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

+ **CRL.L.P. 536/2023 & CRL.M.A. 29121/2023**

THE STATE (NCT OF DELHI)

.....Petitioner

Through: Mr. Ritesh Kumar Bahri, APP with
Mr. Lalit Kumar Luthra & Ms. Divya
Yadav, Advs.

Versus

RAJIV KUMAR

.....Respondent

Through: Mr. Zorawar Singh, Mr. Deepak
Sharma & Mr. Sudanshu Ghai, Advs.
(M- 9953249666)

CORAM:

JUSTICE PRATHIBA M. SINGH

JUSTICE AMIT SHARMA

ORDER

% **16.10.2024**

1. This hearing has been done through hybrid mode.
2. The present petition under Section 378(3) of the CrPC has been filed by the State seeking leave to challenge the impugned judgment of acquittal dated 31st October, 2019 by which the Respondent has been acquitted by Id. ASJ-06, South East District, Saket Courts, New Delhi, in Sessions Case No. 1912/16 arising out of FIR No. 17/2014, under Sections 363/366/368/506 of the IPC, registered at Police Station Govind Puri.
3. The allegation against the Respondent was that he had forcibly entered into a physical relationship with the survivor, who was a minor. By the impugned judgment, the Trial Court had come to the conclusion that the survivor was a major on 24th December, 2013 at the date of the incident. The



learned Trial Court has has relied upon the cross-examination of the survivor (PW-1) and her father (PW-3) while acquitting the Respondent.

4. A perusal of the petition, would show that it has been filed after a substantial delay of more than 1400 days. The Court has perused the reasons given which only says that the same is due to file movement between APPs.

5. The Court has considered the reasons for delay.

6. In addition, a perusal of the judgment on merits would show that the Trial Court has analyzed the testimonies of PW-1 and PW-3 and has come to the conclusion that the survivor was a major at the time of the incident. The relevant portion of the judgment is set out below:-

“20. Hence, the date of birth of the prosecutrix as 27.07.2001 cannot be said to have been cogently and correctly proved by the prosecution. On the other hand, learned Amicus Curiae has invited attention to the testimony of PW -1/prosecutrix ‘S’ and that of her father to contend that prosecutrix ‘S’ was not a minor/not below 18 years of age on the date of incident i.e. 24.12.2013. The name of the elder sister of prosecutrix ‘S’ is ‘P’ who is married to the elder brother of the accused.

21. In his cross examination conducted on 06.09.2016, PW-3, the father of the prosecutrix stated that his daughter ‘P’ was born in the year 1982 after about 2 years of his marriage. He also stated that at the time of marriage of his daughter ‘P’, she was 18 years of age. He also stated that ‘P’ is his eldest child.

22. In her cross- examination conducted on 29.01.2016, Prosecutrix ‘S’ i.e. PW- 1, stated that her sister ‘P’ is eldest amongst them. After ‘P’, her twin brothers were born. She stated that she did not know the exact gap in the age of ‘P’ and her twin brothers but perhaps they are 4-5 years younger than ‘P’. Since ‘P’ was born in 1982



(as stated by her father PW-3), her twin brothers would have been born by 1987 (when 4-5 years is taken on a higher side to be 5).

23. PW -1 further stated that after her twin brothers, her another brother was born who was 3-4 years younger than her twin brothers. Again taking on higher side, the other brother of prosecutrix 'S' would have been born by 1991.

24. PW- 1 further stated that she is 2 years younger than her youngest brother. Thus, PW -1 would have been born latest by 1993. Therefore, on the date of incident, 24.12.2013, age of PW- 1 would be 20 years. PW- 1 has herself stated that she did not know her age when her sister was married but she was present in the marriage of her sister. The said statement of PW-1 also has a bearing on the fact that she was mature enough on the date of marriage of her sister so as to recollect that she had attended the marriage.

25. I have given my thoughtful consideration to the testimonies of the witnesses examined by the prosecution to prove the age of the prosecutrix. In the case in hand, in view of cross-examination of PW -1 and PW -3, the age of the prosecutrix on the date of incident comes around 20 years, which is thus above 18 years and as per this, it can be said that the prosecutrix was adult and major at the time of incident.

26. Thus, the accused is acquitted of offence punishable under section 363 IPC and section 4 of POCSO Act since being below the age of 18 years is a necessary ingredient of the same."

7. The Court has also been informed that the survivor as also the Respondent have now re-married and are settled in their respective families.

8. In view of the above recorded facts and circumstances, as also after analyzing the evidence and Trial Court judgment, this Court is not inclined to



grant leave to challenge the impugned judgment, both on the ground of delay as also merits.

9. The petition is accordingly dismissed. All pending applications, if any, are also accordingly disposed of.

PRATHIBA M. SINGH, J.

AMIT SHARMA, J.

OCTOBER 16, 2024/nk/bh/NS