

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

% Decided on: 24th September, 2018

+ **CRL.L.P. 618/2018**

Ms.G

..... Petitioner

Represented by: Mr. Akhilesh Kumar Pandey, Advocate

versus

THE STATE (GOVT. OF NCT OF DELHI) & ANR. Respondents

Represented by: Mr. Ashok K. Garg, APP for the State
with SI Bhagat Singh, PS Ashok
Vihar.

CORAM:

HON'BLE MS. JUSTICE MUKTA GUPTA

MUKTA GUPTA, J. (ORAL)

Crl. M.A. No. 32769/2018 (Delay)

For the reasons stated in the application, delay of 537 days in filing the leave to appeal petition is condoned.

Application is disposed of.

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1. As per the requirement of law, identity of the petitioner is withheld.
2. Aggrieved by the judgment dated 9th January, 2017, whereby the learned Metropolitan Magistrate acquitted the respondent No.2 for the offences punishable under Sections 323/354D/509 IPC, the petitioner/complainant has preferred the present leave petition.
3. Brief facts of the prosecution case are that on 16th September 2018 on receipt of a call regarding a quarrel, ASI Tahir and Ct. Babu Lal went to the spot. Statement of the petitioner/complainant was recorded vide Ex.PW-3/A wherein she stated that on 14th September, 2013 when the petitioner was

going to the college, respondent No. 2 followed her at Deep Market, Ashok Vihar and tried to talk to her despite clear indication of disinterest by her. On 16th September 2013, the respondent No. 2 went to the Jhuggi of the petitioner and asked her brother about her. When the brother of the petitioner confronted respondent No. 2 and refused to tell the whereabouts of the petitioner, a tiff took place between them. On this statement of the petitioner, FIR No. 273/13 vide Ex.PW-1/A was registered for offences punishable under Sections 354D/509/323 IPC at PS Ashok Vihar.

4. Ct. Babu Lal arrested respondent No. 2 vide arrest memo Ex.PW-2/A and conducted his personal search vide Ex.PW-2/B. Site plan (PW-5/B) was prepared at the instance of the petitioner. Statement of the petitioner was recorded under Section 164 Cr.P.C. vide Ex.PW-3/B. On completion of investigation, charge sheet was filed. Charge was framed for offences punishable under Sections 354D/509/323 IPC.

5. Prosecution examined six witnesses. Petitioner was examined as PW-3. In her testimony, she deposed that in sync with her statement made to the police. She further stated that respondent No. 2 used to pressurize her to get married to him. After the registration of FIR, the family members of respondent No. 2 came to her house and pressurized her to withdraw her complaint. She further stated that on 11th December 2013, respondent No. 2 came along with two of his friends, caught hold of her, pulled her hand and immediately ran away. After narrating the incident to her mother, both of them went to the police station and made a complaint against the respondent No.2 vide Ex.PW-3/C. When they returned to their house, respondent No.2's elder brother Munna came to their house and threatened to kill them. They again went to the police station where the mother of the respondent No. 2

slapped her brother. Due to fear they shifted their house from Wazirpur to Nangloi.

6. Brother of the petitioner was examined as PW-4 who stated that respondent No.2 had started beating him, threatened to kill him and his family when he refused to give him any information regarding his sister. He further stated that he told the entire incident to the mother of respondent No. 2 who told him that respondent No. 2 is not an obedient child and he should file a complaint against him. He made a call to the police on 100 number.

7. Respondent No. 2 in his statement recorded under Section 313 Cr.P.C. stated that he has been falsely implicated as he had a quarrel with the brother of the petitioner due to which the petitioner and her family members were jealous of him.

8. Learned Metropolitan Magistrate acquitted respondent No. 2 for the offences punishable under Sections 354D/509/323 IPC on the ground that the allegations of beatings are not substantiated by testimony of any public witness even though the place of incidence was a crowded residential area nor proved by way of MLC. The petitioner did not report any incident of stalking despite the allegation that respondent No. 2 had been stalking her for the last two years. She had only filed a complaint after the occurrence of the quarrel between her brother and respondent No. 2. There are material contradictions in the testimony of the petitioner and her brother. In her examination in chief, the petitioner stated that she filed the complaint against respondent No. 2 on 14th September 2013 whereas in her cross-examination she stated that she had not filed any complaint against respondent No. 2 other than the present case. The complaint by the petitioner to the police is dated 12th December 2013 whereas she reported

the occurrence of the incident of stalking as 14th September 2013. She has not furnished any proper justification regarding why she did not report the incident of 14th September 2013. The petitioner's whereabouts on 16th September 2013 are doubtful as in her statement before the police she stated that she was at home when respondent No.2 gave beatings to her while in her statement recorded under Section 164 Cr.P.C. she stated that she had gone to her college. Furthermore, the petitioner has not mentioned any incident regarding pressurization for marriage or abuses being hurled by respondent No. 2 in her statement recorded under Section 164 Cr.P.C. In order to invoke the provisions of Section 509 it was essential for the petitioner to narrate the actual words/gestures used by respondent No. 2 but the same have not been disclosed by the petitioner. The petitioner stated that she along with her mother went to the police station and got their statement recorded whereas the Investigating Officer stated that he reached the spot and recorded the statement.

9. Findings of the learned Metropolitan Magistrate are a plausible view on the evidence led by the prosecution. Hence, the impugned judgment acquitting the respondent cannot be said to be perverse warranting interference of this Court.

10. Leave to appeal petition is dismissed.

(MUKTA GUPTA)
JUDGE

SEPTEMBER 24, 2018

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