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

+ **CRL.L.P. 433/2016**

% **Decided on: 16th August, 2016**

SHABANA BEGUM

..... Petitioner

Represented by: Mr. Gaje Singh, Advocate.

versus

STATE (NCT OF DELHI) & ANR

..... Respondents

**Represented by: Mr. Kewal Singh Ahuja, APP
for the State with SI Mukesh
Meena, PS Sagar Pur.**

CORAM:

HON'BLE MS. JUSTICE MUKTA GUPTA

MUKTA GUPTA, J. (ORAL)

Crl. M.A. No. 12673/2016 (Delay in filing)

For the reasons stated in the application the delay of 20 days in filing the leave to appeal petition is condoned.

Application is disposed of.

CRL.L.P. 433/2016

1. The petitioner through the Special Power of Attorney holder has filed the present leave to appeal petition against the judgment dated 17th May, 2016 whereby the learned Additional Sessions Judge acquitted the respondent No.2 for offence punishable under Section 376 IPC.

2. In FIR the petitioner alleged that in the year 2010 the petitioner and the respondent No.2 came close to each other on a request made at the Facebook. Thereafter they met at Haldiram Shop, Chandni Chowk, Delhi. The meeting continued. In the year 2012 the elder sister of the petitioner

was contesting Elections for Vidhan Sabha from Uttar Pradesh when respondent No.2 accompanied the petitioner to the constituency to help her sister in the election campaigns. During that period both of them came close to each other. Respondent No.2 proposed to marry the petitioner however, she refused as the same was not possible for the reason she was ten years elder to the respondent No.2 and their castes were also different. Respondent No.2 replied that he did not care about caste and creed and since he loved her, he wanted to marry her. During election period they used to come to Delhi together. On one such occasion respondent No.2 took the petitioner to his house at Sagarpur, in the absence of his parents and on the false promise of marriage established physical relationship. At Lucknow they both stayed in a hotel and made physical relations. In the month of June, 2012 the petitioner went to Canada and came back in November, 2012. In Delhi again both of them established relationships whenever the family members of the petitioner were not available at home. In April, 2013 the petitioner again went to Canada for her studies when respondent No.2 requested her to apply for his visa for Canada, however, the same was refused. After the petitioner came back, the respondent No.2 again established physical relationship on the pretext of marriage but later on refused to marry her and thus she made a call to 100 number on 11th May, 2015 resulting in registration of FIR.

3. After the investigation charge sheet was filed, the prosecution led the evidence by examining the petitioner and five other witnesses who were formal in nature. The learned Trial Court acquitted the respondent No.2 and came to the conclusion that there was improvement in the statement of the petitioner in her examination-in-chief before the Court wherein she stated

that she was believing that they were married before Guru Granth Sahab as well as in the name of 'Allah' by accepting the locket given by respondent No.2. In cross-examination she clearly defined how marriages of her elder brother and sister were performed as per the Muslim rituals. The learned Trial Court also held that in the MLC Ex.PW-1/B the petitioner herself told the concerned doctor that the accused was using 'Barrier Contraception' and there was no abortion nor any pregnancy which reflects that the sexual intercourse between the parties were consensual. Further nowhere in the testimony of the petitioner it was alleged that respondent No.2 established physical relationship with her forcibly against her will. The learned Trial Court also noted that the relationship between the two were going on smoothly till it was revealed to the petitioner on checking the gmail account of the respondent No.2 that he was chatting with one lady namely Neha and she saw her nude photographs.

4. Learned counsel for the petitioner referring to para -23 of the impugned judgment states that the learned Trial Court having noted that the statement of the petitioner was alone sufficient to convict the accused came to an erroneous conclusion that she was not under misconception of fact that she was the legally wedded wife of the respondent No.2 and in that belief she gave her consent for the first time for establishing physical relations. Para-23 of the impugned judgment reads as under:

"23. No doubt, the statement of the prosecutrix alone is sufficient to convict the accused but also equally important fact is that as to what reliance, the court should place on statement of prosecutrix in peculiar facts and circumstances of the case. The prosecutrix in her testimony before the court reiterated the allegations in her complaint but

simultaneously stated new facts in her statement before the Court. Several new facts have come on record in her testimony like gifting bouquets to her by accused, going to Lucknow, Meerut and Delhi many times and during those visit, accused used to tell her verty times that he loves her. The most significant aspect of new facts in the testimony of prosecutrix is in respect to her consent under misconception of the fact that accused gave her impression that she is legally wedded wife of the accused though accused was having knowledge that he is not a legally wedded husband. In this regard in the complaint, it has been stated that accused established physical relationship at his house at Sagarpur, Delhi on inducing the prosecutrix on the promise of marriage. However, in the entire complaint, nothing has been explained as to what kind of impression or pretext about marriage was given by the accused. No doubt, complaint is not the encyclopedia of entire facts but law requires that in the complaint the necessary facts constituting the offence must be mentioned. In her statement u/s 164 Cr.P.C, prosecutrix has stated that on the last day of Mannat, accused took her to the Gurdwara, Tilak Nagar, New Delhi and distributed Prasad and thereafter he took her to his shop and thereafter to his house. At his house, accused has put locket of 'Allah' and told that we are now husband and wife from today and established physical relationship with the prosecutrix for the first time. In her testimony before the court in her examination in chief, she has stated that on the 40th day of his fast ie Mannat on last Tuesday, accused wanted the prosecutrix to come with him for the Distribution of Prasad at Gurdwara, Tilak Nagar, New Delhi and thereafter she went to Gurdwara where accused proposed her for marriage before Guri Granth Sahib and she accepted his proposal. She further stated that

after Prasad distribution, she along with accused went to Sagarpur and thereafter he insisted the prosecutrix to come at his house at Sagarpur, therefore, she went to the house of accused. Nobody was present in the house and he gifted a locket of 'Allah' and stated that from that day on wards they are husband and wife as he has accepted her as wife in front of "Guru Granth Sahib" and "Allah". Thus, if the version of the prosecutrix in her complaint, statement u/s 164 of Cr. P.C. as well as the examination in chief of prosecutrix are taken together, it is clear that in the complaint there was no allegation of any kind of marriage ceremony prior to establishing physical relationship but in her statement u/s 164 Cr.P.C., there is improvement to the extent that after performing false marriage ceremony by giving a locket of 'Allah', the prosecutrix was given belief of being legally wedded wife. However, there is further improvement in the examination in chief before the Court wherein the prosecutrix has stated to have belief of his marriage before Guru Granth Saheb as well as in the name of 'Allah' by accepting the locket given by the accused. These facts which came on record in the statement u/s 164 Cr.P.C. as well as in her examination in chief have now brought the case of the prosecutrix within the purview of clause Fourthly of section 375 of IPC of giving consent under the misconception of marriage. However, if the entire testimony of the prosecutrix perused, it is clear that though she has stated that these ceremonies were performed and accused was treating her as his wife but she was never believing the same and she was well aware of the fact that there was no marriage between the parties and this fact finds corroboration from the complaint as well as in her statement wherein she has clearly stated that when the accused refused to marry her finally on 11.05.2015, she lodged the present

complaint. Thus, from above facts it cannot be said that she was under misconception of fact that she was under belief that she is legally wedded wife of the accused and on such belief she had given her consent for the first time for physical relationship within the accused. Furthermore, prosecutrix failed to disclose the date, time and month when the accused made physical relationship with her for the first time at his house in year 2011.”

5. The learned Trial Court rightly noted in Para-23 that though the case of the petitioner in the FIR was that under a promise of marriage the respondent No.2 established physical relationship however, in her testimony before the Court she introduced new facts and the most significant thereof being that she gave the consent under the misconception of the fact that the respondent No.2 gave her an impression that she was the legally wedded wife of the respondent No.2 though he knew that he was not a legally wedded husband.

6. The learned Trial Court has rightly noted the facts deposed by the petitioner in her examination-in-chief and cross-examination wherein no marriage either as per Muslim Personal Law or in the Gurudwara was performed. The learned Trial Court also noted the cross-examination of the petitioner whereby she admitted having seen the ceremonies required to be performed when a marriage was performed as per Muslim customs. From the evidence on record it is evident that on the one hand petitioner claims that relations were established on the promise of marriage on the other hand she claims that relationship was established on the misconception of marriage. The two situations are self contradictory.

7. Considering the facts and circumstances of the case and the fact that

there could be no misconception between the parties that they were legally wedded partners and the fact that the petitioner never resisted the advances of the respondent No.2, the view expressed by the learned Trial Court cannot be said to be a perverse view warranting interference.

8. Hence the leave to appeal petition is dismissed.

(MUKTA GUPTA)
JUDGE

AUGUST 16, 2016
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