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

+ **CRL.L.P. 77/2018**

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..... Petitioner

Through: Mr. Saurabh Kansal, Advocate

versus

STATE & ANR

..... Respondent

Through: Mr. Rajat Katyal, APP with Insp.
Sataybir Singh, SI Usha Rani, PS
Bindapur

CORAM:
HON'BLE MR. JUSTICE VIPIN SANGHI
HON'BLE MR. JUSTICE P.S.TEJI

ORDER

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01.02.2018

Crl.M.A. No. 1915/2018

Exemption allowed, subject to all just exceptions. The application stands disposed of.

CRL.L.P. 77/2018 & Crl.M.A. No. 1914/2018

The prosecutrix has preferred this petition to seek leave to appeal against the impugned judgment dated 31.10.2017 whereby the respondent/ accused has been acquitted in SC No.424/2017 arising out of FIR No.93/2017 under Section 376(2)(n) IPC. The petitioner also seeks condonation of 20 days delay in filing the leave petition. Since we have heard learned counsel for

the petitioner on merits and we are not inclined to entertain the present petition, no useful purpose would be served in issuing notice in the delay application.

The case of the prosecution was that the husband of the prosecutrix passed away on 25.08.2015. The respondent/ accused is the brother-in-law (devar) of the prosecutrix. The further case of the prosecution was that the prosecutrix was living with her brother and sister-in-law at the relevant time after the demise of her husband. In July 2016, the accused came to the house of the prosecutrix and offered to get married to her. The prosecutrix sought some time to consider the said proposal. The accused thereafter again came to the house of the prosecutrix while her brother and sister-in-law were not at home and forcibly committed rape upon her despite her resistance. After committing rape, he promised to marry her and, consequently, she did not make any complaint. On the following day, he also took the prosecutrix to the temple and put vermilion on her head. The prosecutrix learnt that the accused was planning to marry some other person in February 2017 and whereafter she filed the FIR on 15.02.2017.

The statement of the prosecutrix was recorded by the Magistrate, wherein she made the statement on similar lines as the complaint. However, when she appeared as a prosecution witness, she claimed that the accused had raped her for the second time in August 2016. She also claimed that she had slapped him, when he had sought to rape her on the first occasion.

The Trial Court found that there was a definite improvement in the case of the prosecutrix before the Court. It had not been claimed by her that after establishing physical relations with her in July 2016, the accused had threatened and beaten her. Moreover, she had not claimed that in August

2016 she had been raped for the second time. The Trial Court also found that in September 2016 itself, the prosecutrix had lodged two complaints against the accused and her in-laws – the first under Section 498A IPC and other provisions, and the second under the Domestic Violence Act. Even at that stage, the prosecutrix had not made any allegations against the accused of having been raped. In these circumstances, the Trial Court found that the prosecutrix was not a reliable witness.

The submission of learned counsel for the petitioner is that it was only in February 2017 that she learnt that the promise made by the accused to marry her was false and, therefore, the FIR came to be lodged on 15.02.2017. He further submits that merely because there had been improvement on the part of the prosecutrix - by claiming that the second incident of rape in August 2016 had taken place, it does not water down the first incident of July 2016. He further submits that the Trial Court was not justified in making observations that the prosecutrix - who is able bodied, could have resisted and fought the attempt of the respondent to rape her, and she could have raised an alarm, but she did not do so.

Having heard learned counsel for the petitioner and perused the impugned judgment, we are of the view that the Trial Court was justified in acquitting the respondent/ accused, since sufficient doubt has been raised in the case of the prosecution. Firstly, as noticed herein above, there was a clear improvement in the case of prosecution from the stage when the FIR was registered; the statement under Section 164 Cr PC was recorded before the Magistrate, and; when the prosecutrix gave her testimony before the Court. This itself made the prosecutrix an unreliable witness. Moreover, there is no explanation as to why the allegation of rape was not made earlier

when the prosecutrix made two complaints including under Section 498A/406/506 IPC in September 2016, and filed another FIR in September 2016 under the Domestic Violence Act against her in-laws and the accused. Her claim that she remained under the impression that the respondent would fulfil his promise to marry her till February 2017 cannot be accepted in the face of the said two cases lodged, *inter alia*, against the accused in September 2016. There was no corroborative evidence led by the prosecution of the alleged rape(s); the promise allegedly made by the accused to marry the prosecutrix, and; about the accused having taken the prosecutrix to the temple and put vermilion in her head.

In these circumstances, we find no merit in this petition dismissed.

VIPIN SANGHI, J

P.S.TEJI, J

FEBRUARY 01, 2018

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