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

+ W.P.(CRL) 2360/2018

SHRI SUNIL KUMAR SHARMA Petitioner
Through Counsel (appearance not given)

versus

UNION OF INDIA Respondent
Through Mr. Vikram Jetly, CGSC.

CORAM:

HON'BLE MR. JUSTICE VIPIN SANGHI

HON'BLE MR. JUSTICE I.S.MEHTA

ORDER

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04.09.2018

CRL.M.A. 29625/2018

By this application, the applicant seeks condonation of 38 days delay in re-filing the petition. In our view, this application is misconceived considering the fact that there is no limitation prescribed for filing of the writ petition.

The application stands disposed of.

W.P.(CRL) 2360/2018

The petitioner has preferred the present writ petition to seek the relief, in public interest, of striking down the Criminal Law (Amendment) Ordinance No. 2/2018 dated 21.04.2018 whereby amendments have been made to the Indian Penal Code, the Indian Evidence Act, the Code of Criminal Procedure and the Protection of Children from Sexual Offences Act, 2012. The purport of all the said amendments is to enhance the

punishment for rape of girl child below twelve years of age; and girl child between twelve and sixteen years of age.

The submission of the petitioner are contained in paras 9 and 10 of the writ petition. The said paragraphs read as follows:

“9. That the Govt. of India has promulgated the ordinance regarding enhancement of sentence to death for rape committed on a girl below the age of 12 years and in case of criminals for rape with the girls between the age of 12 to less than 16 years the provisions of sentence is being made to 20 years.

10. It is submitted that as per the Fundamental Rights enshrined in Chapter-III of the Constitution of India, every citizen is equal before law and it prohibits discrimination on the grounds of religion, race, caste, sex or place of birth. Hence in all the cases of rape the sentence must be death sentence otherwise this law only for the girls below 12 years would be discrimination to the other girls/ladies with whom the rapes are committed because the offence is the same i.e. the rape and the other girls/ladies above the age of 12 years would be deprived of justice and right of equality which is guaranteed by the Constitution of India wherein there is equality of justice for all.

It is pertinent to mention here that by induction of the new law for punishment with death sentence to the offenders of rapes to the girls below 12 years has endangered the lives of the minor girls below 12 years because after the rape with the girl below 12 years the offender most likely and probably definitely would murder that girl because he very well knows that if he did not eliminate this evidence i.e. the raped girl then he is bound to be hanged.

As per Constitution of India everybody is equal before law. Hence equal punishment of death should be provided/given to the accused persons/criminals/offenders of rape.”

Firstly, we may observe that the legality of the amended provisions can appropriately be determined as and when the said issue is raised in a specific case involving rape of a minor. In our view, the said issue cannot be determined in a vacuum, in the public interest litigation. Secondly, there is nothing so blatantly and obviously illegal or discriminatory about the amendment, considering the fact that the legislature has sought to grade the punishment, keeping in view the age of the victim. The offence of rape, by itself, is a very serious and heinous offence. However its gravity increases when it involves a child who is just about twelve years of age or below. Thus, in our view, the classification of the punishment on the basis of the age of the victim cannot, per se, be the said to be discriminatory or arbitrary.

We do not find any merit in this petition and the same is dismissed.

VIPIN SANGHI, J

I.S.MEHTA, J

SEPTEMBER 04, 2018

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