO



Act be set aside and accused/respondent be accordingly convicted for the offences he was charged with, and/ or

- (ii) Pass any further order/orders as may deem fit and proper in the interest of justice.”

2. At the outset, it is observed that, it is an admitted position that the alleged victim and the accused before the trial court, are happily married to each other and reside as husband and wife along with their infant son at the matrimonial residence.

3. It is further an admitted position that the alleged victim clearly deposed before the trial court that, she did not wish for her husband – accused – to be vested with any punishment for any alleged crime stated to have been committed by the latter upon the former.

4. Subsequent upon the investigation, charge-sheet was filed against the sole respondent, namely, Ashok *alias* Shanky and the prosecution examined the alleged victim as PW-1.

5. The victim did not support the case of the prosecution at all and on the contrary, categorically deposed that, she did not want to prosecute the accused since the latter had not committed any wrong with her, as well as, the circumstance that the young couple were married and living happily along with their minor son.

6. In view of the foregoing, the learned trial court by way of an erudite and exhaustive judgement, returned a finding that the



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prosecution's case did not have any legs to stand on, particularly in view of the testimony of the victim.

7. The solitary submission made on behalf of the prosecution in the present leave to appeal petition is, limited to the issue that, a trial court failed to appreciate that the alleged victim was a minor, at the time of the commission of the alleged offence.

8. In this behalf, we find ourselves in agreement with the learned trial court that the testimony of PW-3, the mother of the victim, did not establish beyond reasonable doubt that the alleged victim was below the age of maturity, at the time of the commission of the alleged offence and that the prosecution had, therefore, failed in proving that the victim was a minor, at the time of the commission of the alleged offence.

9. Mr. Ashish Dutta, learned APP appearing on behalf of the State, fairly and candidly conceded that the alleged victim and the accused are happily married and still living together at their matrimonial home along with their minor child.

10. In view of the foregoing, there is no warrant for this Court to interfere with the finding returned by the trial court, to the effect that the prosecution failed to prove beyond reasonable doubt either the



commission of the offence or the fact that the alleged victim was a
minor on the said date.

11. The present leave to appeal petition filed on behalf of the State,
is consequently devoid of merits and the same is accordingly
dismissed and disposed of.

**SIDDHARTH MRIDUL
(JUDGE)**

**RAJNISH BHATNAGAR
(JUDGE)**

APRIL 11, 2022/rs



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