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

**DECIDED ON : 1<sup>st</sup> SEPTEMBER, 2016**

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**CRL.REV.P.397/2016 & CRL.M.A.No.8860/2016**

**HARKIRAT SINGH RYAIT**

..... Petitioner

Through : Mr.N.Hariharan, Sr.Advocate with  
Mr.Harmeet Ruprah, Mr.Amartya  
Kanjilal, Mr.Ambar Tiwari,  
Mr.Aditya Singh & Mr.Vaibhav  
Sharma, Advocates.

versus

**STATE (NCT OF DELHI) & Anr.**

..... Respondents

Through : Mr.Amit Gupta, APP.  
Ms.Shikha Kaushik, Advocate with  
Mr.Ravinder Samual Singh, Advocate  
for Respondent No.2.

**CORAM:**

**HON'BLE MR. JUSTICE S.P.GARG**

**S.P.GARG, J. (Oral)**

1. Present revision petition has been preferred by the petitioner – Harkirat Singh Rayait to challenge the legality and correctness of an order dated 14.05.2016 of learned Addl. Sessions Judge whereby he was charged for commission of offences punishable under Sections 328/376 IPC. Status report is on record.

2. I have heard the learned Senior Counsel for the petitioner and learned Addl. Public Prosecutor assisted by learned counsel for the respondent No.2 and have examined the file.

3. At the outset, it may be mentioned that during course of arguments, learned Senior Counsel, on instructions, opted not to challenge order on charge under Section 376 IPC and restricted his arguments to challenge the legality and correctness of charge under Section 328 IPC only.

4. Learned Senior Counsel urged that there was no convincing and cogent evidence on record to infer if the victim was given any 'chocolate' as a result of which she became drowsy. There is no medical evidence on record to substantiate her oral allegations. The petitioner and the victim were acquainted with each other since long. Physical relations (if any) between the two were consensual. Reliance has been placed on '*Prashant Bharti vs. State (NCT of Delhi)*', 2013 (9) SCC 293.

5. Learned Addl. Public Prosecutor and learned counsel for the respondent No.2 refuting the arguments urged that at this stage, truthfulness or falsity of the allegations cannot be prejudged.

6. FIR No.303/2015 was lodged at PS Vasant Vihar on the victim's statement on 09.03.2015. In her complaint, she levelled allegations of commission of rape upon her by the petitioner. She disclosed that the petitioner had taken her to a renowned Spa Centre 'Moksha' located in PVR Priya Market, Vasant Vihar, Delhi. He booked there for couple massage and jacuzzi sessions. The petitioner had brought some snicker chocolate candies. On consuming a few chocolates, she felt little dizzy and drowsy; her resistance power was low. Thereafter, physical relationship was established by the petitioner. When she realised about it, she opposed but

the petitioner convinced to marry her. In her 164 Cr.P.C. statement also she reiterated her version given to the police at the first instance. Upon completion of investigation, a charge-sheet has already been filed against the petitioner and charge under Sections 328/376 IPC has been framed by the Court below.

7. From the perusal of the contents of the FIR, it transpires that the initial alleged physical relationship with the victim was not with her free consent. For that reasons, seemingly, the petitioner has opted to give up challenge to the charge framed under Section 376 IPC. Apparently, at the time of having physical relationship, prima facie, the victim's consent was vitiated. The petitioner did not give any other 'reason' resulting in physical relationship between the two at that place. The victim claimed that before establishing physical relations, she was offered snicker chocolate to eat by the petitioner and on consuming it, she became drowsy. Thereafter, physical relationships were established by the petitioner as she was unable to resist. Since charge under Section 376 is not under challenge, no sound reasons exist to disbelieve the victim's statement at this stage that physical relations were the result of her consent being vitiated because of consumption of snicker chocolate.

8. Since the petitioner had allegedly assured to marry the victim and subsequently, on several occasions, he had established physical relations with consent; the prosecutrix did not get herself medically examined on the day of first incident of commission of rape.

9. Citation '*Prashant Bharti vs. State*' (supra) relied upon by the petitioner is of no helpful as the facts and circumstances of the said case were entirely different and distinct. In the said case, the Hon'ble Supreme

Court did not believe the version given by the prosecutrix whereby she alleged that after consuming 'Pepsi' she had felt inebriated and thereafter the accused therein had misbehaved with her. The prosecutrix therein was already a 'married' lady and there was no question of the accused therein to have given her a promise to marry. The prosecutrix therein had got herself medically examined on the next day of incident and as per medical report, there was no evidence of 'poisoning'. Moreover, the prosecutrix herself had filed a Writ Petition (Crl.) No. 257/2008 for quashing of the said FIR before this Court.

10. At the stage of consideration of charge, the victim's allegation cannot be discarded.

11. I find no illegality or material irregularity in the impugned order.

12. The petition lacks in merits and is dismissed. Pending application also stands disposed of.

**(S.P.GARG)**  
**JUDGE**

**SEPTEMBER 01, 2016 / tr**