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

+ CRL.L.P. 14/2022

STATE

.....Petitioner

Through: Mr Yudhvir Singh Chauhan, APP for State
SI Dhyanendra, PS-Dabri

versus

BRIJESH KUMAR @ MOMOS

.....Respondent

Through:

CORAM:

HON'BLE MR. JUSTICE JASMEET SINGH

ORDER

28.01.2025

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1. This is a petition seeking leaving to appeal against the judgment dated 22.01.2021 passed by the learned Additional Sessions Judge -04 (POCSO), South-West, Dwarka Courts, New Delhi wherein the respondent has been acquitted for the offence under Sections 10 read with Section 9(m) of POCSO Act and Section 366 of IPC in FIR No. 721/2015, Police Station-Dabri.
2. The respondent has been represented through counsel on an earlier date but there is nobody appearing today.
3. Mr Chauhan, learned APP has drawn my attention to the testimony of PW-1 wherein the child victim has deposed as under:

“The incident was of the year when Preeti madam had taught me in the school. On the day of incident, in the evening time, my mother had left the house for market to purchase vegetables and I was



playing with some children in the parking on the ground floor and when the other children left the place for their respective house. Accused Momos, to whom I knew prior to the incident as he used to roam in the vicinity and used to lift cow dung from the street, reached there. Accused Momos asked me to accompany him on the pretext of giving chocolate and money and thereafter, he had taken me a side in the parking. Accused had inserted his hand into my undergarments and thereafter, he touched his penis to my vagina without removing clothes. I started weeping and came back home and apprised the fact to my mother and sister.”

4. The learned Additional Sessions Judge has acquitted the respondent on the ground that there are contradictions in the testimony of PW-1 and PW-2 regarding the fact whether the child victim felt pain or whether the child victim told her mother about the incident.

5. To my mind, *prima facie*, the same are minor contradictions and the matter requires consideration.

6. In this view of the matter, the petition seeking leaving to appeal is allowed and the appeal is directed to be numbered.

CRL.A **(to be numbered)**

7. For the reasons stated in the appeal, the appeal is “**Admitted.**”

8. To be listed in due course.

9. The parties are at liberty to obtain copy of the Trial Court Records from the Registry in accordance with Delhi High Court Rules & Procedures.

JASMEET SINGH, J

JANUARY 28, 2025

sr [Click here to check corrigendum, if any](#)