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

+ CRL.REV.P. 4/2017

STATE (GOV T OF NCT OF DELHI)

..... Petitioner

Through: Ms. Radhika Kolluru, APP for the
State.

versus

ANUPAM BHARDWAJ

..... Respondent

Through:

CORAM:
HON'BLE MR. JUSTICE VIPIN SANGHI

ORDER
03.01.2017

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Crl.M.A. No. 32/2017

Exemption allowed, subject to all just exceptions.

The application stands disposed of.

CRL.REV.P. 4/2017 & Crl.M.A. No. 31/2017 (for condonation of 47 days delay)

The State has preferred the present revision petition to assail the order dated 10.08.2016, whereby the Trial Court, namely the learned Additional Sessions Judge (SFTC), Dwarka Courts, New Delhi has discharged the accused of the offence under Section 376 IPC in case SC No.440344/16 titled *State Vs. Anupam Bhardwaj* in relation to FIR No.978/2015 under Section 376/ 420/ 506 IPC registered at Police Station – Bindapur.

Since I have perused the impugned order and heard learned counsel for the petitioner/ State, and I am not inclined to issue notice in the revision petition, no useful purpose would be served in issuing notice in the delay application as well.

The submission of Ms. Kolluru is that at the stage of consideration of charge, the Trial Court has wrongly concluded that no prima facie case is made out against the accused in respect of the offence punishable under Section 376 IPC. She submits that the accused had established physical relations with the complainant/ prosecutrix by promising to marry her. However, later he has resiled.

A perusal of the charge-sheet reveals that the prosecutrix and the accused were known to each other as they were both studying at the same tutorial classes. According to the prosecutrix, the accused established physical relations with her, firstly, in April 2008 at her own residence after he alleged put *Sindoor* in her *Maang* and on claiming that he had married her and so she should trust him. She stated that on the pretext of marriage, the accused had established physical relations with her on several occasions thereafter. They continued to remain in physical relationship between 2008 and 2011. She stated that in September 2011, they both got job in Hyderabad and they stayed in the same apartment allotted by their employer. They were transferred to Delhi in December 2011. In March 2015, the accused got a job in ISRO and went to Bangalore. Pertinently, the charge-sheet discloses that according to the prosecutrix, while leaving for Bangalore, the accused asked the prosecutrix to accompany him to Bangalore but the prosecutrix refused. She stated that after reaching Bangalore, the accused pressurised her to live in relationship with him.

However, she refused. In July 2012, the accused got a job in Noida and came back to Delhi. Even thereafter, the accused tried to convince the prosecutrix to establish physical relationship on the pretext of marriage. Allegedly, the accused assured the prosecutrix that his brother's engagement has broken down and that he would marry once the atmosphere at his home improves. She alleged that the accused had again assured her on 01.12.2013 that he had to go to Poland in connection with some official work and after coming back, he would talk with his family members about his marriage and on that pretext, he established physical relations with her. However, subsequently on 04.12.2013, the accused refused to marry the prosecutrix.

The Trial Court while discharging the accused has relied upon several decisions of this Court and the Supreme Court. A perusal of the charge-sheet itself shows that it cannot be said that at the time when the accused established physical relationship with the prosecutrix on the promise of marriage, he even at that stage, did not intend to get married to the prosecutrix. In a recent decision in ***Deepak Gulati Vs. State of Haryana***, (2013) 7 SCC 675, the Supreme Court observed in paragraph 24 as follows:

“24. Hence, it is evident that there must be adequate evidence to show that at the relevant time i.e. at the initial stage itself, the accused had no intention whatsoever, of keeping his promise to marry the victim. There may, of course, be circumstances, when a person having the best of intentions is unable to marry the victim owing to various unavoidable circumstances. The “failure to keep a promise made with respect to a future uncertain date, due to reasons that are not very clear from the evidence available, does not always amount to misconception of fact. In order to come within the meaning of the term “misconception of fact”, the fact must have an immediate relevance”. Section 90 IPC cannot be called into aid in such a situation, to pardon the act of a girl in entirety, and

fasten criminal liability on the other, unless the court is assured of the fact that from the very beginning, the accused had never really intended to marry her.”

In these circumstances, I am of the view that there is no error in the impugned order and it does not call for interference by this Court.

Dismissed.

VIPIN SANGHI, J

JANUARY 03, 2017

B.S. Rohella