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

+ **CRL.L.P. 344/2022**

STATE

.....Petitioner

Through: Mr. Ritesh Kumar Bahri,
APP for the State with Mr.
Lalit Luthra and Mr.
Vinesh Kumar, Advs. with
SI Preeti Ahlawat, PS
Begumpur.

versus

SANTOSH

.....Respondent

Through: Mr. Shubham Asri, Adv.
(through VC)

CORAM:

HON'BLE MR. JUSTICE AMIT MAHAJAN

ORDER

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14.11.2025

1. The present petition is filed under Section 378 of the Code of Criminal Procedure, 1973 ('CrPC') seeking leave to challenge the judgment dated 01.12.2021 (hereafter '**impugned judgment**') passed by the learned Additional Sessions Judge, North-West District, Rohini Courts, Delhi in Case No. 349/2017 whereby the respondent was acquitted of the offence under Section 506 of the Indian Penal Code, 1860 ('IPC') and Sections 9(m)/10/11(i)/12 of the Protection of Children from Sexual Offences Act, 2012 ('POCSO Act').

2. Briefly stated, the respondent was a juice seller, who used to sell juice from a wooden cart. It is alleged that when the victim was having a glass of juice from his wooden cart, the respondent



allegedly told the victim that he likes her and asked her to give him a kiss. Thereafter, the respondent allegedly started touching the victim inappropriately on her waist and stomach. Further, it is alleged that when the victim told the respondent that she would disclose his acts to her mother, the respondent threatened her to not tell her mother about the incident or else he would beat her.

3. The Learned Trial Court framed charges under Sections 506 of the IPC and Sections 9(m)/10/11(i)/12 of the POCSO Act against the respondent to which he pleaded not guilty and claimed trial.

4. The learned Trial Court, by the impugned judgment, acquitted the respondent of the charged offences and noted that multiple material contradictions and inconsistencies existed in the statements of the victim and her mother.

5. The learned Additional Public Prosecutor ('APP') for the State submits that the impugned judgement is based on presumptions, conjectures and surmises, devoid of merits and as such cannot prima facie stand and thus, deserves to be set aside. He submits that the learned Trial Court erred in not considering that evidence of the victim alone is sufficient to convict the accused in POCSO cases.

6. He submits that the learned Trial Court failed to draw the presumption under Section 29 of the POCSO Act against the respondent and further ignored the law that it is for the accused to rebut the said presumption.

7. He submits that the learned Trial Court ignored that Section 30 of POCSO Act permits the Special Court to presume for any offence under the Act which requires a culpable mental state on



the part of the accused, the existence of such mental state.

8. Per contra, the learned counsel for the accused/respondent vehemently opposes the arguments as raised by the learned APP for the State and consequently prayed that the present petition be dismissed.

9. 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 ***State 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)

10. It is well settled that the accused can be convicted solely on the basis of evidence of the complainant / victim as long as the same inspires confidence and corroboration is not necessary for the same. However, the statement of the prosecutrix ought to be consistent from the beginning to the end apart from minor inconsistencies, from the initial statement to the oral testimony, without creating any doubt qua the prosecution’s case, as held by the Hon’ble Apex Court in ***Nirmal Premkumar v. State: 2024 SCC OnLine SC 260.***

11. It was argued by the learned APP that the learned Trial Court ignored the deposition of the victim, who consistently deposed against the respondent and supported the case of the prosecution.

12. However from a perusal of the said testimonies it can be seen that there are certain discrepancies in the same which cast a doubt on the case of the prosecution.

13. The victim in her statement recorded under Section 164 deposed that the accused had touched her breast, waist and back, and asked her to sit on his lap, whereas in her initial complaint she made no mention of the accused asking her to sit on his lap.

14. Further, the victim in her testimony stated that her mother saw the respondent sitting on his lap and touching her inappropriately whereas PW-2/mother of the victim in her testimony stated that she saw the accused touching her daughter inappropriately. Moreover, PW-2 in her initial statement stated



that the victim told her that the respondent abused her. PW-2 during her testimony claimed herself to be an eye witness while in her initial statement she only stated that the victim had informed her about the incident. Hence, the statements of the victim and her mother have material inconsistencies and improvements and cannot be solely relied upon to convict the respondent.

15. The statement of the victim has not been consistent from the initial statement to her oral testimony, and has cast doubt qua the prosecution's case,

16. Moreover, no independent witnesses were produced by the prosecution to support its case even though the alleged incident took place at a public area.

17. Insofar as the argument regarding the presumption of guilt under Section 29 of the POCSO Act is concerned, the same comes into play only 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**]. Once the prosecution has not been able to establish the foundational facts, the onus cannot be placed upon the respondent to rebut the presumption under Section 29 of the POCSO Act.

18. With respect to the presumption under Section 30 of the POCSO Act, which provides for presumption of culpable mental state on the part of the respondent, the judgment of the Hon'ble Apex Court in Attorney General v. Satish: (2022) 5 SCC 545 is of relevance. The relevant portion of the same is produced hereunder:

“39. It may also be pertinent to note that having regard to the seriousness of the offences under the Pocso Act, the legislature has incorporated certain statutory presumptions.



Section 29 permits the Special Court to presume, when a person is prosecuted for committing or abetting or attempting to commit any offence under Sections 3, 5, 7 and Section 9 of the Act, that such person has committed or abetted or attempted to commit the offence, as the case may be, unless the contrary is proved. Similarly, Section 30 thereof permits the Special Court to presume for any offence under the Act which requires a culpable mental state on the part of the accused, the existence of such mental state. Of course, the accused can take a defence and prove the fact that he had no such mental state with respect to the act charged as an offence in that prosecution. It may further be noted that though as per sub-section (2) of Section 30, for the purposes of the said section, a fact is said to be proved only when the Special Court believes it to exist beyond reasonable doubt and not merely when its existence is established by a preponderance of probability, the Explanation to Section 30 clarifies that “culpable mental state” includes intention, motive, knowledge of a fact and the belief in, or reason to believe, a fact. Thus, on the conjoint reading of Sections 7, 11, 29 and 30, there remains no shadow of doubt that though as per the Explanation to Section 11, “sexual intent” would be a question of fact, the Special Court, when it believes the existence of a fact beyond reasonable doubt, can raise a presumption under Section 30 as regards the existence of “culpable mental state” on the part of the accused.”

(emphasis supplied)

19. In the present case, since the prosecution has failed to prove beyond reasonable doubt that the alleged incident actually occurred, the presumption regarding the existence of culpable mental state under Section 30 of the POCSO Act cannot be invoked against the respondent. The burden to disprove this presumption does not arise unless the prosecution first establishes that the alleged incident actually occurred.

20. Considering the infirmities in the testimony of the witnesses, coupled with the fact that there is an absence of any independent witnesses to corroborate the case of the prosecution, it is held that the prosecution has not been able to prove its case beyond reasonable doubt.



21. 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 grant leave to appeal in the present case.

22. The leave petition is dismissed in the aforesaid terms.

AMIT MAHAJAN, J

NOVEMBER 14, 2025

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