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

+ **CRL.L.P. 466/2018**

STATE

.....Petitioner

Through: Mr. Sunil Kumar Gautam,
APP for the State.
SI Lalit Kumar, PS Civil
Lines.

versus

RAVI SHARMA

.....Respondent

Through:

CORAM:

HON'BLE MR. JUSTICE AMIT MAHAJAN

ORDER

% **24.03.2025**

1. The present petition is filed under Section 378 of the Code of Criminal Procedure, 1973 ('CrPC') seeking leave to challenge the judgment dated 02.05.2018 (hereafter '**the impugned judgment**') passed by the learned Additional Sessions Judge ('ASJ'), Tis Hazari Courts, Delhi in Sessions Case No. 27895/2016.

2. The FIR was registered on a complaint given by the victim. It is alleged that on 30.04.2013 at about 10:00 am, when the victim and her friend namely Rajji were travelling to the house of Rajji's sister, the respondent, upon seeing the victim and her friend Rajji, started following them. Thereafter, the respondent also forcibly pulled the right hand of the victim, and tried to take her to one side. It is alleged that the respondent also asked the victim to accompany him to roam around with him. It is alleged that in the meantime, the brother of the victim's friend Rajji, namely Harry came from behind and caught hold of the



respondent.

3. The victim alleged that even prior to the date of the incident, that is, 30.04.2013 the respondent had forcibly kissed her on cheeks on two occasions, and that when the victim had disclosed about the same to her mother, she tried to make the respondent understand not to engage into such activities.

4. The respondent was charged with the offences under Section 354A of the Indian Penal Code, 1860 ('IPC') and Section 10 of the Protection of Children from Sexual Offences Act, 2012 ('POCSO')

5. By the impugned judgment, the learned ASJ acquitted the respondent of the charged offences. It was noted that the respondent did not dispute the fact that the age of the victim at the time of the alleged incident was 14 years. The learned ASJ considered the deposition of the witnesses and the statement of the respondent. It was noted that the victim admitted that she was having friendly relations with the respondent, and that the respondent had proposed to her on several occasions. It was noted that while the victim had stated that she used to inform her mother and her friend Rajji whenever the respondent met her or proposed to her, the mother of the victim, in her examination-in-chief stated that her daughter had not made any complaint against the respondent prior to the date of the incident. Similar stand was also taken by the victim's friend Rajji who deposed that the victim did not tell her anything about the respondent prior to the date of the incident.

6. It was noted that the victim did not raise any allegations against the respondent regarding him touching the victim's chest prior to the date of the incident. It was noted that even in her complaint, the victim had only stated that the respondent had



kissed her on two occasions. It was noted that when as per the case of the victim herself, she used to tell her mother each time the respondent met her or proposed her for marriage, it was surprising how the victim never disclosed the act of the respondent kissing her on her cheeks or touching her chest prior to the date of the incident. It was further noted that it was dubious why the victim would lodge a complaint against the respondent on 30.04.2013 when the respondent pulled her by her arm, and asked her to roam with him, and not when the respondent had allegedly kissed the victim or touched her chest.

7. It was noted that from a perusal of the material on record, it appeared that the allegations regarding the respondent having touched the victim's chest or kissed her cheeks, could not be believed to be correct. It was noted that the victim herself admitted that she was having friendly relations with the respondent, and that the respondent liked her. It was noted that when the victim informed her mother about the respondent's act of proposing to her, it was unclear why she would not inform her mother about the respondent touching her or kissing her.

8. The learned ASJ noted that the victim had further alleged that on 30.04.2013, the respondent in addition to holding her hand, had also stated that he would kidnap her. It was noted that the victim's friend Rajji had categorically deposed that the respondent had caught hold of the victim's hand, and had asked her to roam to which the victim refused. It was noted that Rajji's brother, Harry had deposed that on reaching the spot he had seen the respondent holding the arm of the victim. It was however noted that as per Harry's earlier statement, such fact was not stated by Harry to the police. It was consequently noted that his testimony to the effect that he saw the respondent holding the



victim's arm was an improvement and must be discarded.

9. It was further noted that the mother of the victim had added that the respondent had threatened to kidnap the victim, and had also stated that he would beat her should the victim go along with any other person. It was however noted that such allegation was neither raised by the victim herself nor her friend Rajji. Consequently, the learned ASJ, upon a consideration of the totality of facts and circumstances, acquitted the respondent of the charged offences.

10. The learned Additional Public Prosecutor for the State submits that the learned ASJ erred in acquitting the respondent of the charged offences. He submits that the impugned judgment is based on conjectures and surmises and is liable to be set aside. He submits that the learned ASJ erred in relying upon the aspect of the non-disclosure of the earlier incidents by the victim. He submits that the version of the victim cannot be rendered doubtful merely because the victim failed to report certain incidents to her mother. He consequently submits that the impugned judgment is liable to be set aside.

Analysis

11. It is trite law that the Appellate 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.

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24. We may hasten to clarify that we may not be understood to have laid down an inviolable rule that no leave should be refused by the appellate court against an order of acquittal recorded by the trial court. We only state that in such cases, the appellate court must consider the relevant material, sworn testimonies of prosecution witnesses and record reasons why leave sought by the State should not be granted and the order of acquittal recorded by the trial court should not be disturbed. Where there is application of mind by the appellate court and reasons (may be in brief) in support of such view are recorded, the order of the court may not be said to be illegal or objectionable. At the same time, however, if arguable points have been raised, if the material on record discloses deeper scrutiny and reappraisal, review or reconsideration of evidence, the appellate court must grant leave as sought and decide the appeal on merits. In the case on hand, the High Court, with respect, did neither. In the opinion of the High Court, the case did not require grant of leave. But it also failed to record reasons for refusal of such leave.”

(emphasis supplied)

12. It is pertinent to note that in order to establish its case, the prosecution examined 9 witnesses. PW-1/mother of the victim, PW-2/victim, PW-9/victim’s friend and PW-4/cousin of PW-9



deposed regarding the occurrence of the incident. The other witnesses being official witnesses deposed regarding the manner of the conduction of the investigation, and the registration of the FIR.

13. PW-2/victim deposed that on 30.04.2013 at about 10 am she along with her friend Rajji/PW-9 were going to Civil Lines when the respondent, who was sitting on a rickshaw, upon seeing them, caught hold of her right arm, and pulled her towards him and also stated that he would kidnap her. She deposed that in the meantime, the brother of PW-9 namely Harry had also arrived, and the respondent told to Harry as well that he would kidnap her. She deposed that 3-4 days before the date of the incident, the respondent had touched her chest, and also kissed her on her cheeks. She further deposed that her friend Rajji made a call to the police, and the police reached at the spot and recorded her statement.

14. PW-1/mother of the victim stated that on 30.04.2013, her daughter had gone out with her friend Rajji. She deposed that the respondent was misbehaving with her daughter, and that the respondent in the presence of PW-1 had threatened to kidnap the victim and also beat her should the victim go along with any other person. She further deposed that the victim had not made any complaint against the respondent prior to 30.04.2013.

15. PW-9/friend of the victim deposed that on the aforesaid date and time, the respondent upon seeing them, had started following the victim and her. She deposed that the respondent caught hold of the arm of the victim, and started pulling the victim behind by stating "*mere sath ghoomne chal.*" She stated that the victim refused to do so, and that in the meantime she called her brother Harry. Thereafter, she made a call at 100



number and the police reached at the spot. She further stated that she did not know the respondent prior to the date of the incident, and that the victim did not tell her anything about the respondent prior to the said incident.

16. PW-4/cousin of PW-9 stated that he received a call from her sister who stated that one boy was harassing her outside the office of the Delhi Jal Board. He stated that upon reaching there he saw that the respondent had caught hold of the victim's arm and refused to leave her. He stated that in the meantime PW-9 made a call to the police.

17. This Court has duly considered that the victim is a child, and minor contradictions in her statement would not adversely impact the matter. It is trite law that the accused can be convicted solely on the basis of evidence of the complainant / victim as long as same inspires confidence and corroboration is not necessary for the same [Ref. ***Nirmal Premkumar v. State : 2024 SCC OnLine SC 260***]. However, having noted so, it is imperative to examine whether the contradictions, if any in the present case, were such so as to adversely impact the matter.

18. From a perusal of the material on record, it is apparent that there exist several contradictions in the case of the prosecution. In the present case, the victim admitted to having friendly relations with the respondent. She stated that she had met the respondent on a few occasions prior to the date of the incident. She further deposed that 3-4 days prior to the incident, the respondent had touched her chest, and had kissed her on her cheeks. She also deposed that she used to inform her mother, and her friend Rajji whenever the respondent met her or proposed to her.

19. However, upon an examination of the testimony of PW-



1/mother, it emerges that the victim had not made any complaint against the respondent prior to the said incident. A similar stand was also maintained by the PW-9/victim's friend who stated that she did not know the respondent prior to the date of the incident, and that the victim did not tell her anything about the respondent prior to the said incident.

20. As rightly appreciated by the learned ASJ, while the victim herself stated that she used to inform her mother each time when the respondent met her or proposed to her for marriage, it is improbable that the victim would not inform her mother when the respondent allegedly kissed her, and also touched her chest. Further, no complaint was lodged by the victim when the respondent allegedly committed such acts.

21. The victim further deposed that the respondent liked her, and it is due to their friendship that she never made any complaint to the police before the date of the incident. However, in the opinion of this Court, it is implausible why the victim would not inform her mother about the alleged act of the respondent touching and kissing her when she would inform her mother about meeting the respondent, and that the respondent used to propose her for marriage.

22. It is also pertinent to note that the victim alleged that on the date of the incident, the respondent caught hold of her hand and had threatened to kidnap her. Contrary to the stance of the victim, her friend Rajji/PW-9 stated that the respondent had caught hold of the victim's arms and had pulled her behind by stating "*mere sath ghoomne chal*" to which the victim refused. Further, while PW-4/cousin of PW-9 deposed that on reaching the spot, he saw the respondent holding the arm of the victim, the same was contrary to his earlier statement where such fact was



not stated to the police. His testimony, in regard to the respondent holding the arm of the victim, was rightly observed as an improvement and the same was rightly discarded.

23. It is also pertinent to note that PW-1/mother of the victim also added that on the date of the incident, the respondent had threatened to kidnap the victim, and also beat her should she go along with any other person. However, as was rightly observed by the learned ASJ, neither did the victim nor did her friend/PW-9 depose anything in relation to the respondent allegedly threatening to beat the victim.

24. Consequently, in the opinion of this Court, the ingredients necessary to constitute an offence under Section 354A of the IPC and Section 10 of the POCSO have not been made out.

25. Upon a consideration of the totality of facts and circumstances, this Court does not find any infirmity in the impugned judgment, and the same cannot be faulted with. This Court is of the opinion that the State has not been able to establish a *prima facie* case in its favour and no arguable 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 therefore dismissed in the aforesaid terms.

AMIT MAHAJAN, J

MARCH 24, 2025