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

+ **CRL.L.P. 495/2022**

STATE (GNCT OF DELHI)

.....Petitioner

Through: Mr. Sunil Kumar Gautam,
APP for the State
W/SI Akanksha, PS- B.
Diary

versus

GULZAR

.....Respondent

Through: Mr. Ravi Bhushan, Adv.

CORAM:

HON'BLE MR. JUSTICE AMIT MAHAJAN

ORDER

% **10.10.2025**

CRL.M.A. 22430/2022 (for condonation of delay)

1. For the reasons mentioned in the application, the same is allowed.
2. The delay of 143 days in filing the leave to appeal is condoned.
3. The application stands disposed of.

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4. The present petition is filed under Section 378(1) of the Code of Criminal Procedure, 1973 ('CrPC') seeking leave to challenge the judgment dated 21.02.2022 (hereafter '**impugned judgment**') in Sessions Case No. 56776 of 2016 arising out of FIR No. 106/2015, registered at Police Station Bhalswa Dairy, New Delhi whereby the learned Trial Court acquitted the respondent of offences punishable under Section 354 of the Indian Penal Code,

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1860 ('**IPC**') read with Section 8 of the Protection of Children from Sexual Offences Act, 2012 ('**POCSO Act**').

5. The brief facts of the case are that the respondent's family were tenants on the first floor of the prosecutrix's house. It is alleged that on 08.02.2015, while the prosecutrix's mother was hospitalised the respondent approached her inside her home. The respondent allegedly told the prosecutrix that he wanted to talk to her and upon her refusal he caught hold of her hand and allegedly started touching her breast. The prosecutrix informed her mother about the alleged incident in the evening when she returned from the hospital, but they did not inform the police on the same day due to her ill health. The prosecutrix gave a statement to the police on 17.02.2015, which led to the registration of the FIR in the present case.

6. The Learned Trial Court framed charges under Section 354 of the IPC and Section 8 the POCSO Act against the respondent to which he pleaded not guilty and claimed trial.

7. The learned Trial Court, by the impugned judgment, acquitted the respondent of the charged offences and observed that the testimony of the prosecutrix was unreliable due to contradictions.

8. The learned Trial Court noted that the prosecution had failed to prove beyond reasonable doubt that the prosecutrix was minor at the time of the alleged incident. It was noted that there was no material on record on the basis of which the age of the prosecutrix had been recorded in her school. Further, it was noted that the prosecutrix herself testified that she got married on 22.11.2016 and was more than 18 years old at the time of her



marriage.

9. The learned Additional Public Prosecutor ('**APP**') for the State submits that the impugned judgement is based on presumptions, conjectures and surmises, and cannot stand the scrutiny of law and thus, deserves to be set aside.

10. He submits that the present case though is not fit for appeal qua acquittal of the respondent for the offence punishable under Section 8 of POCSO Act. However, the case is fit for appeal under Section 354 of the IPC.

11. He submits that the prosecutrix has supported the case of the prosecution at every stage and there are no material contradictions in her testimony.

12. He submits that the learned Trial Court ignored the judgment titled ***State of HP V. Asha Ram : AIR 2006 (SC) 381***, wherein it was held, *inter alia*, that the testimony of the prosecutrix needs no corroboration and minor contradictions and discrepancies in statement of the prosecutrix, should not be ground for throwing out an otherwise reliable prosecution case.

13. He further submits that the Trial Court erred in giving undue weightage to the minor inconsistencies in the testimonies of the prosecutrix, which were not material in nature.

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

ANALYSIS

15. 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)

16. 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***.

17. Upon perusal of the testimony of the prosecutrix it can be seen that there are material discrepancies in the same which casts doubts on the case of the prosecution.

18. The victim has testified that the respondent told her that he wanted to talk to her and upon her refusal, he caught a hold of her hand and started touching her breast. However, the prosecutrix made no mention regarding the respondent touching her breast in her complaint or her statement recorded under Section 164 of the CrPC. Further, the prosecutrix deposed during her chief examination that the respondent had bolted the door of her house before the said incident. However, no mention of the same fact was made in her complaint or in her statement recorded under Section 164 of the CrPC. The same appear to be mere improvements made by the prosecutrix.

19. The prosecutrix in her complaint as well as in her testimony stated that the incident occurred when her mother was admitted in the hospital. To the contrary, the prosecutrix in her statement under Section 164 of CrPC stated that the incident occurred while her mother had gone to the market and she was alone at home.

20. Thus, as noted above, it can be seen that the victim has made material improvements and contradictions in her testimony which has rendered the same doubtful.

21. Further, the prosecution has not been able to justify the delay in registering the complaint before the police. The prosecutrix and her mother in their statements have stated that the



mother of the prosecutrix had been discharged the very same day the incident occurred but still the complaint was made to the police 9 days later. Moreover, no document regarding the admission of the mother of the prosecutrix in the hospital was placed on record by the prosecution before the learned Trial Court.

22. A bare perusal of Section 354 of the IPC reveals that for it to apply, the offence must be committed against a woman; criminal force must be applied against her; and such application of force must be with the intent to outrage her modesty. [Ref. ***Raju Pandurang Mahale v. State of Maharashtra: (2004) 4 SCC 371***].

23. It is pertinent to note that the prosecutrix in her complaint has only alleged that the respondent entered her home and upon her refusal to talk to him, caught hold of her hand. In the absence of any evidence to establish the intention of the respondent to outrage the modesty of the prosecutrix, the said allegations do not satisfy the ingredients of the aforesaid offence. As noted above, the allegations made by the prosecutrix that the respondent bolted the door of her house and touched her breasts seem to be mere improvements.

24. Moreover, the investigating officer of the present case testified before the learned Trial Court that she had been told by the mother of the prosecutrix that a quarrel had taken place between her and the family of the respondent between 08.02.2015 and 17.02.2015. Thus, the possibility that the respondent has been falsely implicated in the present case due to this quarrel cannot be ruled out.

25. 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.

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

AMIT MAHAJAN, J

OCTOBER 10, 2025

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