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

+ CRL.L.P. 525/2018

SANJANAN SAINI

..... Petitioner

Through: Ms. Manika Tripathy Pandey,
Advocate.

versus

STATE GOVT OF NCT DELHI & ORS

..... Respondents

Through: Mr. G.M. Farooqui, APP for State
with W/SI Komal Rathi, PS-CAW
Cell, S.N. Puri.

CORAM:

HON'BLE MR. JUSTICE NAJMI WAZIRI

ORDER

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10.08.2018

CRL.M.A. 29729/2018 (Exemption)

Allowed, subject to all just exceptions.

The application stands disposed-off.

CRL.M.A. 29730/2018 (delay of 7 days in filing)

For the reasons mentioned in the application, it is allowed. The delay of 7 days in filing the petition is condoned.

The application stands disposed-off.

CRL.L.P. 525/2018

This petition impugns an order dated 31.05.2018 in FIR No. 717/2014 registered with PS-Badarpur acquitting the accused person under section 376 of IPC. The learned counsel for the petitioner submits that the Trial Court has erred both in facts and in law insofar as it has not taken into

consideration that the complainant is illiterate and did not have the documents of her divorce. Nevertheless, she had stated that there was an offence under section 376 of IPC by the accused. According to the petitioner, the incident happened in the year 2011. She had made a complaint before the DCW and CAW Cell in the years 2011 and 2012, however, in neither of the complaints, did she allege any offence under section 376 IPC. The relationship, as may have been between the parties, would be considered to be consensual, unless it is otherwise proven that there was force applied to the petitioner by the respondent. The Trial Court has reasoned as under:-

“38. Prosecutrix has admitted in her cross examination before the court that the facts that she tried to shout and accused had gagged her mouth and that after the incident of rape she started crying, were not mentioned by her in her statement given to the Magistrate or in her complaint to the police. The prosecutrix states that she does not remember if she received any injury or not in the incident. The incident had happened in 2011. In the first complaint lodged by her after eight days of incident, she did not mention about this rape. She did not mention about the rape even before DCW or CAW Cell. It is only in 2014, she made the statement of the alleged rape by accused in 2011 on the assurance of marriage.

39. The prosecutrix in the court has mentioned that the accused made physical relations with her forcibly after assuring her that he will marry her which was not her case in the earlier complaints lodged in 2011 to police or in 2013 to DCW. Now again she put up a new story of rape on which this case is registered. This exaggeration makes her testimony unreliable and untrustworthy.

40. During her cross examination the prosecutrix has admitted that she was married and having a son of 19 years of age from her marriage with Shiv Om Rohtagi @ Mukesh. She has admitted that she does not have any papers of divorce with

Mukesh. The prosecutrix is a quite grown up lady and is mature enough. She was knowing full well that being married she cannot perform marriage with the accused without taking divorce from her earlier husband. A lady who herself is married cannot be misled by any misrepresentation from the side of accused that he will perform marriage with her because it is in her knowledge that she herself cannot perform marriage with the accused without taking divorce from her earlier husband. The lady who is herself married cannot be cheated on the point of false pretext of marriage.

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42. Moreover, there are various contradictions in the statement of prosecutrix on the point of meetings held between her and the accused prior to the alleged incident of rape. The prosecutrix has even refused for her medical examination. As the incident was very old of more than three years, the prosecution is not having any advantage of medical evidence. There is also discrepancy on the point whether on the date of alleged incident the accused took her to his office at Badarpur or whether she herself went there because in her statement in the court she stated that she went there of her own.

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47. In the light of above discussion and findings, the statement of prosecutrix is not believable and convincing, cogent and trustworthy. The prosecution has failed to prove its case beyond reasonable doubt against the accused. Giving benefit of doubt, accused Sunit Kumar Singh @ Sumit Kumar is acquitted of the offence punishable under Section 417/376 IPC for which he has been charged”.

The Court is of the view that reasoning of the impugned order that the allegation under section 376 IPC is an afterthought and therefore, the testimony of the prosecutrix is not trustworthy and reliable, is not unfounded. The illiteracy of the complainant cannot be a ground for presumption that the respondent was involved in a crime of which he is alleged of.

In view of the above, the Court finds no reason to interfere with the Impugned order. Accordingly, the petition is dismissed.

NAJMI WAZIRI, J

AUGUST 10, 2018

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