



2024:DHC:6508



\$~71

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**% *Date of Decision: 22nd July, 2024*+ **CRL.L.P. 339/2024**

STATE

.....Petitioner

Through: Ms. Meenakshi Dahiya,
APP for the State
SI Suruchi, PS- Fatehpur
Beri

versus

BASANT MISHRA

@ SURAJ

.....Respondent

Through: None

CORAM:**HON'BLE MR. JUSTICE AMIT MAHAJAN****AMIT MAHAJAN, J. (Oral)****CRL.M.A. 21075/2024 (for exemption)**

1. Exemptions allowed, subject to all just exceptions.
2. The application stands disposed of.

CRL.L.P. 339/2024, CRL.M.A. 21074/2024 & CRL.M.A. 21076/2024

3. The present petition is filed under Section 378 of the Code of Criminal Procedure, 1973 challenging the judgment dated 10.03.2021 (hereafter '**the impugned judgment**'), in Sessions Case No. 7884/2016 arising out of FIR No.643/2015, registered at Police Station Fatehpur Beri, whereby the learned Trial Court had acquitted the respondent of the offences under Sections 376 (2)/506 of the Indian Penal Code, 1860 ('**IPC**'), Section 6 read

Signature Not Verified

Digitally Signed
By: HARMINDER KAUR
Signing Date: 29.08.2024
19:09:04

CRL.L.P. 339/2024

Page 1 of 9



2024:DHC:6508



with Section 5 of the Protection of Children from Sexual Offences Act, 2012 ('**POCSO Act**') and Section 23 of the Juvenile Justice (Care and Protection of Children) Act, 2000 ('**JJ Act**').

4. The petitioner has also filed an application, that is, CRL.M.A. 21074/2024 under Section 5 of the Limitation Act, 1963 read with Section 482 of the CrPC seeking condonation of delay of 699 days in filing the present petition. The petitioner has filed another application, that is, CRL.M.A. 21076/2024, seeking condonation of delay of 45 days in re-filing the petition.

5. The brief facts of the present case are that the respondent allegedly raped the prosecutrix, who was 14 years old at the time of the incident. The FIR was lodged on a complaint made by the prosecutrix on 06.09.2015. It was alleged that the prosecutrix was employed in the house of the respondent to take care of his sister's children. It was alleged that after the prosecutrix had left the job, the respondent and his sister came to her house on 31.08.2015 and levelled allegations of theft on her. It was alleged that a month prior to the registration of the FIR, the respondent had forcefully established physical relations with the prosecutrix and threatened her to not tell about the same to anyone. The FIR was registered after the prosecutrix informed her mother about the incident.

6. The learned Trial Court framed the charges against the respondent *vide* order dated 17.02.2017 for the offences under Sections 376 (2)/506 of the IPC, Section 6 read with Section 5 of the POCSO Act and Section 23 of the JJ Act.

CRL.L.P. 339/2024

Page 2 of 9



2024:DHC:6508



7. The learned Trial Court, by the impugned judgment, acquitted the respondent of the charged offences.

8. The impugned judgment dated 10.03.2021 is challenged by the State belatedly in July, 2024. Clearly, there is an inordinate delay of about 700 days in filing the present petition.

9. It is well-settled that each day of the delay is required to be explained. In the present case, no sufficient reasons are mentioned in the application which would entitle the petitioner for condonation of delay. The application for condonation of delay, that is, CRL.M.A. 21074/2024, mentions that though the judgment was delivered on 10.03.2021, the certified copy of the same was only applied for on 14.09.2021. No reason has been mentioned for the inordinate delay for more than six months in applying for the certified copy of the impugned judgment. The application thereafter mentions that the file was in process in the various departments for opinion on the point of filing of the appeal and was sent to the Standing Counsel (Criminal) on 01.11.2021. No reason has been mentioned as to why the appeal was thereafter filed in May, 2024, except for stating that the Hon'ble Supreme Court had extended the period of limitation from 15.03.2020 till 28.02.2022.

10. Even if, the benefit of the judgment passed by the Hon'ble Apex Court is given to the prosecution, there has been a delay of more than two years in filing the present appeal.

11. The Hon'ble Apex Court has frowned upon following of such practices by the Government departments. The Hon'ble Apex Court, in the case of *Postmaster General v. Living Media*

CRL.L.P. 339/2024

Page 3 of 9



2024:DHC:6508



India Ltd. : (2012) 3 SCC 563, had held that the Government cannot claim to have a separate period of limitation when the Department is possessed with competent persons familiar with court proceedings. The delay cannot be condoned mechanically merely because the Government or a wing of the Government is a party before the Court. The Hon'ble Apex Court had rejected the claim on account of impersonal machinery and bureaucratic methodology of making several notes in view of the modern technologies being used and available.

12. The Hon'ble Supreme Court in the case of **State of M.P. v. Bherulal : (2020) 10 SCC 654**, while observing the irony that no action is taken against the officers who sit on files and do nothing under a presumption that the court would condone the delay in routine, held as under:

"6. We are also of the view that the aforesaid approach is being adopted in what we have categorised earlier as "certificate cases". The object appears to be to obtain a certificate of dismissal from the Supreme Court to put a quietus to the issue and thus, say that nothing could be done because the highest Court has dismissed the appeal. It is to complete this formality and save the skin of officers who may be at default that such a process is followed. We have on earlier occasions also strongly deprecated such a practice and process. There seems to be no improvement. The purpose of coming to this Court is not to obtain such certificates and if the Government suffers losses, it is time when the officer concerned responsible for the same bears the consequences. The irony is that in none of the cases any action is taken against the officers, who sit on the files and do nothing. It is presumed that this Court will condone the delay and even in making submissions, straightaway the counsel appear to address on merits without referring even to the aspect of limitation as happened in this case till we pointed out to the counsel that he must first address us on the question of limitation."



13. Therefore, unless a reasonable and acceptable explanation for the delay is provided, the same cannot be accepted. As held by the Hon'ble Apex Court, the Government departments are under such obligation to ensure that they perform their duties with diligence and commitment.

14. As noted above, no worthy reason is pleaded so as to entitle the application for condonation of delay being allowed.

15. Insofar as the merits of the case are concerned, the respondent has been acquitted by the learned Trial Court noting that the prosecution has failed to establish the foundation of facts beyond reasonable doubt.

16. It is trite law that this Court must exercise caution and should only interfere in an appeal against acquittal where there are substantial and compelling reasons to do so. At the stage of grant of leave to appeal, the High Court has to see whether a *prima facie* case is made out in favour of the appellant or if such arguable points have been raised which would merit interference. The Hon'ble Apex Court in the case of ***Maharashtra v. Sujay Mangesh Poyarekar : (2008) 9 SCC 475*** held as under:

“19. Now, Section 378 of the Code provides for filing of appeal by the State in case of acquittal. Sub-section (3) declares that no appeal “shall be entertained except with the leave of the High Court”. It is, therefore, necessary for the State where it is aggrieved by an order of acquittal recorded by a Court of Session to file an application for leave to appeal as required by sub-section (3) of Section 378 of the Code. It is also true that an appeal can be registered and heard on merits by the High Court only after the High Court grants leave by allowing the application filed under sub-section (3) of Section 378 of the Code.

20. In our opinion, however, in deciding the question whether requisite leave should or should not be granted,



the High Court must apply its mind, consider whether a prima facie case has been made out or arguable points have been raised and not whether the order of acquittal would or would not be set aside.

21. It cannot be laid down as an abstract proposition of law of universal application that each and every petition seeking leave to prefer an appeal against an order of acquittal recorded by a trial court must be allowed by the appellate court and every appeal must be admitted and decided on merits. But it also cannot be overlooked that at that stage, the court would not enter into minute details of the prosecution evidence and refuse leave observing that the judgment of acquittal recorded by the trial court could not be said to be “perverse” and, hence, no leave should be granted.”

(emphasis supplied)

17. The learned Additional Public Prosecutor for the State submits that the impugned judgment is based on conjectures and the learned Trial Court has failed to appreciate the evidentiary value of the statement of the prosecutrix who had supported the case of the prosecution on all material particulars.

18. He submits that it is settled law that the accused can be convicted merely on the basis of the statement of the prosecutrix as well and in the present case, the presumption under Section 29 of the POCSO Act is raised against the respondent.

19. He submits that the victim was merely 14 years old at the time of the incident and the discrepancy in her statements regarding her terms of employment are of no significance.

20. He submits that there is no major contradiction in the prosecution's case whereby the minor contradictions in the victim's testimony should not have been the ground of acquittal of the respondent.

21. The prosecution examined 9 witnesses in support of its CRL.L.P. 339/2024



2024:DHC:6508



case, including the prosecutrix, her mother and 4 police officials.

22. The learned Trial Court, after examining the evidence, has passed a well reasoned order noting that there are inherent infirmities in the prosecution's version.

23. It was noted that the prosecutrix in her complaint had categorically stated that she was employed at the house of the respondent to take care of his sister's children. She worked there for about four months and left on 20.08.2015. However, in her statement under Section 164 CrPC, the prosecutrix mentions that she used to work in the house and also at the office of the respondent.

24. The prosecutrix in her complaint initially made no mention that she was not paid any salary for four months. In her statement under Section 164 CrPC, the prosecutrix stated that her salary of ₹4,000/- per month was not paid. Later, the prosecutrix stated that the sister of the respondent had told her that they will pay her ₹3,000/- per month, however, even that was not paid to her.

25. Further, in the complaint which led to registration of the FIR, the prosecutrix stated that the respondent established physical relations with her around one month before in his house, whereas in her statement under Section 164 CrPC, the prosecutrix alleged that she was raped for the first time in the second month of her employment, raped for the second time by the respondent after a few days in his office and raped again in his house.

26. The learned Trial Court noted that the prosecutrix was not able to offer any plausible explanation on being confronted for

CRL.L.P. 339/2024

Page 7 of 9



2024:DHC:6508



not disclosing the fact of her being raped three times in her complaint given initially. It was noted that statement was signed by the victim.

27. Another relevant factor which was allegedly noted by the learned Trial Court was that the allegation of rape was made for the first time on 06.09.2015 and that was only after the accused and his sister had alleged theft by the prosecutrix during the time when she was working as a maid. The complaint for theft was made on 31.08.2015.

28. In her evidence, the prosecutrix stated that on 31.08.2015 she had told her mother that the respondent had raped her and the police had not paid any heed to their complaint. The learned Trial Court rightly observed that no such statement was made by the victim when she gave a complaint to the police or when the statement under Section 164 of the CrPC was recorded. No explanation was furnished for the same.

29. It was rightly noted that no complaint was ever made by the prosecutrix against the police for not cooperating.

30. In the present case, the allegations are sought to be proved only on the basis of statement of the prosecutrix. It is an admitted case that that the same is not corroborated by any other independent evidence.

31. It is trite law that the accused can be convicted solely on the basis of evidence of the complainant / victim as long as same inspires confidence and corroboration is not necessary for the same [Ref. *Moti Lal v. State of M.P.* : (2008) 11 SCC 20]. However, as noted above, the testimony of the complainant is



2024:DHC:6508



full of inconsistencies and the same does not inspire confidence. The benefit of the same has to go to the accused.

32. Insofar as the argument regarding the presumption of guilt under Section 29 of the POCSO Act is concerned, the same comes into play once the prosecution establishes the foundational facts. It can be rebutted by discrediting the witnesses through cross-examination as well [Ref. *Altaf Ahmed v. State (GNCTD of Delhi)* : 2020 SCC OnLine Del 1938]. Having noted that the testimony of the prosecutrix is in doubt and that there is no independent corroboration in the form of MLC or FSL, the possibility of the respondent's false implication cannot be ruled out.

33. In view of the aforesaid discussion, this Court is of the opinion that the State has not been able to establish a *prima facie* case in its favour and no credible ground has been raised to accede to the State's request to condone the delay or to grant leave to appeal in the present case.

34. The leave petition along with the pending applications for condonation of delay are dismissed in the aforesaid terms.

AMIT MAHAJAN, J

JULY 22, 2024