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

+ CRL.L.P. 201/2017

STATE (NCT OF DELHI)

..... Petitioner

Through: Mr. Rajesh Mahajan, ASC with Mr.
Rajat Katyal, APP for State with
Inspector Suresh Chand, SHO Gokul
Puri, Delhi

versus

BHAGWAN CHAND

..... Respondent

Through: Mr. Gyan Mitra, Advocate

CORAM:

HON'BLE MR. JUSTICE VIPIN SANGHI

HON'BLE MR. JUSTICE P.S.TEJI

ORDER

16.01.2018

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1. The State has preferred the present petition to seek leave to appeal against the judgment dated 21.10.2016 passed in SC No.44914/15 arising out of FIR No. 197/2012 registered at Police Station Gokalpuri, Delhi, under Section 376/377/354/506/313 IPC.
2. There were two accused namely Om Prakash, the father of the prosecutrix and Bhagwan Chand, the respondent herein. The trial court while convicting Om Prakash under Section 376/506 (ii) IPC acquitted the respondent Bhagwan Chand. The trial court acquitted the respondent Bhagwan Chand on account of the fact that while lodging the DD No.21A by the mother of the prosecutrix (PW-1) Smt.

Sunita, no allegation was made against Bhagwan Chand and sexual assault was alleged only against the father Om Prakash. On the same day, the FIR in question was subsequently registered vide FIR No. 197/2012, wherein the allegation against the respondent Bhagwan Chand was that he and Om Prakash have gone to the residence of Om Prakash, where the prosecutrix was present and Om Prakash asked the prosecutrix to get water. She stated that she got the water, whereafter the respondent Bhagwan Chand had inappropriately touched her and also made inappropriate advances. She claimed that she freed herself from the clutches of Bhagwan Chand and went outside the house. She returned to the house only after the respondent accused had left. The statement of the prosecutrix was thereafter recorded under Section 164 of Cr.P.C. on 8th June 2012 wherein she stood by her allegations contained in the FIR against the respondent Bhagwan Chand. However, when she appeared as a witness during the course of trial, she improved her allegations by claiming that it was the father Om Prakash, who had gone to get water and while he was away, the respondent Bhagwan Chand had raped her.

3. The trial court held that in the first information furnished to the police vide DD No. 21A, no allegation was made against the respondent Bhagwan Chand. Moreover, the prosecutrix had clearly improved upon the case by claiming that she had been raped by respondent – accused while recording her testimony before the court, contrary to her allegations against respondent contained in the FIR and in the statement recorded under Section 164 of Cr.P.C.

4. The respondent also lead defence evidence to show that civil dispute was pending in court in relation to monies advanced by him to Om Prakash for purchase of property from Om Prakash. It is further stated that civil dispute was pending when the prosecutrix recorded her testimony before the court. In these circumstances the trial court held that the statement of the prosecutrix, qua Bhagwan Chand could not be relied upon.
5. The submission of Mr. Mahajan is that the prosecutrix did not exonerate the respondent Bhagwan Chand at any point of time in her FIR as well as in her statement recorded under Section 164 Cr.P.C. She made allegations against Bhagwan Chand as aforesaid and even if she may have improved upon the case while recording her testimony, to the extent of improvement, the statement may be discarded. However, looking to the statement recorded by the prosecutrix at the time of lodging the FIR, and as recorded under Section 164 Cr.P.C., the respondent Bhagwan Chand could not have been acquitted.
6. Having perused the impugned judgment, relevant documents above referred to, we are of the view that no error can be found in the impugned judgment qua acquittal of the accused Bhagwan Chand. It is pertinent that in the first statement recorded vide DD No. 21A on 01.06.2012 there was absolutely no allegation against the respondent – accused. However, the allegation was made only when the FIR was recorded followed by the statement recorded under Section 164 Cr.P.C. It is also pertinent to note that even when the prosecutrix was medically examined, she did not make any statement to the doctor

with regard to the alleged conduct of the respondent Bhagwan Chand. In these circumstances, the trial court correctly acquitted the respondent as the prosecutrix was found to be unreliable qua the respondent. The impugned judgment does not call for any interference qua the respondent Bhagwan Chand.

7. The petition is accordingly dismissed.

VIPIN SANGHI, J

P.S.TEJI, J

JANUARY 16, 2018

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