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

% ***Date of decision: 28th October, 2025***

\+ CRL.L.P. 380/2022

STATE .....Petitioner

Through: Mr. Ritesh Kumar Bahri & Ms. Richa Dhawan, APP with SI Kamlesh, PS Saket.

versus

MUKESH JOSHI .....Respondent

Through: Mr. Rachit Batra, Mr. Rachit Khandelwal & Ms. Isha Bhalla, Advs.

CORAM:
HON'BLE MR. JUSTICE VIVEK CHAUDHARY
HON'BLE MR. JUSTICE MANOJ JAIN

J U D G M E N T

1. It is to be seen whether appellant/State is entitled to leave to appeal the impugned order whereby the accused (respondent herein) has been acquitted.

2. Let us take note of the relevant facts.

3. Accused was sent up to face trial for committing offences under Section 363 and 376 of Indian Penal Code (in short 'IPC') and Section 4 of Protection of Children from Sexual Offences Act, 2012 (in short 'POCSO Act').

4. Since the case pertains to sexual assault upon a minor girl, she would be referred to as *'Miss R'* in the present judgment.

5. On 15.10.2013, mother of *'Miss R'*, lodged a complaint that her daughter was missing. She stated to the police that *'Miss R'* left her home at around 2:00 p.m. while informing that she was going to Sector-5, Pushp Vihar, Delhi but she neither reached there nor returned home.

6. However, the very next day i.e. 16.10.2013, mother of *'Miss R'*, again, came to Police Station. Her missing daughter was also with her and police made inquiries from her.

7. *'Miss R'* told the police that she had gone to Select City Walk Mall, Saket where she met accused. Her one friend Neha was also there, accompanied by her friend Raju.

8. From such Mall, they all came to the house of accused. After some time, Neha and Raju left from there.

9. She revealed that, later on, though, the accused had sexual intercourse with her, it was voluntary in nature. She also told the police that she met Neha outside the house at around 7 am and then they both returned home. She also expressed her inclination to stay with some NGO as she did not want to go back to her parents.

10. She was produced before the concerned Magisterial Court for recording of her statement under Section 164 of the Code of Criminal Procedure, 1973 (in short Cr.P.C.) and in her such statement, she, reiterating the same, claimed that nothing wrong had been done by the accused (*usne mere saath kuch galat nahi kiya*) while also supplementing that whatever had happened was with her willingness and there was no forcible act upon her.

11. Since *'Miss R'* was found to be of 17 years of age, accused was arrested and was, eventually, charged for commission of offences under Section 363 and 376 IPC and under Section 4 of POCSO Act.

12. Prosecution examined ten witnesses, including *'Miss R'* (PW-1), her mother (PW-2) and her two friends Neha (PW-4) and Raju (PW-6).

13. Accused, in his statement under Section 313 Cr.P.C., denied his

involvement and claimed that he had been falsely implicated. He, however, did not lead any evidence in defence.

14. Learned Trial Court, though, held *'Miss R'* to be minor at the relevant time, it went on to acquit the accused holding that her testimony was neither consistent nor of sterling quality. Noting that her friends had turned hostile, the evidence of her mother to be hearsay in nature and the fact that there was no corroboration in the shape of medical or scientific evidence, it came to the conclusion that the prosecution failed to establish its case beyond reasonable doubt.

15. Such order is under challenge.

16. Since the appeal is against the order of acquittal, it has been filed under Section 378 Cr.P.C.

17. As per Section 378(3) Cr.P.C., no such appeal can be entertained except with the leave of the High Court.

18. Therefore, at this juncture, it is to be seen whether the State is entitled to any such leave or not.

19. The parameters, within which any such leave is to be granted or refused, are well-defined and the Court is simply mandated to assess whether any arguable point has been shown which warrants deeper scrutiny and elaborate appreciation of evidence.

20. Reference in this regard be made to the following observations made by Supreme Court in *Manoj Rameshlal Chhabriya vs. Mahesh Prakash Ahuja and Another*: 2025 SCC OnLine SC 451: -

> *"7. The question as to how the application for grant of leave to appeal filed under Section 378(3) of the Cr.P.C. should be decided by the High Court and what are the parameters which the High Court should keep in mind remains no longer res integra. This issue was examined by this Court in State of Maharashtra v. Sujay Mangesh Poyarekar reported in (2008) 9*

SCC 475. C.K. Thakker, J. speaking for the Bench held in paras 19, 20, 21 and 24 respectively 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 subsection (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.*
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> *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.*
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> *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 reappreciation, 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."*

21. Thus, at this stage of grant of leave, the Court is, merely, to see whether any arguable point has been raised by the State which requires comprehensive and extensive evaluation of evidence.

22. We have already taken note of the relevant facts and it is quite evident that neither in her statement made under Section 161 nor under Section 164 Cr.P.C., she made any allegation against the accused and, rather, in no uncertain terms, she claimed that no wrong was committed by him and whatever had happened between them was with her own 'sweet-will'.

23. However, when she entered into witness box, she enormously improved upon her such previous statements and introduced a different story, altogether.

24. In witness box, she deposed that when she was with her friends at Mall, the accused gave her cold drink, laced with sedative and on consuming the same, she felt heaviness in her head. She then asked Neha to drop her at her house but Neha, instead, took her to some other place. When she woke up next morning, she learnt that wrong act had been committed upon her. She also claimed that accused was also present in the room, who threatened her not to say anything to anyone.

25. Obviously, her such deposition is not in synchronization with her earlier statements.

26. She tried to explain such massive shift in the stand by claiming that she had, during the investigation, given incorrect statements as she was pressurized by the sister of the accused.

27. Her such explanation, about her being under pressure, does not seem to be convincing from any angle whatsoever.

28. As noticed already, she is a grown-up girl of 17 years of age.

29. When she was produced before the concerned Magisterial Court for recording of statement under Section 164 Cr.P.C., learned Magistrate had put several questions to her and proceeded to record her statement only after satisfying herself about the voluntary nature thereof. It is, clearly, recorded and certified in the abovesaid proceedings that she was making statement voluntarily and was in fit state of mind.

30. Therefore, her claim that she had made previous statements under pressure is not digestible at all. Moreover, no material of any nature whatsoever, was produced before the Court which may give even slightest of the hint that there was any pressure or threat either from the accused or from his sister. According to her, she had received calls and messages from the sister of the accused and such messages were shown by her to her parents, even. However, these messages have not seen light of the day.

31. To make things worse, even her friends do not support her version at all.

32. PW-4 Neha has not supported the case of prosecution. Her testimony does not corroborate the deposition made by *'Miss R'* and despite the fact that she was declared hostile by the prosecution and was cross-examined by the prosecution, she remained adamant in her such stand and did not whisper even a single word against the accused. Raju (PW-6) has also not supported the case of prosecution.

33. Thus, it's difficult to reconcile their statements with that of *'Miss R'*.

34. It is also not comprehensible as to why *'Miss R'* did not permit her internal gynecological examination. She was, though, brought to AIIMS by police on 16.10.2013 itself, she refused her internal examination as is evident from MLC (Ex.PW7/B).

35. Mr. Ritesh Bahri, learned Addl. P.P. for the State submits that the consent of the child has no meaning and her deposition during trial should have been given requisite priority and dominance over her earlier statements and, therefore, the acquittal was not warranted. He also submits that even if it is assumed that there were improvements and material contradictions, these were of no avail as there was no proper confrontation during cross-examination.

36. Learned defence counsel, on the other hand, submits that learned Trial Court has evaluated and analyzed the evidence in the most appropriate manner and there is nothing on record which may require any kind of interference.

37. Needless to say, testimony of prosecutrix has to be of sterling and pristine quality, particularly, when the entire case is dependent upon her testimony. Court has to be fully sure and certain about her version being absolutely infallible and truthful. Here, very clearly, *'Miss R'* had disowned her previous statements in her *examination-in-chief* itself as she tried to project that these were made by her under some pressure and there is specific suggestion that there was no such pressure at all. All other relevant suggestions have also been put to her and therefore, there is found to be requisite confrontation.

38. Learned Trial Court rightly noted that there was no consistency in her version. The relevant observations made by the learned Trial Court in the impugned judgment are as under:-

> *"[33]. Therefore, neither in her statement under section 164 Cr.P.C. nor in her statement under section 161 Cr.P.C. the victim had narrated the story that accused Mukesh Joshi had given her a cold drink laced with sedatives and thereafter she was taken to the house at Sector-5, Pushp Vihar in half unconscious state or without her consent and thereafter*

accused Mukesh Joshi had forcibly committed rape with her and had thereafter threatened her. As per the statements under sections 161 and 164 of Cr.P.C., the victim had voluntarily gone along with accused Mukesh Joshi, who was her boyfriend, after telling lies to her mother.

[34]. It is further seen that PW 1 (victim) stated in her testimony that the accused had threatened her not to disclose the correct facts to the police and after that the sister of the accused had also told her that she should state before the Ld. MM that whatever was done with her was with her consent and that she (sister of the accused) will get her (the victim) married with the accused, and accordingly, she (victim) had stated to the Ld. MM that everything was done with her own consent. However, this explanation has been given on 19.11.2014 when the victim was examined as PW1 before the court while the alleged incident took place on 15.10.2013. In between, the victim had not given any complaint to the police or to any other authority or to the court that she was threatened by the accused or that any inducement or threat was given to her by the sister of the accused. Even before the police (in her statement under section 161 Cr.P.C.) the victim had stated that she had gone with the accused with her consent and she voluntarily had sexual intercourse with him. When she had already approached the police then the question of intimidation by the accused does not arise. In her cross-examination, PW1 (the victim) has admitted that the Ld. MM had written her statement under section 164 Cr.P.C. on her dictation. She further stated that she did not tell about the pressure (alleged) upon her to the Ld. MM. PW 1 further stated that she had told her mother about the same, however, her mother (PW2) had also not made any complaint in this respect to the police or to the court or to any other authority. PWl (the victim) has also admitted that neither she nor her mother had lodged any complaint to the police with regard to the said pressure. Accordingly, this explanation, tendered by the victim, cannot be said to be convincing, believable or satisfactory.

[35]. PWl (the victim) has also stated that she had received various calls and messages of Ms. Priyanka Joshi, sister of the accused. However, the printouts of such messages/ chats have not been placed on record nor any Call Details Record has been proved to substantiate this contention that Ms. Priyanka Joshi used to communicate with the victim. PW 1 had also not informed the police in this respect at any point of time. Further PW1 (the victim) has admitted that she was sent to Prayas on 16.10.2013 and thereafter her statement under section 164 Cr.P.C. was recorded. In such circumstances, it cannot be said that there was any pressure upon her at the time of recording of her statement under section 164 Cr.P.C. by the Ld. MM, and at that time the accused was also in custody. Hence, it is clear that she had given her statement under section 164 Cr.P.C. as well as her statement under section 161 Cr.P.C. voluntarily.

[36]. Further, in her statement under section 164 Cr.P.C., the victim had categorically stated that Mukesh Joshi was her boyfriend and she knew him for the last about six months. However, in her testimony, PW 1 (victim) has firstly stated that she had met accused Mukesh Joshi for the first time on the day of the alleged incident only and he was the friend of Nisha @ Neha and she again stated that she met him on 11.10.2013 for the first time with Neha after school and then they went to some park. This is an apparent contradiction. The victim has further stated that accused Mukesh Joshi had even given her a SIM card. In her evidence the victim (PW1) has put the entire blame on Neha for taking her to Pushp Vihar. However, no such allegations are there in any of her previous statements. Interestingly, the. prosecution has examined the said Neha as PW4, and she has not supported the version of the prosecution. PW4 Neha has stated in her testimony that while she was returning from the hospital, one of the friends of accused Mukesh Joshi, namely; Raju met her on the way at Batra Bus Stand; and that Raju came to take her on motorcycle on the direction of the victim "R" and thereafter they both went to Five Senses Garden, where the victim "R" and accused Mukesh Joshi were already present. PW4 further deposed that she remained with the victim "R", accused and Raju for about 45 minutes, and thereafter, she informed the victim "R" that she is not feeling well; and that on the instructions of the victim, Raju dropped her (PW4) at her home. PW4 further deposed that they did not visit any house on that day. PW 4, during her cross examination by the Ld. SPP, categorically denied the suggestion that they had gone to Select City Walk Mall for strolling or that thereafter they had gone to the house of accused Mukesh Joshi at Sector-5, Pushp Vihar, New Delhi. Thus PW 4 has not Supported the version of the prosecution.

[37]. The aforesaid Khem Chand @ Raju, who was the friend of Neha, has been examined as PW6 before the court but he has also not supported the case of the prosecution. PW6, during his cross examination by the Ld. SPP, has denied the suggestion that on 15.10.2013, his friend/accused Mukesh Joshi called him for outing and thereafter, accused Mukesh Joshi alongwith his friends Ms. "R" and Neha came there and all four of them went to Select City Mall and thereafter they returned in the evening time at the house of accused Mukesh Joshi and they remained there for some time and thereafter he (PW6) alongwith Ms. Neha left the house of the accused Mukesh and thereafter Ms. Neha had proceeded to her house. Thus the so called independent witnesses have not supported the case of the prosecution.

[38]. Further, during her examination before the court, PW 1 could not give any description as to from where the cold drink was purchased or what was the brand name of the said cold drink. There is no investigation

in this respect that what was the alleged intoxicating substance and from where the said intoxicating substance was purchased/ procured by accused Mukesh Joshi. There is no medical or scientific evidence in this respect as well. Thus it has not been proved beyond reasonable doubt that the accused had administered any intoxicating substance to the victim and had taken her away without her consent and while she was in semi unconscious condition, to his house at Pushp Vihar. The material on record establishes that the victim had voluntarily, out of her own free will, gone alongwith accused Mukesh Joshi and her other friends after telling lies to her mother.

[39]. In the judgment titled as ***Brahama Devi v. State of NCT of Delhi reported as (2016) 154 DRJ 656 (DB)*** *it was held by the Hon'ble High Court of Delhi:*

*"****.... 8****. For the offence of kidnapping punishable under Section 363 IPC the learned ASJ relied upon the decision of the Supreme Court reported as AIR 1965 SC 942 S. Vardarajan v. State of Madras wherein distinction was drawn between "taking" and "allowing a minor to accompany". From the statement of the prosecutrix it is amply clear that Rakesh Malik had not taken her rather being irritated by the restrictions imposed by her family, on August 16, 2012 she asked Rakesh to meet her outside the school gate and after the school was got over on August 17, 2012 she went with him to Agra. Thus the learned ASJ rightly acquitted Rakesh Malik for the offence of kidnapping for marriage or for forcible intercourse with her ..... "*

[40]. In the judgment titled as ***State of Maharashtra v. Surendra Kumar Mevalal Mehesh, reported as 1998 Cri LJ 3768*** *the Hon'ble High court of Bombay held:*

" ***..... 18.*** *Even assuming that the prosecutrix was marginally below 18 years of age, as contended by Mr. Singhal, still the respondent would not be guilty for an offence punishable under section 366, Penal Code, 1860. To make out an offence of kidnapping, it has to be established that a girl below 18 years of age was kidnapped or taken out from the lawful guardianship. Section 361, Penal Code, 1860 provides that in order to constitute an offence of kidnapping, there should be taking away or enticement. In the instant case, there was neither taking away nor enticement. The prosecutrix Nirmala on her own accord had gone with the respondent. Our view is supported by the decision of Supreme Court reported in AIR 1965 SC 942, S. Vardarajan v. State of Madras has in para 9 held that where a minor knowing and having the capacity to know the full import of what she is doing voluntarily joins the accused, she could not be said to have been taken or enticed from her lawful guardianship. In the case before the Supreme Court also, the girl was below 18 years of age but since she and the accused were having an affair, which included*

telephonic conversation, the Supreme Court took the view that in spite of the fact that she was below 18 years of age, when the accused took her away, no offence of kidnapping would be made out ..... "

[41]. In the judgment titled as ***Chander Pal Singh v: State of Punjab reported as 2007 SCC OnLine P&H 574:(2008) 1 RCR (Cri) 1*** *the Hon'ble High Court of Punjab and Haryana held:*
"..... 7*. The Supreme Court in S. Varadarajan v. State of Madras (supra) held that taking or enticing a minor out of the keeping of a lawful guardian is an essential ingredient of the offence of kidnapping. However, when the girl (who though a minor had attained the age of discretion and is on the verge of attaining majority and is senior college student) from the house of the relative of the father where she is kept, herself telephones the accused to meet her at a certain place, and goes there to meet him and finding him waiting with his car gets into that car of her own accord, and the accused takes her to various places and ultimately to the Sub-Registrar's Office where they get an agreement to marry registered; and there is no suggestion that this was done by force or blandishment or anything like that on the part of the accused but it is clear from the evidence that the insistence of marriage came from her side, the accused by complying with her wishes can by no stretch of imagination be said to have "taken" her out of the keeping of her lawful guardianship, that is the father in the said case.*
8. *In Lalta Prasad v. State of M.P. (supra) it was observed by the Supreme Court that girl was found to have gone with the accused of her free will and with consent of her mother and there was no proof that she was taken by accused to seduce her to illicit intercourse, the accused would not be guilty for the offence under Section 366 IPC ..... "*

[42]. Now from the evidence on record, it is clear that the victim was aged about 17 years and 3 months at the time of the alleged incident and that she had voluntarily, out of her own free will, gone along with accused Mukesh Joshi and her other friends after telling lies to her mother. Therefore, in view of the aforesaid judgments and in light of the material on record it cannot be said that the accused Mukesh Joshi had kidnapped the victim. Accordingly, the prosecution has failed to bring home the charge for the offence under section 363 IPC and the accused is entitled to be acquitted for the same."

39. As already noticed above, there is no medical evidence corroborating the allegation of her being sexually assaulted.

40. Moreover, her testimony does not reveal anything concrete either as

she merely deposed that she had fallen unconscious and when she woke up in the morning, she found that some wrong had been committed upon her. The learned Trial Court, therefore, rightly, observed that in such a situation, it was difficult to conclude that she had been raped by the accused. Moreover, cold drink, laced with some sedative, was, allegedly, administered to her when she was with her friends at a mall. Her such two friends i.e. Neha and Raju have though not supported her at all, on the abovesaid crucial aspect, it is inexplicable as to why Investigating Agency did not make any attempt to collect CCTV footage from the abovesaid mall for substantiating the same.

41. Keeping in mind the above, we are of the firm opinion that State has failed to disclose any arguable point or *prima facie* case which may necessitate any deeper evaluation of the matter. Quite clearly, the deposition of '*Miss R'* is neither consistent nor of sterling quality. Coupled with hostile testimony of her friends and unexplained denial to undergo medical examination, the order of acquittal was nothing but *fait accompli*.

42. Resultantly, the leave is, hereby, declined and the petition stands dismissed accordingly.

(VIVEK CHAUDHARY)
JUDGE

(MANOJ JAIN)
JUDGE

OCTOBER 28, 2025/*st/nc*