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

+ **CRL.A. 797/2004 & CRL. M.A. 8752/2004 (delay in re-filing)**

DECIDED ON :2nd February, 2015

BIJENDER

..... Appellant

Through : None.

versus

STATE

..... Respondent

Through : Ms. Kusum Dhalla, APP for State
along with SI Joginder Singh, P.S.
Shalimar Bagh, Delhi.

CORAM:

HON'BLE MR. JUSTICE S.P.GARG

S.P.GARG, J. (ORAL)

1. Present appeal has been preferred by the appellant Bijender to challenge the legality and correctness of a judgment dated 14.05.2004 of learned Additional Sessions Judge in Sessions Case No. 93/99 arising out FIR No. 959/98, P.S. Shalimar Bagh, Delhi by which he was held guilty for committing offence punishable under Section 376 IPC. By an order dated 19.05.2004, he was awarded rigorous imprisonment for 7 years with fine of Rs. 1,000/-. It is relevant to note that he was acquitted of the charges under Sections 363/366 IPC.

2. Allegations against the appellant as reflected in the Charge-sheet was that on 25.12.1998, Nasim Khan lodged a report with police that her

daughter 'X' aged about 15 years was kidnapped by the appellant. She left the house on 21.12.1998 but did not return. On 06.01.1999, on the pointing out of the complainant, the appellant was apprehended and the prosecutrix was recovered from the bus stop Haider Pur. She was medically examined and her statement under Section 164 Cr. P.C. was recorded. All the witnesses conversant with the facts were examined. The Charge-sheet was submitted against the appellant under Sections 363/366/376 IPC. The prosecution examined ten witnesses who established the appellant's guilt. In the statement recorded under Section 313 Cr.P.C, the appellant denied his involvement in the offence. The trial resulted in his conviction under Section 376 IPC. Being aggrieved and dissatisfied, the appeal has been preferred by the appellant. Application moved by the appellant for suspension of sentence was dismissed by an order dated 01.12.2004. It appears that the file was not taken up thereafter for hearing. On 20.01.2015, when the file was taken up for hearing, none appeared on behalf of the appellant. Production warrants were ordered to be issued against him. Fresh Nominal roll was also called. The Nominal Roll dated 27.01.2015 reveals that the appellant has already been released on 26.03.2009 after he served out the sentence awarded to him. The fine has been paid by him in Jail.

3. A letter dated 27.01.2015 has also been received from Central Jail No. 7, Tihar, Delhi and it is informed that the appellant has already been released after he served out the sentence awarded to him. Since the appellant has already completed the substantive sentence awarded to him and has deposited the fine imposed, the appeal preferred by the appellant has become infructuous. None has appeared on behalf of the appellant to address arguments on merits. Even after being released on 26.03.2009, the appellant

did not appear before the court to get the appeal decided on merits. It seems that the appellant is not interested to pursue the appeal. The appeal is dismissed as infructuous. However, it is made clear that if the appellant appears before the Court within a reasonable time to get the appeal decided on merits, his prayer would be considered favourably. Pending application also stands disposed of.

4. Trial court record, if any, be sent back with the copy of this order.
5. Intimation be sent to the Jail Superintendent.

(S.P.GARG)
JUDGE

FEBRUARY 02, 2015

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