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

+ CRL.L.P. 435/2018

X

..... Petitioner

Through: Mr. Saurabh Kansal and Ms. Pallavi S.
Kansal, Advocates

versus

STATE (GOVT OF NCT OF DELHI) & ANR Respondents

Through: Ms. Aashaa Tiwari, APP for R-1/State
Mr. S K Sharma and Mr. Priyank Atri,
Advocates for R-2

CORAM:

HON'BLE MS. JUSTICE HIMA KOHLI

HON'BLE MR. JUSTICE MANOJ KUMAR OHRI

ORDER

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27.11.2018

1. Having regard to the fact that the present criminal leave petition arises out of a judgment dated 08.12.2017 passed by the Trial Court in SC No.446/2017 for the offence under Section 376(2)(n) IPC, the Registry is directed to anonymise the name of the petitioner/prosecutrix and describe her as 'X' throughout. Necessary corrections in that regard shall be made in the court records and the order sheets.
2. The petitioner is aggrieved by the judgment dated 08.12.2017 passed by learned ASJ in SC No.446/2017, arising out of FIR No.157/2017, registered at P.S. Greater Kailash wherein the respondent No.2 has been acquitted for the offence under Section 376(2)(n) IPC on the ground that in view of the statement

made by the petitioner/ prosecutrix before the Court on 08.12.2017, the consensual physical relationship established between the parties, cannot be termed as rape.

3. Learned counsel for the petitioner has sought to explain the consent of the petitioner with regard to the consensual physical relationship established with the respondent No.2, as a statement made by her under pressure and states that the same is disputed on the ground that she was coerced to retract from her earlier statement recorded under Section 164 Cr.P.C. before learned Metropolitan Magistrate on 07.09.2017.

4. Having perused the statement made by the petitioner under Section 164 Cr.P.C. on 07.09.2017, the letter dated 06.11.2017 addressed by her to the SHO wherein she had categorically stated that she had made physical relations with the respondent No.2 of her own free will, the stand which she took during her deposition recorded in the Court on 08.12.2017 as also her cross examination, where she has admitted her letter dated 06.11.2017 (PW1/DA) and has also categorically denied that physical relations between her and the respondent No.2 were not consensual or that the same was made forcibly, we are not inclined to interfere with the findings returned in the impugned judgment dated 08.12.2017, wherein the trial court has closed the matter on the ground that in view of the stand of the prosecutrix, there was no point in waiting for the report of FSL results and recording the depositions of the other formal witnesses, as it would not bring home the guilt of the accused.

5. For the aforesaid reasons, we are not inclined to entertain the present petition, which is accordingly dismissed.

6. Trial Court record be returned forthwith.

HIMA KOHLI, J

MANOJ KUMAR OHRI, J

NOVEMBER 27, 2018

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