

IN THE HIGH COURT OF DELHI AT NEW DELHI

Date of decision: 06.11.2019

+ CRL.REV.P. 1058/2019 & CRL.M.A. 37615/2019-delay STATE ..... Petitioner Through Mr. Hirein Sharma, APP for State SI Seema, PS Dwarka South.

versus

ANIL @ KALLU @ THAKUR ..... Respondent Through None

CORAM: HON'BLE MR. JUSTICE SURESH KUMAR KAIT J U D G M E N T (ORAL) CrI. M.A. No. 37616/2019 (exemption) Allowed, subject to all just exceptions. Application is disposed of.

CRL.REV.P. 1058/2019 1. Vide the present petition, the petitioner seeks directions thereby setting aside the impugned order dated 01.05.2019 passed by the learned Addl. Session Judge-01, SP. Court (POCSO), NorthWest, Rohini, Delhi in FIR No.61/2019 for the offences punishable under sections 354A IPC and Section 12 of the POCSO Act, registered at P.S. Bharat Nagar to the extent discharging the respondent for the offence punishable under Section 12 of the POCSO Act and directions may be given for framing of charges under the aforesaid sections. 2. The brief facts of the case are that on 11.02.2019 after receipt of information about DD No.27A, police reached the place where the respondent was produced and on inquiry, it came to the knowledge of police that the respondent had asked three minor girls to come to his room after offering them money. The mother of the victim got her statement recorded to the effect that on 11.02.2019 at about 2.00 p.m., when she returned from the place of work, her daughter i.e. the victim/minor girl aged around 6 years, came to her and told her that yesterday when she was playing near railway line along with her friends, the Respondent came there and rubbed his hand over her face and asked her "do rupees doonga, mere ghar chal, panch minute ki baat hai". She further stated that the respondent had also given the same offer to her friends as well but none of them had gone to the house of the respondent. 3. In view of the above, complaint by the mother of the victim was lodged on 11.02.2019 and the aforesaid case was registered against the respondent. Thereafter, statements of all the victims were recorded under Section 164 Cr.P.C. on 12.02.2019. Statements of other witnesses were recorded and after completion of investigation, charge sheet was filed against the accused-respondent for the commission of offences, as mentioned above. Learned ASJ, vide order dated 01.05.2019, discharged the respondent of the offence punishable under Section 12 of the POCSO Act.

4. Learned APP appearing on behalf of the State has argued that the learned ASJ, without looking into the allegations, which are serious in nature and without appreciating the evidence in proper perspective, discharged the respondent. It is, therefore, prayed that the instant petition be allowed and the Trial Court may be directed to conduct fresh trial after framing charges upon the respondent. 5. On perusal of the impugned order, it is revealed that the learned ASJ had observed that the statement of the victim and the complainant, recorded under Section 164 Cr.P.C, did not reflect that the respondent committed any offensive act upon the victims or he had any sexual intent. It is further observed that the main ingredients of Section 12 of the POCSO Act, i.e., sexual intent is missing in the entire act of the respondent and therefore the prima facie offence of sexual harassment was not made out against him and he was accordingly discharged. 6. On perusal of statement under Section 164 Cr.P.C of the victim wherein she stated that she along with her four friends were playing on the railway lines when the respondent asked them that after playing, they all should come to his house and he will give them ₹2. She did not go to his house and told this fact to her elder sister. 7. In the said statement the victim has not stated anything regarding any sexual intent or sexual assault; however, the FIR was registered on the statement made by her mother wherein she has made some allegations against the respondent.

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