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IN THE HIGH COURT OF DELHI AT NEW DELHI

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CRL.L.P. 276/2023 & CRL.M.A. 13882/2023

THE STATE (GNCT OF DELHI)

.....Petitioner

Through: Mr. Aman Usman, APP for the State.
SI Sukh Chain, PS- Nihal Vihar.

versus

PRAVEEN KUMAR @ TONI

.....Respondent

Through: Mr. Sumit Dagar, Advocate with
Respondent in person.

CORAM:

JUSTICE PRATHIBA M. SINGH

JUSTICE AMIT SHARMA

ORDER

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07.11.2024

1. This hearing has been done through hybrid mode.
2. This petition under Section 378(3) of the CrPC has been filed seeking leave to challenge the impugned judgment dated 18th October, 2019 by which the Respondent/Accused was acquitted by the Trial Court in Sessions **Case No. 134/2013** arising out of **FIR No. 68/2013**, under Section 363 of the IPC and Section 6 of the Protection of Children from Sexual Offences Act, 2012 ('POCSO Act') registered at PS Nihal Vihar.
3. The incident took place on 05th March 2013. The FIR was subsequently registered on the same date on a complaint lodged by the complainant/PW-4, *i.e.*, the grandmother of the survivor, at about 06:30 p.m., stating that the survivor had gone out for some work and thereafter had not returned. The FIR was initially registered under Section 363 of the IPC and subsequently on the statement made by the survivor making allegations of rape by the Respondent, Section 6 of the POCSO Act was added in the FIR.



4. Charges were framed *vide* order dated 26th July, 2013 for the offences punishable under Section 363 of the IPC and Section 6 of the POCSO Act and the prosecution had led 15 witnesses to prove the charges levelled against the Respondent. The survivor's statement under Section 164 of the CrPC had also been recorded.

5. After perusing the evidence, the Trial Court arrived at the following conclusions :-

- i. That the evidence given by the survivor was not of sterling quality. There were improvements and certain contradictions in her initial statements recorded under Section 161 Cr.P.C., 164 Cr.P.C. and in her testimony recorded before the Trial Court;
- ii. The medical evidence also did not support the allegations made against the Respondent. The MLC, **Ex. PW-8/A**, did not reveal any external injuries;
- iii. The Trial Court had also perused the FSL report and the same also did not support the case of the prosecution;
- iv. The Court also gave an opportunity to produce independent public witnesses and despite availability, the same was not done;
- v. The Court then came to the conclusion that the testimony of the survivor and her grandmother were also contradictory on material points and therefore were not sufficient to convict the Respondent. In these circumstances, the Trial Court found that there were various infirmities which were fatal to the entire prosecution case.

6. The present leave petition has been filed with considerable delay of more than 532 days. This Court has also examined the reasons for the delay, which merely are of movement of the file from the Department to the APPs.



7. Mr. Aman Usman, Id. APP for the State has also taken this Court through the Trial Court Record. A perusal of the MLC would show that no injuries have been recorded despite the serious allegations which were made. Even the FSL Report, **Ex. PX-3**, shows that there is no male DNA profile generated from the exhibits which were collected including the vaginal swabs. The survivor herself on her own had refused her internal examination.
8. Insofar as the submission by Mr. Usman that the presumption under Section 29 of the POCSO Act ought to be read, it is sufficient to note that the foundational facts required in order to raise such a presumption have also not been established.
9. Considering the overall facts and circumstances in the opinion of this Court, this is not a fit case for grant of leave to appeal. The leave petition is accordingly dismissed both on the grounds of delay as also on merits.
10. The petition is accordingly dismissed. Pending application, if any, also stands disposed of.

PRATHIBA M. SINGH, J

AMIT SHARMA, J

NOVEMBER 7, 2024/nd/nk/bh/NS