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

+ **CRL.L.P. 78/2022**

STATE

.....Petitioner

Through: Mr. Ritesh Kumar Bahri,
APP for the State with Ms.
Divya Yadav and Mr. Lalit
Luthra, Advs.
SI Arti, PS Tilak Nagar.

versus

DEVENDER

.....Respondent

Through: Mr. Chitvan Singhal, Adv.
(through VC)

CORAM:

HON'BLE MR. JUSTICE AMIT MAHAJAN

ORDER

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10.11.2025

1. The present petition has been filed seeking grant of leave to appeal against the judgment dated 31.01.2020, in SC No. 57/18 arising out of FIR No. 418/2013, registered at Police Station Tilak Nagar, whereby the respondent was acquitted of the offence under Section 12 of the Protection of Children from Sexual Offences Act, 2012 ('**POCSO Act**').

2. Briefly stated, the present FIR was registered pursuant to a complaint made by the victim's mother. It is alleged that the nine year old victim had gone to the respondent's shop to buy chocolates, however, she was subsequently found crying and running home in a panicked condition. On being asked as to why she was crying, the victim told her mother that the respondent had lifted her t-shirt up to her chest. In her statement under Section 164 of the Code of Criminal Procedure, 1973, the minor



victim stated that when she had touched one chocolate gift, the respondent twisted her hand and lifted her t-shirt. She alleged that the respondent stated that as she had torn the gift, in a similar manner, the respondent will tear her t-shirt and send her home.

3. Charge sheet was filed against the respondent for the offences under Section 354B of the Indian Penal Code, 1860 and Section 11 of the POCSO Act. Charge was framed for the offence under Section 12 of the POCSO Act.

4. By the impugned judgment, the learned Trial Court acquitted the respondent on being weighed by the fact that the parents of the victim (PW4 and PW5) as well as her maternal uncle (PW6) had turned hostile and they had not supported the case of the prosecution.

5. It is the case of the prosecution that the star witness of the prosecution, that is, the victim, has not been examined in the present case and the evidence was closed after recording the statements of the victim's parents, who were merely hearsay witnesses.

6. Undisputedly, grave miscarriage of justice has happened on account of lapse on the part of not only the prosecuting agency but also the learned Trial Court in not examining the prosecutrix, who is the victim of the alleged offence.

7. It is not disputed that the statement of the minor victim was recorded not only under Section 161 of the CrPC but also under Section 164 of the CrPC. However, due to serious lapse on the part of the prosecution, the victim was not sought as one of the witnesses and the said inadvertence was also not pointed out by the concerned Public Prosecutor. Unfortunately, the learned



Trial Court also did not call the victim for examination in exercise of power under Section 311 of the CrPC, even though, the said provision provides for summoning of any witness at any stage of trial to meet the ends of justice. Although this power is to be exercised with caution and circumspection, it cannot be denied that the victim's testimony was essential to give a just decision of the case, despite which, instead of examining the victim by resorting to the said power, the learned Trial Court proceeded to acquit the accused on account of the family members of the victim, including the complainant who is the mother of the victim, turning hostile.

8. On 18.08.2025, this Court took notice of the said aspect and issued notice to the concerned Deputy Commissioner of Police for furnishing an explanation in this regard.

9. It is informed that the Investigating Officer who was responsible for filing of the chargesheet as well as the Public Prosecutor who had represented the State before the learned Trial Court have already expired, and therefore, no disciplinary action can be taken against them.

10. Even so, in the opinion of this Court, the aforesaid lapse has significant repercussions on the case and the same warrants grant of leave.

11. In view of the above, the present leave petition is allowed.

12. Accordingly, the appeal be numbered as CRL.A.
(to be numbered).

CRL.A. (to be numbered)

13. In view of the facts as noted above, in the opinion of this Court, the testimony of the victim was of utmost importance as



she was a material witness and the same ought to have been recorded before any final order could have been passed by the learned Trial Court.

14. Therefore, the impugned judgment is set aside and the case, that is, SC No. 57/18, is restored before the learned Trial Court to the stage of prosecution evidence for summoning and recording the evidence of the victim as a prosecution witness. Needless to say, pursuant to the same, the learned Trial Court shall proceed further in accordance with law and reconsider the case in light of the fresh evidence.

15. Accordingly, list before the concerned Trial Court on 05.12.2025.

16. A copy of this order be communicated to the concerned Principal District and Sessions Judge for compliance.

AMIT MAHAJAN, J

NOVEMBER 10, 2025

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