

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

% Decided on: 20th January, 2017

+ **CRL.L.P. 33/2017**

STATE (GOVT. OF NCT OF DELHI)

..... Petitioner

Represented by: Mr. Ashok Kr. Garg, APP with
SI Shyam Sunder PS Sector-23,
Dwarka.

versus

BRIJESH @ RAHUL

..... Respondent

Represented by: None.

CORAM:

HON'BLE MS. JUSTICE MUKTA GUPTA

MUKTA GUPTA, J. (ORAL)

CrI.M.A. 1191/2017

For the reasons stated in the application 50 days delay in filing the leave to appeal petition is condoned.

Application is disposed of.

CRL.L.P. 33/2017 & CrI.M.A. 1073/2017 (for leave to appeal)

1. The respondent has been acquitted of the charge for offence punishable under Section 354D IPC in FIR No.372/2013 registered at PS Dwarka, Sector-23 vide the impugned judgment dated 24th August, 2016 challenging which the State prefers the present leave to appeal petition along with application seeking condonation of delay.

2. FIR was lodged on the written complaint of the prosecutrix who alleged that she was a student at Noida. Two-three months ago the respondent who was a resident of village Bhartal called on her mobile phone. Later he met her a number of times on the way and started following her till Metro Station whenever she went to the college. She told him not to do so a number of times. On 5th December, 2013 he followed her till her college and enquired from her college. She stated that same has disturbed her studies.

3. In her deposition before the Court she reiterated her allegations in the complaint. However, in cross-examination the complainant admitted that she knew the sister and niece of the respondent. She also identified 24 photographs wherein she was present with the respondent, his sister and niece though she denied sending messages to the respondent from the mobile phone belonging to her father. She was confronted with the printouts of the messages. She further denied that she wanted to marry the respondent however her father did not like the friendship and thus she falsely implicated the respondent.

4. In defence, the respondent produced Nodal Officer, Bharti Airtel to show in whose name the mobile phone existed. Further two other witnesses were examined who stated that the respondent was running a shop, the complainant was regularly visiting his shop and wanted to marry the respondent. However, since the family of the complainant did not approve the alliance, they were planning to perform Court marriage but the complainant was beaten up by her family members where after she stopped coming to the respondent.

5. In the light of this evidence of the complainant and the defence, the learned Trial Court noted that besides the testimony of the complainant there

was nothing to corroborate her version. Though her specific allegation was that the respondent used to follow her at the Metro Station, however the investigating officer made no efforts to collect the CCTV footage of the Metro Station. Further except one date, there was no specific date or time when the respondent followed her. No enquiries were made from the college or from the students. It was also not stated by the complainant as to from whom the respondent enquired and what he enquired. Though the learned Trial Court did not consider the photographs produced by the defence as they were produced without a certificate under Section 65-B Indian Evidence Act but from the messages between the parties, learned Trial Court held that the defence was probablized. The Court also noted that no proper investigation was done by the investigating officer.

6. Considering the evidence of the prosecution and the defence led, the impugned judgment acquitting the respondent cannot be held to be a perverse judgment warranting interference. CRL.L.P. 33/2017 & CrI.M.A. 1073/2017 are dismissed.

(MUKTA GUPTA)
JUDGE

JANUARY 20, 2017
‘ga’