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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**% *Judgment delivered on: 03.09.2025*+ **CRL.REV.P. 1370/2024 & CRL.M.A. 38155/2024**

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.....Petitioner

Through: Mr. Shekhar Nanavaty,
Advocate

versus

STATE OF NCT OF DELHI & ANR.Respondents

Through: Mr. Manoj Pant, APP for the
State with Ms. Puja Mann,
Advocate with W/SI Saneh,
P.S. BHD Nagar.
Mr. Sanjeev Kumar Anand,
Mr. Vikas Kumar Bhardwaj,
Mr. Harshit Anand, Advocates
for R-2.**CORAM:****HON'BLE DR. JUSTICE SWARANA KANTA SHARMA****JUDGMENT****DR. SWARANA KANTA SHARMA, J**

1. The petitioner, by way of this revision petition, seeks setting aside of the order dated 25.09.2024 [hereafter '*impugned order*'] passed by the learned Additional Sessions Judge (FTSC)(POCSO) - 02, Dwarka Courts, Delhi [hereafter '*Trial Court*'] in case arising out of FIR No. 299/2013, registered on 21.11.2013 at Police Station Baba Haridass Nagar, Delhi for commission of offence punishable under Sections 328/342/363/366/368/376 of the Indian Penal Code, 1860



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[hereafter ‘*IPC*’] and Sections 6/12 of the Protection of Children from Sexual Offences Act, 2012 [hereafter ‘*POCSO Act*’].

2. Briefly stated, the case of the petitioner-prosecutrix is that on her complaint, the present FIR was registered against the accused/respondent for offences involving sexual assault, abduction, and other serious charges. Upon completion of investigation, a chargesheet was filed and the trial commenced. On 23.02.2024, more than eight months after the closure of prosecution evidence, the accused moved an application before the learned Trial Court seeking to send his mobile phone to the Forensic Science Laboratory (FSL) for examination, purportedly to verify the authenticity of certain messages allegedly sent by the prosecutrix to him during the relevant period.

3. The learned Trial Court, *vide* order dated 23.02.2024, dismissed the said application on the ground that the trial had already been pending for an inordinate length of time and that the application appeared to be a deliberate attempt to delay proceedings. Aggrieved thereby, the accused approached this Court by way of Criminal Revision Petition No. 452/2024. The Coordinate Bench, *vide* order dated 08.08.2024, permitted the accused to lead defence evidence and made certain observations in relation to the request for sending the mobile phone to the FSL. The order of the learned Trial Court, in simply dismissing the application, was found erroneous, and the matter was disposed of by granting liberty to the accused to lead defence evidence.



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4. Subsequently, the learned Trial Court passed the impugned order dated 25.09.2024, directing the SHO to seize and seal the mobile phone of the accused and send it to the FSL for examination, holding that such a course was mandated by the order of this Court. In compliance, the accused's mobile phone was seized and deposited at FSL Rohini on 04.10.2024. The FSL report is still awaited.

5. The learned counsel appearing for the petitioner-prosecutrix submits that the learned Trial Court has misinterpreted the order of this Court dated 08.08.2024 in Criminal Revision Petition No. 452/2024. It is urged that paragraphs 6 and 8 of the said order clearly reflect that this Court had declined to direct the sending of the mobile phone for FSL examination, and therefore the impugned order is contrary to the directions actually issued. It is further argued that the case has been pending since 2014; the prosecution concluded its evidence in 2023; and at no point during the preceding 11 years did the accused express any intent to send his mobile phone to the FSL or make it part of the chargesheet during investigation. It is contended that the accused, being a terminated police official, is well-versed with procedural loopholes and is attempting to protract the trial.

6. *Per contra*, the learned counsel appearing for the respondent no. 2-accused submits that the intention of this Court in its order dated 08.08.2024 was to allow the accused to lead evidence in his defence concerning the electronic record, i.e. the messages allegedly exchanged between him and the prosecutrix, and that the genuineness of such messages can only be established through forensic



examination of the mobile phone. It is further urged that no prejudice would be caused to the petitioner if the FSL result is placed before the learned Trial Court. It is also contended that the present petition has become infructuous, since the mobile phone was seized by the Investigating Officer on 25.09.2024 and sent to FSL on 04.10.2024, with the report awaited; hence, nothing survives for adjudication and the petition deserves dismissal on this ground alone.

7. This Court has **heard** arguments addressed on behalf of both the parties and has perused the material available on record.

8. The issue in question is short – that is whether the impugned order dated 25.09.2024 proceeds on a correct or an incorrect understanding of the judgment dated 08.08.2024 passed by the Coordinate Bench of this Court in *Crl.Rev.P. No. 452/2024*.

9. To appreciate the same, this Court has gone through the judgment dated 08.08.2024, wherein the Court in paragraph 6 of the judgment observed as under:

“6. However, instead of outrightly sending the phone for FSL examination, the matter needs to be seen in perspective if the petitioner / accused can lead evidence in defence with respect to the messages exchanged between the petitioner and prosecutrix, which constitutes a part of electronic record and is relevant.”

10. The Coordinate Bench then referred to the decision of Hon’ble Supreme Court in *Arjun Panditrao Khotkar v. Kailash Kushanrao Gorantyal: (2020) 7 SCC 1*, and extracted the relevant observations in the said judgment pertaining to Section 136 of Indian Evidence Act



(discretion of judge to decide as to admissibility of evidence), and Sections 65A and 65B of Indian Evidence Act (admissibility of electronic records). The said decision was referred to by the Coordinate Bench for discussing the law pertaining to proving of electronic evidence.

11. Further, in paragraph 8 of the judgment, the Coordinate Bench held that:

“8. In view of aforesaid legal position, the appropriate course for the learned Trial Court is to permit the petitioner / accused to lead evidence in defence, if the petitioner / accused so desires. The same rules out the forwarding of the phone for FSL examination as sought by the accused and would prevent shutting down of relevant evidence being considered by the learned Trial Court. The course adopted by the learned Trial Court of simply dismissing the aforesaid application is erroneous.

Petition is accordingly disposed of leaving it open to the petitioner to lead evidence in defence in accordance with law. An opportunity in this regard, shall be granted to petitioner by learned Trial Court, if he desires to lead defence evidence...”

12. Thus, it is evident from the reading of entire order that the Coordinate Bench was of the view that it was not necessary to forward the mobile phone of the accused for FSL examination, and the learned Trial Court could have decided the accused’s application for leading defence evidence, by taking into consideration the decision of the Hon’ble Supreme Court in *Arjun Panditrao Khotkar v. Kailash Kushanrao Gorantyal* (*supra*) and then deciding as to whether the electronic evidence sought to be produced by the accused was relevant or not, and if found relevant by the Trial Court, whether



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such electronic evidence could be admitted in accordance with Sections 65A and 65B of the Indian Evidence Act.

13. Clearly, the Coordinate Bench had nowhere directed that the accused's mobile phone is to be seized and sent to FSL. Rather, it only, in essence, remanded back the matter to the learned Trial Court for providing an opportunity to the accused to lead defence evidence in accordance with law – the law which was discussed in paragraph 5 to 7 of the judgment dated 08.08.2024.

14. Thus, in this Court's opinion, there is merit in the contention of the learned counsel for the petitioner that the order of the Coordinate Bench has been incorrectly interpreted by the learned Trial Court as containing a mandatory direction to send the mobile phone for FSL examination, while no such direction had been issued. In these circumstances, the impugned order dated 25.09.2024 is set aside. The matter is remanded back for compliance of the judgment dated 08.08.2024 of the Coordinate Bench and passing an order afresh on the accused's application for leading defence evidence, in terms of paragraphs 4 to 8 of the said judgment.

15. In view of the above, the present petition along with pending application stands disposed of.

16. The judgment be uploaded on the website forthwith.

DR. SWARANA KANTA SHARMA, J
SEPTEMBER 03, 2025/zp