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

+ **CRL.L.P. 704/2015**

STATE OF NCT OF DELHI

..... Petitioner

Through: Mr. Rajat Katyal, APP

versus

PAWAN KUMAR PATEL

..... Respondent

Through:

CORAM:

HON'BLE MR. JUSTICE VIPIN SANGHI

ORDER

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08.03.2017

Crl.M.A. No. 15879/2015

For the reasons stated in the application, the delay is condoned and the application is allowed.

Crl.M.A. No. 15880/2015

Exemption allowed, subject to just exceptions.

Crl.L.P. No. 704/2015

The State has preferred the present leave petition to seek leave to appeal against the judgment dated 02.06.2015 passed in SC No. 34/14 arising out of FIR No. 297/13 registered at Police Station Vasant Kunj under Sections 376/506 Part II IPC, titled, 'State Vs. Pawan Kumar Patel', by learned Addl. Sessions Judge-01, New Delhi District, Patiala House Courts,

whereby the respondent/accused has been acquitted of the said offence.

The case of the prosecution was that the accused had established physical sexual relations with the prosecutrix-a citizen of Nepal on the promise of marriage. The prosecutrix claimed that the accused did not intend to marry her and on that false pretext established physical relations with her. She examined herself as the prosecution witness. The accused in his statement under Section 313 Cr.P.C. admitted the fact of having established physical relationship with the prosecutrix but he denied that he had ever made any promise to marry prosecutrix. The trial court has acquitted the accused on a scrutiny of the statement of the prosecutrix from which it emerged that when the physical relations were established, there was no definite promise made by the accused to marry her. The trial court took note of the fact that the prosecutrix was a grown-up matured lady elder than the accused and was also a divorcee. The accused was doing his Ph.D in social system of Nepal and at that stage, the prosecutrix came in contact with the accused in a cultural forum and they started interacting with each other. The accused, even according to the prosecutrix, had told the prosecutrix that he would not be able to marry her as he was not working and that he would get married to her after he completed his Ph.D and got a job. The trial court, thus, concluded that the prosecutrix was under no misconception, at the time when she voluntarily established physical relations with the accused, that the accused was in a position to marry her at that stage. Pertinently, in her examination-in-chief, the prosecutrix has narrated the events from January 2013 to May 2013 when the accused came to Nepal; he informed that his parents would also be coming to Nepal for their marriage and both of them hired a flat; the parents of the accused did

not turn up; the accused informed that he had got a job in Madhya Pradesh and left Nepal; he stopped taking the calls of the prosecutrix; she came to Delhi in May, 2013 and met the professor of the accused Prof. Abhijeet Pathak and also Dr. Aparna; the accused on the advise of the said persons agreed to get married with the prosecutrix and stated that he would call his parents to Delhi on 10.08.2013; he asked the accused to accompany her for a court marriage and hired an auto-rickshaw to take her to Tis Hazari Courts but returned mid-way and again promised to marry her; and she returned to Nepal on 23.05.2013. However, apart from her own statement, there is no other corroborative evidence produced by the prosecutrix. Prof. Abhijeet Pathak and Dr. Aparna were also not examined by the prosecution. Similarly, she has narrated with regard to the meetings held in July, 2013 in the presence of several persons, however, they were not produced as witnesses.

In this background, the trial court concluded that the relationship established between the accused and the prosecutrix was consensual and there was no definite promise of marriage made by the accused before establishment of such physical relationship. The submission of Mr. Katyal is that a reading of the testimony of the prosecutrix would show that the accused had initially proposed marriage even before the physical relations were established. He submits that the prosecutrix initially was reluctant even for marriage but it is the accused who persisted and informed that the age difference between the two is not relevant. It is on the pretext of marriage that the parties established physical relations.

Apart from the statement of the prosecutrix, no other witness has been examined on the aspect as to whether the accused had established the

relationship on the basis of promise to marry the prosecutrix, which promise he knew to be false on the day when it was so made. The view taken by the trial court is a probable view since it is the case of one person's word against another.

In these circumstances, the impugned judgment does not call for interference. The petition is, accordingly, dismissed.

VIPIN SANGHI, J

MARCH 08, 2017
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