



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

% *Judgment Reserved on: 29.07.2026*
Judgment pronounced on: 10.08.2026

CNR No. DLHC012885792016

+ **CRL.A. 1065/2016**

STATE (NCT OF DELHI)Appellant

Through: Mr. Utkarsh, APP for State

Versus

SAJID ALIRespondent

Through: Mr. Mohd. Iqbal and Mr. Kanwar
Faisal, Advocates

CORAM:

HON'BLE MS. JUSTICE CHANDRASEKHARAN SUDHA

JUDGMENT

CHANDRASEKHARAN SUDHA, J.

1. In this appeal under Section 378(3) of the Code of Criminal Procedure, 1973 (the Cr.P.C), the State, namely, the respondent in Sessions Case no. 165 of 2013 on the file of the Additional Sessions Judge -01 (Central), Tis Hazari Court, Delhi assails the judgment dated 22.08.2014 as per which the sole accused has been acquitted of the offences punishable under Sections 354A of the Indian Penal Code, 1860 (IPC) read with



Section 10 of the Protection of Children from Sexual Offences Act, 2012 (POCSO Act).

2. The prosecution case is that on 17.07.2013, between 6:30 PM-7:00 PM in the area in front of house no. 2, Makbara Rodgran, Lal Kuan Delhi and also at different times and different places, the accused repeatedly made sexually coloured remarks against PW4, a minor girl aged 17 years. Additionally, the accused has committed aggravated sexual assault by touching her cheeks and hip. As per the chargesheet/ final report, the accused is alleged to have committed the offences punishable under Sections 354A, 354D IPC and Section 12 of the PoCSO Act.

3. On the basis of Ext. PW 4/A FIS/FIR of PW4, given on 17.07.2013, Crime no. 110/2013, Hauz Qazi Police Station, i.e., Ext. PW 1/A FIR was registered by PW1, Head Constable. PW8, Women Sub-Inspector (W/SI) conducted investigation into the crime and on completion of the same, filed the chargesheet/final report alleging commission of the offences punishable under the



aforementioned Sections.

4. When the accused was produced before the trial court, all the copies of the prosecution records were furnished to him, as contemplated under Section 207 Cr.P.C. After hearing both sides, the trial court, vide order dated 21.10.2013, framed a Charge under Sections 354A IPC and Section 10 of the PoCSO Act, which was read over and explained to the accused to which he pleaded not guilty.

5. On behalf of the prosecution, PWs 1 to 8 were examined and Exts. PW1/A, PW1/B, PW1/C, PW1/D, PW2/A, PW2/DA, PW4/A, PW4/B, PW4/C, PW4/D, PW4/E, PW6/A, PW6/B, PW8/A and PW8/B were marked.

6. After the close of the prosecution evidence, the accused was questioned under Section 313(1)(b) Cr.P.C. regarding the incriminating circumstances appearing against him in the evidence of the prosecution. The accused denied all those circumstances and maintained his innocence. The accused submitted that people of



the locality, who are quite orthodox, were annoyed as PW4 used to wear objectionable clothes. They objected and even gave a complaint to the police. He is also a signatory to the said complaint. When PW4 came to know about the complaint, she with the help of Sub Inspector Pawan Tomar, with whom she is in a relationship, falsely implicated him as he has criminal antecedents.

7. After questioning the accused under Section 313(1)(b) Cr.P.C., compliance of Section 232 Cr.P.C. was mandatory. In the case on hand, no hearing as contemplated under Section 232 Cr.P.C. is seen done by the trial court. However, non-compliance of the said provision does not, ipso facto vitiate the proceedings, unless omission to comply with the same is shown to have resulted in serious and substantial prejudice to the accused (**See Moidu K. vs. State of Kerala, 2009 (3) KHC 89 : 2009 SCC OnLine Ker 2888**). Here, the accused has no case that noncompliance of Section 232 Cr.P.C. has caused any prejudice to him.



8. On behalf of the defence, DW1 was examined and Ext. DW1/A was marked.

9. Upon consideration of the oral and documentary evidence on record, and after hearing both sides, the trial court, vide the impugned judgment dated 22.08.2014, acquitted the accused of the offences punishable under Section 354A IPC and Section 10 of the POCSO Act. Aggrieved, the respondent/State has come up in appeal.

10. It was submitted by the learned Additional Public Prosecutor that PW4, the prosecutrix, has remained consistent in her version. Minor discrepancies in the testimony of the prosecution witnesses do not vitiate the case when the core of the prosecution story stands proved. Therefore, he submitted that the impugned judgment of acquittal be set aside, and the accused be convicted in accordance with law.

11. It was submitted by the learned counsel for the respondent/accused that there is no infirmity in the impugned



judgment calling for an interference by this Court. The learned counsel also submitted that the prosecution has failed to establish that PW4 was below 18 years of age, which is a prerequisite for bringing home the Charge under the PoCSO Act. It was contended that Ext. PW5/A birth certificate of PW4 cannot be relied upon to prove her age, as PW5, Sub-Registrar, Birth and Death, Shahdara, South Zone admitted that there is no entry in the birth register for the period from 1/1/1996 to 28/12/1996 pertaining to Ext. PW5/A birth certificate.

12. Heard both sides and perused the records.

13. The only point that arises for consideration in the present appeal is whether there is any infirmity in the impugned judgment calling for interference by this court.

14. I make a brief reference to the oral and documentary evidence relied on by the prosecution in support of the case. Ext. PW4/A, the FIS/FIR of PW4, recorded in Hindi on 17.07.2013, translated reads thus:- “ ...*Whenever I go out, a man named Sajid*



who resides in House no. 2061 Rodgran stalks me every day and tells me that I look very nice (आप बहुत अच्छी लग रही हो). Today at about 6:30 in the evening, when I was returning home after getting medicines from Farashkhana, Sajid met me at Makbara Rodgran near his house and put his hand on my cheeks. When I objected to his conduct, he replied -तेरी शराफत में यही दिखा दूंगा खामोशी से अपने घर चली जा...”

14.1. Ext. PW4/B Section 164 Statement of PW4 recorded in Hindi on 19.07.2013 translated reads thus:-“*Sajid lives in my neighbourhood. He has been stalking me for the past 6 months. Whenever I go out, he follows me and from behind puts his hands on my hips and touches my cheeks, saying ‘jaaneman kaha ja rahi ho?’ (Sweetheart, where are you going?) As I was scared/frightened, I used to leave before he did anything further. He always does these kinds of acts. When I told this to my mother, she told me that she would speak to the elders of the locality. My*



mother thought Sajid would mend his ways. That is why I did not complain till date. When I used to object to his acts, he used to say -चली जाओ नहीं तो तुम्हारी शराफत यही दिखा दूंगा. On 17.07.2013 at 06:00 in the evening, while I was returning from Farashkhana after getting medicines and when I reached near Makbara, Sajid approached me, and he tried to touch me. When I stopped him, he said- यहाँ से चली जा, तेरी शराफत यही दिखा दूंगा और अब देख मैं आगे क्या करता हूँ. I got angry because Sajid instead of apologizing, threatened me and misbehaved with me. Hence, I informed the police. People in my locality/ neighbourhood are pressurizing me to withdraw the case, but I have refused. I need safety.”

14.2. PW4, when examined before the trial court deposed that whenever she used to go out the accused used to stalk her, touch her cheeks and say “*tu mujhe achi lagti ho*”. On the date of the incident, the accused touched her cheeks and when she objected, he asked her to leave the place silently or else he would



show what her *sharafat* was. PW4 in her cross-examination, deposed that she had written down Ext. PW4/A at the police post, Rodgarn. On the said day, she went to the police post with her mother and brother by about 07:15 pm. According to her, the incident took place at 6:30 pm.

15. PW3, the mother of PW4, supported the prosecution case. According to her, on 17.07.2013, her daughter (PW4), went to fetch medicines and on returning home, the latter complained that the accused touched her cheeks. She further stated that the accused had been harassing her daughter (PW4) for a few days and so her daughter complained to the police.

15.1. PW3 in her cross examination admitted that when her daughter (PW4) was born, the latter's birth had not been registered at the MCD office. She was unable to recall the year in which her daughter (PW4) was born. She further admitted that the birth of PW4 was registered with the MCD on 23.06.2009 only, which she did as advised by others. PW3 admitted that her daughter had



given similar complaints against other boys of the locality as they had harassed her daughter.

16. PW5, Sub-Registrar, Birth and Death, Shahdara South Zone, deposed that Ext. PW5/A is the original birth certificate of PW4, which was prepared on the basis of official record. PW5 in his cross-examination, admitted that as he had not brought the register, he was unable to say as to who had applied for the birth certificate. He also added that the register is not traceable. To a question by the Court as to whether he could produce the register, he answered in the affirmative and hence, the trial court adjourned his examination and directed him to produce the register on the next date of hearing. Thereafter, when PW5 was further examined on 02.06.2014 (earlier partly examined on 01.05.2014), he produced the birth register for the period from 01.01.1996 to 28.12.1996. PW5 admitted that the register does not contain any entry pertaining to Ext. PW5/A birth certificate. PW5 added that the registration in the case of PW4 was done on 23.06.2009. He



admitted that he had not brought any records to substantiate the registration that was done on 23.06.2009. But, thereafter he admitted that the register brought by him pertains to the year 2009. PW5 further deposed that all births that took place during the year 1996 have been entered in the register. However, there is no entry in the said register corresponding to the entry in Ext. PW5/A birth certificate. In the cross-examination PW5 was asked regarding the document which would show that Ext. PW5/A birth certificate was in fact a genuine document to which he answered that he had to check the records in the SDM office. Hence, his examination was again adjourned. On the next hearing date, i.e. on 16.07.2014, PW5 when further cross-examined, admitted that there was no record(s) available in the office regarding Ext. PW5/A birth certificate and therefore, he is unable to say whether the said certificate is genuine or false. PW5 also admitted that when registration of birth is done after a year or so after birth, the same is done under the direction/order of the SDM. PW5 further



admitted that such an order could not be traced in the office.

17. PW8, Sub-Inspector, Hauz Quazi, police station, the Investigating Officer (IO) deposed that on 17.07.2013 on receipt of information regarding DD no. 23B through Head Constable Sita Ram (PW6), he proceeded to PW4's house, where she along with her mother were present. PW4 gave a written complaint, i.e. Ext. PW4/A. She made necessary endorsements on Ext. PW4/A complaint and thereafter sent it to the police station through PW6. Thereafter, the prosecutrix took her to the scene of occurrence pursuant to which she prepared Ext. PW8/B site plan as pointed out by the former. In the meantime, PW6 joined her at the scene of occurrence after lodging the FIR and handed over to her the copy of the FIR and rukka. Thereafter, they went in search of the accused, who was apprehended at the instance of PW4 from Lal Kuan. The arrest memo has been marked as Ext. PW4/C. In the cross-examination, PW8 deposed that Ext. PW4/A complaint was written by PW4 herself at her residence. Though, initially PW8



deposed that she could not recall the time at which she reached the house of PW4, on further questioning stated that she reached the house of PW4 at 08:00 PM and remained there till about 09-9:30 PM. PW8 further admitted that PW4 had made several complaints against other persons of the locality also. The said complaints pertain to eve-teasing. PW8 admitted that the said complaints had not been examined. PW8 when asked whether the copies of the said complaints could be produced answered in the affirmative. Hence, at the request of the defence counsel, the further examination was adjourned. When PW8 was further cross-examined on 16.07.2014, she deposed that PW4 had not made any complaint against the accused before the present complaint. Further, PW8 admitted that the birth of PW4 had been registered after 13 years of her birth and that she had not conducted any inquiry regarding the reasons for the delay. PW8 also admitted that no inquiry was conducted regarding the basis on which and the circumstances under which the birth was registered after such a



long delay. PW8 deposed that she is unaware of Ext. PW2/DA complaint lodged by the accused and others against PW4. The said complaint does bear the seal of Central District of Delhi Police and also the name of the ASI. However, she did not investigate the same as it was never disclosed to her. PW8 denied the suggestion that a false implication has been made by PW4 as her neighbours wanted the latter and her mother to stop their illegal activities. PW8 admitted that the scene of occurrence is a crowded place.

18. Now a brief reference to the defence evidence as well. DW1, a neighbour of the accused as well as PW4, deposed that on 17.07.2013, he along with the accused and others went to police chowki, Rodgran, to complain against the prosecutrix about her conduct and the dress she wears. They handed over the complaint to Sub-Inspector Pawan Tomar, in-charge of police post Rodgran. They handed over the complaint prior to roza time. Thereafter, he went to the masjid to perform namaz. When he returned from the masjid, he came to know that the police had apprehended the



accused from his residence. DW1 also deposed that since the accused has criminal antecedents, the latter has been implicated at the instance of the prosecutrix. On 29.08.2013, he and others moved an application before the DCP Central, the copy of which has been marked as Ext. DW1/A. According to DW1, the prosecutrix used to wear objectionable clothes during the month of Ramzan against which he as well as the local residents objected. Hence, she has falsely implicated the accused. DW1 in his cross-examination admitted that Ext. DW1/A was moved after the registration of the present case.

19. As per Section 386(1) Cr.P.C, the Appellate Court may in an appeal from an order of acquittal, reverse such order and direct that further inquiry be made, or that the accused may be retried or committed for trial, as the case may be, or find the accused guilty and pass sentence on him according to law. The general principles regarding the powers of the appellate court while dealing with an appeal against acquittal are:- firstly, the appellate court has the



power to review, reappraise and reconsider the evidence upon which the order of acquittal is founded. Secondly, the Code puts no limitation, restriction or condition on exercise of such power and an appellate court on the evidence before it, may reach its own conclusion, both on questions of fact and of law. Thirdly, various expressions, such as, “substantial and compelling reasons”, “good and sufficient grounds”, “very strong circumstances”, “distorted conclusions”, “glaring mistakes”, etc. are not intended to curtail the extensive powers of an appellate court in an appeal against acquittal. Such phraseologies are more in the nature of “flourishes of language” to emphasise the reluctance of an appellate court to interfere with an acquittal than to curtail the power of the court to review the evidence and to come to its own conclusion. Fourthly, an appellate court, however, must bear in mind that in the case of acquittal, there is a double presumption in favour of the accused, that is, (i) the presumption of innocence is available to him under the fundamental principle of criminal jurisprudence that every



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person shall be presumed to be innocent unless he is proved guilty by a competent court of law, (ii) the accused having secured his acquittal, the presumption of his innocence is further reinforced, reaffirmed and strengthened by the trial court. Lastly, if two reasonable conclusions are possible on the basis of the evidence on record, the appellate court should not disturb the finding of acquittal recorded by the trial court. (See **Babu Sahebogouda Rudragoudar and others v. State of Karnataka (2024) 8 SCC 149**, **Rajesh Prasad v. State of Bihar (2022) 3 SCC 471**, **Chandrappa vs. State of Karnataka, (2007) 4 SCC 415**).

19.1 In **Ram Kumar v. State of Haryana, 1995 Supp (1) SCC 248**, the Apex Court observed that the powers of the High Court in an appeal from order of acquittal to reassess the evidence and reach its own conclusions under Sections 378 and 379 CrPC are as extensive as in any appeal against the order of conviction. But as a rule of prudence, it is desirable that the High Court should give proper weight and consideration to the view of the trial court



with regard to the credibility of the witness, the presumption of innocence in favour of the accused, the right of accused to the benefit of any doubt and the slowness of appellate court in justifying a finding of fact arrived at by a judge who had the advantage of seeing the witness. No doubt it is settled law that if the main grounds on which the court below has based its order acquitting the accused, are reasonable and plausible, and the same cannot entirely and effectively be dislodged or demolished, the High Court should not disturb the order of acquittal.

20. Keeping in mind the aforesaid binding principles, this Court proceeds to examine the evidence and the materials on record to ascertain whether the conclusions arrived at by the trial court in acquitting the respondent/ accused is reasonable and justified or whether the same is vitiated by manifest illegality or the conclusions recorded by the trial court are such which could not have been possibly arrived at by any court acting reasonably



and judiciously, which may in other words be characterised as perverse.

21. The basic requirement to attract the provisions of the PoCSO Act is the age or the minority of the prosecutrix. In the case on hand, the prosecution relies on Ext. PW5/A birth certificate and the testimony of PW5 to prove the date of birth of PW4. As per the birth certificate, the date of birth of PW4 is 20.11.1996. The date of the incident is 17.07.2013. If that be so, at the time of the incident, PW4 must have been around 17 years. Admittedly, the birth was not registered immediately or within a reasonable time of the birth of PW4, but it was registered after about 13 years. PW5 admits that order of the SDM is required if registration is done after a year or so. But there is no such order here. PW5 admits that the entry in Ext. PW5/A birth certificate does not find a place in the register produced which contains entries regarding all the births that took place during the period from 01.01.1996 to 28.12.1996. Going by Ext. PW5/A, the date of



birth of PW4 is 20.11.1996. If that be so, the entry relating to PW4's birth ought to have been there in the register. But for reasons best known to the prosecution, the entry is not there in the register. Added to that, there is no document to show that the birth was registered as per the orders of the SDM. PW5 admitted that in the absence of the entry in the register and in the absence of an order of the SDM, he cannot say whether Ext. PW5/A birth certificate is fake or genuine. In such circumstances, it can only be held that the prosecution has failed to satisfactorily establish the age or minority of PW4, the prosecutrix. Hence, the provisions of the PoCSO Act cannot be invoked in this case.

22. Now coming to Section 354A IPC. The trial court rejected the prosecution case for the following reasons:- (i) failure to prove the identity of the caller who informed the police about the incident; (ii) discrepancy regarding time of arrest of the accused; (iii) discrepancy/inconsistency regarding the place at which Ext. PW4/A complaint was given/recorded; (iv)



discrepancy/inconsistency regarding the period of illness and the nature of illness of PW4 whether it was typhoid or a simple fever; (v) failure of the IO to investigate the complaints given by the accused and the residents of the locality against PW4 and her mother and (vi) non examination of independent witnesses. For the said reasons the trial court concluded that the prosecution had failed to prove the case beyond reasonable doubt and hence, proceeded to acquit the accused.

23. The failure to prove the identity of the caller is immaterial and does not in any way whatsoever affect the prosecution case because even the appellant/accused has no case that PW4 had not preferred a complaint against him. His only case is that he has been falsely implicated in this case and that he is innocent. That being the position, it was quite unnecessary or immaterial to prove the identity of the caller who informed the police of the incident.



24. The materials on record do show a discrepancy regarding the time of arrest of the accused. According to PW4, the accused was arrested at around 07:15 pm. But the arrest memo, that is, Ext. PW4/C shows that the arrest was at 09:00 pm. Would that mean that the prosecution case is false and has to be thrown out? The answer can only be in the negative because it is settled law that for certain defects in investigation, the accused cannot be acquitted. This aspect has been considered in various decisions. There may be highly defective investigation in a case. However, it is to be examined as to whether there is any lapse by the IO and whether due to such lapse any benefit should be given to the accused. The law on this issue is well settled that defect in the investigation by itself cannot be a ground for acquittal. If primacy is given to such designed or negligent investigations or to the omissions or lapses by perfunctory investigation, the faith and confidence of the people in the criminal justice administration would be eroded. Where there has been negligence on the part of the investigating agency



or omissions, etc. which resulted in defective investigation, there is a legal obligation on the part of the court to examine the prosecution evidence *dehors* such lapses, carefully, to find out whether the said evidence is reliable or not and to what extent it is reliable and as to whether such lapses affected the object of finding out the truth. Therefore, the investigation is not the solitary area for judicial scrutiny in a criminal trial. The conclusion of the trial in the case cannot be allowed to depend solely on the probity of investigation. (See **C. Muniappan v. State of T.N., (2010) 9 SCC 567** and ; **Hema v. State, (2013) 10 SCC 192**; **Dayal Singh vs. State of Uttaranchal, (2012) 8 SCC 263**).

24.1. In **Gajoo v. State of Uttarakhand, (2012) 9 SCC 532**, while reiterating the aforesaid principle, it has been held that defective investigation, unless affects the very root of the prosecution case and is prejudicial to the accused should not be an aspect of material consideration by the Court.



24.2. What would be the duty of the court in such cases of defective investigation? In **Sathi Prasad v. State of U.P., (1972) 3 SCC 613** it has been held that if the police records become suspect and investigation perfunctory, it becomes the duty of the court to see if the evidence given in court should be relied upon and such lapses ignored. Noticing the possibility of investigation being designedly defective, it has been held in **Dhanaj Singh v. State of Punjab, (2004) 3 SCC 654** that in the case of a defective investigation, the court has to be circumspect in evaluating the evidence. But it would not be right in acquitting an accused person solely on account of the defect; to do so would tantamount to playing into the hands of the investigating officer if the investigation is designedly defective. Dealing with the cases of omission and commission, the Apex Court in **Paras Yadav v. State of Bihar, AIR 1999 SC 644** enunciated the principle in conformity with the previous judgments, that if the lapse or omission is committed by the investigating agency, negligently or



otherwise, the prosecution evidence is required to be examined *dehors* such omissions to find out whether the said evidence is reliable or not. The contaminated conduct of officials should not stand in the way of evaluating the evidence by the courts, otherwise the designed mischief would be perpetuated and justice would be denied to the complainant party.

25. It is true that PW4's case is that she had gone to the police station and that she herself had written down her complaint. But, according to the police, the complaint was written by PW4 at her residence. Again, this alone is not sufficient to throw out the entire prosecution case as the same will have to be considered along with the other facts and circumstances in the case.

26. Further, it is immaterial whether PW4 had only fever or typhoid or whether she had recovered from typhoid days before the incident or was still suffering from the same. That has got nothing to do with the case in hand. It is true that the prosecution case is that PW4 while returning after taking medicines was harassed on



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her way home. The pertinent question is was she sexually harassed and not as to why she was on the road or what was her reason or justification to go out into the road.

27. PW8 did admit that the scene of occurrence is a crowded place. It is also true that no independent witnesses have been examined to prove the prosecution case. But again, non examination of independent witnesses is also not a ground to disbelieve the case. The same will depend on the facts and circumstances of each case.

28. Yet another reason that has been given by the trial court is the failure of PW8, the IO, to investigate into the complaints given by the accused and residents of the locality against PW4.

Paragraph 29 of the impugned judgment reads thus:-

“29. PW4 in her cross-examination admitted that the orthodox people of the locality used to raise objection on her western clothes. However, she clarified that she used to wear normal jeans and top. But she admitted that the local residents used to raise



objection on her attire. Thus, the testimony of PW4 corroborates the defence version to the extent that local residence [sic] used to take objection on her attire. Perusal of complaint Ex. PW2/DA reveals that more than 50 persons of the locality had given a written complaint to the police on July 17, 2013 and same was assigned to ASI Sripal Singh. But surprisingly no investigation was conducted by PW8 on the said complaint by just showing her ignorance about the said complaint. It is quite unbelievable that investigating officer would not be aware of the complaint which was made by more than 50 residents of the locality on the very same day. This again shows that the investigating officer had not investigated the matter with due diligence and sincerity.

(i). DW1 in his examination-in-chief categorically deposed that on July 17, 2013 he along with accused and others went to police chowki Rodgran to make a complaint against the victim about her conduct and dress which she used to wear and further deposed that they handed over a written complaint to SI Pawan Tomar, Incharge of police post Rodgran. He further testified that they had handed over the said complaint prior to Roja time and thereafter,



he went to masjid to perform namaaz and further deposed that when he returned from masjid, he came to know that police had apprehended Sajid from his house. The testimony of DW1 is corroborated by victim who deposed that accused was brought to the police choki after opening of the Roja at about 7.15 PM.....”

(Emphasis supplied)

29. I refer to Ext. PW2/DA, the complaint stated to have been given by the appellant/accused and the residents of the locality against PW4, the non-investigation of which was found by the trial court to be a defect in the prosecution case. Ext. PW2/DA reads thus:-

“SUBJECT: - Complaint against one lady Ms. Ruheen D/o Mst. Reshma R/o 2104, Rodgran Lal Kuan, Delhi- 110006.

RESPECTED SIR,

It is respectfully showeth as under:-

1. That the complainants are the residents of the area of Rodgran, Lal Kuan, Delhi- 110006, alongwith their respective families and having young aged girls and are peace loving and law abiding citizens and having a deep root in the society.



2. That the above said lady Ms. Ruheen is residing alone with her mother and having no male members in the family.

3. That the above said lady is indulged in some immoral activities and wearing clothes which look adverse effect on the innocent boys of the area and as such in-collusion and in-conivance with her mother she has created a bad nuisance in the area.

4. That the said lady also busy in making complaints of innocent boys and persons who are not come in the hands the said lady with the police without any reasonable cause and excuse.

5. That it is also revealed that this lady shifted from the Seelampur Delhi Area when a raid was carried out by the police.

It is prayed that a suitable stern action may kindly be taken against the above said lady and the life and liberty may kindly be saved of the complainants on the clutches of this lady.

Thanking You,”

(Emphasis supplied)

30. This Court specifically asked the learned counsel appearing for the appellant/accused as to the cognizable offence that is made out in Ext. PW2/DA, which the IO failed to take note of or investigate. The learned counsel was unable to give any answer(s) to the same. The “**crime**” committed by PW4 as revealed in Ext. PW2/DA is: - (i) residing alone with her mother, with no male member in the family; (ii) wears objectionable dress;



and (iii) she is corrupting the young boys of the locality by wearing such dresses. I am totally at a loss and unable to find any provision(s) in any law/statute/rule book prevailing in the country that has been violated/breached by PW4 that necessitated the police to take action by registering a crime and launching an investigation into the same.

31. The powers of the police to investigate are dealt with in Chapter XII Cr.P.C. As per Section 154 Cr.P.C. on receipt of information relating to the commission of a cognizable offence, the same needs to be reduced into writing and its substance has to be entered into a prescribed book. Section 156 Cr.P.C. which deals with the powers of an officer-in-charge of a police station to investigate into a cognizable offence, says that any officer-in-charge of a police station may without the order of a magistrate investigate any cognizable case which a court having jurisdiction over the local area within the limits of such station would have power to inquire into or try under the provisions of Chapter XIII.



Section 157 dealing with the procedure for investigation says that if from the information received or otherwise, an officer in charge of a police station has reason to suspect the commission of an offence which he is empowered under Section 156 to investigate, he shall forthwith send a report of the same to a magistrate empowered to take cognizance of such offence upon a police report and shall proceed in person or shall depute one of his subordinate officers proceed to the spot to investigate the facts and circumstances of the case and if necessary to take measures for the discovery and arrest of the offender. Proviso (b) to Section 157(1) Cr.P.C. permits the officer in charge of a police station not to investigate the case if it appears to him that there is no sufficient ground for entering into an investigation. Of course in such cases where he decides not to investigate on the ground mentioned in the second clause of the proviso, he is required to notify to the informant the fact that he will not investigate the case or cause it to be investigated. The right of the police to investigate is subject to



the condition that the police officer should have reason to suspect the commission of a cognizable offence. The existence of the reason to suspect the commission of a cognizable offence has to be gathered from the allegations made in the first information made before the police officer. (See **S.N. Sharma v. Bipen Kumar Tiwari, AIR 1970 SC 786; State of Haryana v. Ch. Bhajan Lal, AIR 1992 SC 604**).

32. Ext. PW2/DA complaint reveals commission of no cognizable offence, and therefore no investigation into the same by the police was called for.

33. Coming to Ext. DW1/A, yet another complaint given by the accused and other residents of the locality. The same in Hindi, translated reads thus:

*“To,
The DCP,
Central District, Daryaganj
New Delhi-02*

Sir,

It is submitted that all the applicants are residents of



Rodgaran, Lal Kuan, Police Station Hauz Qazi. It is respectfully submitted that a girl namely Roheen, aged about 19–20 years is residing at House No. 2104, Rodgaran, Lal Kuan. Her conduct and character are extremely objectionable. Likewise, the conduct and character of her mother Reshma are also highly objectionable. They blackmail young boys of the locality. They first make obscene gestures towards such boys and thereafter demand money from them. Keeping this in view, some respectable men and women of the locality visited their house, spoke to both the mother and daughter, and counselled them. After considerable persuasion, Roheen and her mother Reshma assured everyone that they would not, in future, level any false allegations against the residents of the locality.

However, disregarding the residents, both the mother and daughter resumed the same activities and started threatening to lodge false complaints against certain minor boys of the locality. They claimed that they had connections with influential and wealthy persons who paid substantial money to the police station and that through such persons, Reshma and her daughter Roheen



could get anything done, including the lodging of false complaints. They further stated that anyone in the locality who opposed them would be dealt with in such a manner that he would spend his entire life in prison. They also claimed that Reshma had personal relations with SI Pawan Tomar. Thereafter, Roheen attempted to falsely implicate a boy named Nazim, residing at House No. 2097, Rodgaran, Lal Kuan, in a case. Subsequently, she also attempted to falsely implicate another boy named Hammad, residing at House No. 2096, in a case.

On 17.07.2013, Roheen lodged a complaint at Police Post-Rodgaran against Sajid Ali, who is about 20 years older than her (Roheen). Acting solely on the basis of that complaint, SI Pawan Tomar, without conducting any inquiry in the locality, summoned Sajid Ali from his house while he was breaking his fast during Ramadan. Upon learning of this, some respectable men and women of the locality, who were neither members of Sajid Ali's family nor his relatives, went to the Rodgaran Police Post and complained to SI Pawan Tomar regarding the conduct of the said mother and daughter. They informed him that Sajid Ali had



neither said anything to the girl nor committed any act of molestation or harassment against her. However, SI Pawan Tomar abused those respectable men and women in filthy language and drove them away. Thereafter, he booked Sajid Ali under Section POCSO-12/354, and locked him up, although, those provisions were invoked unlawfully.

Thereafter, we again approached SI Pawan Tomar and informed him that Sajid Ali had maintained a peaceful and law-abiding conduct for the last nine years, and that there had never been any complaint against him either in the locality or at the police station. We further submitted that, just as people from locality, the Police should also get them reformed. At this, SI Pawan Tomar passed irresponsible remarks "If these people get reformed, then how will we policemen earn our money?". Thereafter, he wrongfully booked the said boy under Section POCSO-12/354 and locked him up.

It is, therefore, most respectfully prayed that kindly not to act merely on the basis of the false complaints made by the said mother and daughter and take action only after carrying out



investigation in the locality. Further, appropriate legal action may be initiated against SI Pawan Tomar, so that the residents of the locality may continue to have faith and confidence in the police.

The applicants shall remain ever grateful for your kind consideration.

Thanking you,

(Emphasis supplied)

34. Again, what is the offence that is made out in Ext. DW1/A has not been clarified by the learned counsel. Moreover, the same has been given on 29.08.2013, much after the incident in this case on 17.07.2013. An allegation of blackmailing is also seen raised in Ext. DW1/A. If the police was not taking action on the basis of such incidents of blackmailing by PW4, the accused and the other residents of the locality could have either approached the higher authorities or approached the jurisdictional Court. Till date, no such action is seen taken.

35. The main grievance of the accused and the residents of the locality seem to be the dress of PW4, which is quite clear from



the line of cross-examination and arguments of the learned counsel for the appellant/accused. I make a brief reference to the relevant portions of the testimony of PW4 which reads thus:-

“

Question: Is it correct that Muslim people are residing in your neighborhood?

Answer: It is correct.

.....

Question: Is it correct that being a Muslim area, residents are orthodox and they raised objection on the western clothes?

Answer: It is correct.

Question: What dress you were wearing when you went to the Doctor?

Answer: I was wearing suit and salwar.

Question: I put to you that generally you wear western tight clothes.

Answer: I wear normal jeans and top.

Question: Is it correct that local residents raised objections on your apparel?

Answer: Yes.



.....”

36. This line of cross-examination pursued by Advocate Mohammed Iqbal was wholly irrelevant, improper and would appear to be a technique to embarrass, humiliate and morally judge the prosecutrix based on her clothing. It ought to have been disallowed at the very outset by the learned Trial Judge. A woman’s choice of attire neither diminishes her dignity nor serves as justification or condonation for unlawful conduct directed against her. Questions founded upon regressive notions of how a woman ought to dress have no legitimate place in a court of law and cannot be permitted to become a device for character assassination or for blaming the prosecutrix. I am not unmindful of the considerable pressures under which officers of the district judiciary discharge their duties. Nevertheless, the presiding judge is not a passive spectator to the proceedings. Whenever cross-examination transgresses the bounds of relevance and propriety, or is employed as a means to intimidate, insult, harass or shame a



witness, the Court must intervene promptly and decisively. The process of cross-examination cannot be reduced to an instrument of humiliation, nor can the dignity of a witness be sacrificed under the guise of testing her credibility (See Sections 146 to 152 of the Evidence Act).

37. Here it would be apposite to refer to the dictum in **State of U.P. v. Raghubir Singh (1997) 3 SCC 77**, where a defence witness spoke derisively of the moral character of her mother, one of the prosecution witnesses. It was *inter alia* considered whether the court should have allowed the defence witness to make such imputations on the moral character of her mother in a case where the fact in issue was whether the accused had kidnapped and murdered her son. The Apex Court after referring to Sections 140, 151 and 155 of the Evidence Act and an early decision of Patna High Court in **Mahammad Mian v. Emperor (52 Indian Cases 54)**, pointed out that if inquiries involving any scandalous matters are made with a purpose of shaking the credit



of a witness, the court has complete dominion over them and may forbid such questions even though they may have some bearing on the question before the Court. But the Court may have no discretion to forbid such question, if they relate to the facts in issue or to matters necessary to be known in order to determine whether or not the facts in issue existed. Reference was also made to a Division Bench decision of the High Court of Calcutta in **Subala Das v. Indra Kumar Hazzva**, AIR 1923 Cal. 315, wherein the court had to consider the objection raised by the opposite side when a question was put to the defendant during examination as to whether the defendant was made pregnant by a certain person. The counsel who put the question defended it on the premise that it was relevant as his client had a case that defendant did not inherit the property by reason of her unchastity during the life time of her husband. The Division Bench pointed out that if the fact in issue was whether the defendant was disentitled to inherit the property by reason of her unchastity then the question would be relevant.



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"If, however, it was asked for impeaching her credit as a witness," the Court would have to consider its powers to forbid such questions. Likewise, it was held that if the fact in issue was concerning the paternity of the child, perhaps, some relevance to the moral life of his mother could have been assumed. But in a murder case where the mother of the child gave evidence that her son was murdered, there was little scope for conducting any inquiry into the moral life of the mother. Law does not permit even the child of a prostitute to be murdered. The murderer in such a case cannot escape by establishing that the mother of the child was of loose morals. Holding so, the Apex Court deprecated the evidence of the defence witness as quite unnecessary and irrelevant in the case.

38. Coming to the case on hand, there was no reason whatsoever to introduce religion into the present case. Advocate Mohd. Iqbal, who represented the accused before the Trial Court, appears for the appellant in this appeal also. When asked why



questions concerning the religion of the people in the locality and the clothes worn by PW4 had been put to her, the learned counsel replied: - “*Janab, har mohalle mein ek reeti riwaz hota hain jinko sabko manna padega*”.

39. This submission is wholly unacceptable. The only question before the Court is whether the testimony of PW4 discloses the commission of an offence under Section 354A of the Indian Penal Code or under any other provision of law. Her religion, the religion of the residents of the locality, and the clothes worn by her have no connection with that issue. The Indian Penal Code, the Protection of Children from Sexual Offences Act and all other laws of the land apply alike to every person, irrespective of religion. Neither religion nor local custom can be used to justify unlawful conduct or to impose restrictions upon the personal choices of a woman. The attempt to bring the religion and attire of PW4 into the case was entirely irrelevant and improper.



40. The argument advanced on behalf of the appellant cannot be accepted even for a moment. What a girl or woman chooses to wear is a matter of her personal choice. Neither her neighbours, nor society, nor the accused, nor counsel appearing in a court of law has any right to dictate her clothing. It is simply none of their concern. The suggestion that a woman wearing jeans may “*corrupt young boys*” reflects a deeply troubling and unacceptable mindset. The answer does not lie in controlling the clothes of girls and women. Parents and society must instead teach their children to control their conduct, respect personal boundaries and treat every human with dignity, whether at home or outside. The line of cross-examination adopted before the trial court, and the argument advanced in its support, deserve the strongest disapproval. The questions put to PW4 were plainly not intended to test her truthfulness or impeach her credit under Section 155 of the Evidence Act. They were intended to insult, shame and annoy her (See Sections 151 and 152 Evidence Act). Such conduct is



particularly serious when it comes from an advocate, who is an officer of the Court and whose duty is to assist the Court in arriving at the truth. An advocate cannot use the privilege of cross-examination as a licence to humiliate a witness or attack her dignity.

41. Therefore, the conclusion of the trial court that no proper investigation had been conducted in the case is also incorrect and erroneous.

42. Coming back to the offence contemplated under Section 354A IPC, which deals with the offence of sexual harassment. A man committing any of the following acts:- (i) physical contact and advances involving unwelcome and explicit sexual overtures; or (ii) a demand or request for sexual favours; or (iii) showing pornography against the will of a woman; or (iv) making sexually coloured remarks, is guilty of the commission of offence of sexual harassment.



43. When the learned counsel for the appellant/accused was asked whether he had any arguments to advance on the point, submitted that he has nothing to submit except that the trial court was perfectly justified in acquitting the accused and that there is no reason(s) for interference. I am afraid; I disagree with the argument advanced by the learned counsel for the appellant/accused.

44. PW4 the prosecutrix, has given a consistent version in the FIS/FIR; the Section 164 statement, as well as in the testimony before the Court. The only variation I find is that in the 164 statement she says that the accused had placed his hands on her hips also, which is absent in the FIS/FIR and her version before the Court. But in all other statements, she has consistently stood by her case of unwanted physical contact of the accused, that is, the accused touching her cheeks, despite her objection. Her version is consistent regarding stalking also. However, no Charge was framed by the trial court for the offence of stalking punishable



under Section 354D. Nevertheless, the overt act of the accused of touching the cheeks of PW4 coupled with the comments that he made, to which I have already referred in detail while referring to the testimony and earlier statements of PW4, make it clear that the offence contemplated under Section 354A(1)(i) IPC is certainly made out. PW4 is also seen to have been consistent in her version regarding the reaction of the accused, when she objected to his acts. The reaction or attitude of the accused appears to be - don't pretend to be virtuous/chaste, I know what you are, meaning thereby that she is a woman of easy virtue and, therefore, he has every right to mentally and physically harass her.

45. Even a woman of easy virtue is entitled to privacy and no one can invade her privacy as and when he likes. So also, it is not open to any and every person to violate her person as and when he wishes. She is entitled to protect her person if there is an attempt to violate it against her wish. She is equally entitled to the protection of law. At the most, the court called upon to evaluate



her evidence would be required to administer caution unto itself before accepting her evidence. (**State of Maharashtra v. Madhukar Narayan Marlokar, 1991 KHC 863: AIR 1991 SC 207; Ranvir Singh v. State of M.P., 1996 KHC 1447: (1996)11 SCC 595**). Therefore, even assuming PW4 to be a woman of easy virtue, as was attempted to be made out, her evidence cannot be thrown overboard.

46. The testimony of PW4 has not been discredited in any way. It is true that the mother of PW4 admitted that her daughter has earlier given complaints of eve teasing by other boys of the locality also. That would not automatically mean that the complaint here is false. PW4 may be wearing clothes not palatable or approved by the accused or the other residents. That is no ground to disbelieve or discard her testimony. The grounds on which the trial court disbelieved the case are immaterial and they do not in any way affect the core prosecution case.



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47. In the light of the aforesaid discussion, I find that the conclusions arrived at by the trial court are erroneous, and hence, interference into the same is called for. The materials on record do clearly make out an offence contemplated under Section 354A (1)(i) of IPC. Therefore, I find the appellant/accused guilty of the commission of the offence punishable under Section 354A (1)(i) IPC and hence convict him thereunder.

48. Before parting with the case, this Court considers it necessary to sound a word of caution to all judicial officers of the District Judiciary. A presiding judge is duty-bound to protect the dignity of every witness appearing before the Court. Cross-examination is a valuable right, but it is not an unrestricted licence to insult, shame, intimidate or harass a witness. Whenever questions are irrelevant, indecent, scandalous, insulting or intended merely to annoy or humiliate a witness, the presiding judge must intervene without hesitation and stop such questioning at once. The Court cannot remain a silent spectator while the dignity of a



witness is attacked under the guise of cross-examination. This duty assumes even greater importance where the witness is a child, a victim of a sexual offence or a person otherwise placed in a vulnerable position. Judicial officers must ensure that court proceedings do not become a second site of trauma for the injured or witness. Questions based on a woman's clothing, character, lifestyle, religion or personal choices, unless strictly relevant to an issue arising in the case, must not be permitted. The right of an accused to a fair trial must be fully protected, but it cannot be allowed to become a means of subjecting a witness to indignity or character assassination.

49. A copy of this judgment shall be forwarded to all Principal District and Sessions Judges in Delhi for circulation amongst the judicial officers under their respective jurisdictions. A copy shall also be sent to the Director (Academics), Delhi Judicial Academy, with a direction that the concerns expressed in this



judgment be brought to the notice of judicial officers through appropriate training and sensitization programmes.

50. For hearing on sentence as contemplated under Section 235(2) Cr.P.C, the appellant/accused is directed to appear before this Court on 12/08/2026.

**CHANDRASEKHARAN SUDHA
(JUDGE)**

AUGUST 10, 2026
p'ma