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

+ CRL.L.P. 664/2018 & CRL.M.A. 34378/2018

STATE OF NCT OF DELHI

..... Petitioner

Through: Ms. Kusum Dhalla, APP with Insp.
Sanjeev Verma and SI Harender
Kumar, PS Timarpur

versus

ISHWAR SINGH

..... Respondent

Through:

CORAM:
HON'BLE MR. JUSTICE VIPIN SANGHI
HON'BLE MR. JUSTICE I.S.MEHTA

% **ORDER**
15.10.2018

The State has preferred the present leave petition to seek leave to appeal against the judgment dated 27.07.2018 passed by the learned ASJ-Special FTC-2 (Central), Tis Hazari Courts, Delhi in SC No.57/2015 arising out of FIR 653/2015 under Section 366/376/376(2)(n)/341/323 IPC. By the impugned judgment, the Trial Court has acquitted the respondent/ accused.

The brief facts narrated by the Trial Court in the impugned judgment read as follows:

“2. In this case criminal law was set into motion on the basis of statement of prosecutrix recorded by police on 27.08.2015 when FIR No.653/2015 under Section 376/354(D)/366 IPC was registered. In her statement prosecutrix alleged that accused had been following her for last about two years when she used to go her coaching classes and he has developed friendship with and one day in October 2014, he took her to Bhajanpura on the pretext of taking her to Kalkaji Mandir and there in a house he established physical relationship with her forcibly, when prosecutrix protested, he promised her to marry. Thereafter, in December 2014, accused took her documents date of birth and on 03.05.2015 accused got married with her in Arya Samaj Mandir, Tis Hazari Court. Prosecutrix further alleged that she left her house and started living with accused from June 2015. She was kept by accused at the house of his sister Suresh in Village Tilla, Ghaziabad, U.P. and after about one week he kept her in a rented accommodation in Bhajanpura. She further stated that accused used to make sexual relationship by using condoms and use to give her pills while staying in the house of Bhajanpura and she also used to visit sister of accused in her village and from there she came to know that accused was a married person having two grown up children, a daughter of 23 years of age and son of 17 years. She had also a fight with the wife of Ishwar and on coming to know that accused had not disclosed to her about his previous marriage. She came to PS Timarpur along with her mother in the company of counsellor of DCW and lodged complaint with the police against accused.

3. On the complaint made by prosecutrix, W/SI Neeraj got the case registered and she got prosecutrix medically examined in Aruna Asaf Ali Hospital. The exhibits prepared by the doctor regarding examination of prosecutrix and seized the same. On 28.08.2015, accused Ishwar Singh was arrested by the I.O when he appeared in the police station and he was also medically examined in Aruna Asaf Ali Hospital and the exhibits regarding his examination were also seized by the I.O. W/SI Neeraj also visited the spot of incident at Bhajanpur and

Khajuri Khas where prosecutrix had stayed with the accused and prepared site plan. During investigation, statement of prosecutrix under Section 164 Cr PC was also recorded on 11.09.2015 wherein she had again reiterated the same facts and circumstances against the accused. W/SI Neeraj has also seized the documents regarding marriage of prosecutrix on 26.09.2015. I.O also examined the parents of the prosecutrix and other witnesses under Section 161 Cr PC during investigation and after completing investigation chargesheet was filed in the court of Id. Metropolitan Magistrate. After compliance of the requirement of section 207 Cr PC, the case was sent to this court being the designated Special Fast Track Court for trial of the offences of sexual assault against the women through the office of Id. District & Sessions Judge (HQ), Tis Hazari Courts, Delhi”.

The prosecutrix made allegations of rape against the accused, firstly, forcibly sometime in October 2014 at a room in Bhajanpura. She admitted during her examination that after the alleged incident, the accused had left her in the said room and also had left the mobile in the room of the prosecutrix. Thereafter the accused continued to interact with the prosecutrix and she claimed that she had married him. In this background, the allegations made against the accused so far as the alleged rape committed in October 2014 is concerned is completely unbelievable. She admitted that after the marriage on 12.03.2015, she lived with the accused as husband and wife. She claimed that she learnt of the fact that the accused was already married sometime in August 2015. She lodged her complaint on 26.08.2015, on the basis of which the FIR came to be registered.

The Trial Court has disbelieved the case of the prosecution on the premise that the prosecutrix was 25 years of age and the accused was 40 years old at the time when they met. The accused was working in the same

office in which the mother of the prosecutrix was working. The defence also produced a witness DW-1, who stated that she also used to work in the same office as the mother of the prosecutrix and that she informed the mother of the prosecutrix about his marital status.

The admitted case is that for two years before the marriage, the prosecutrix and the accused were known to each other. In these circumstances, in our view, the Trial Court was justified in disbelieving the case of the prosecution that the prosecutrix was not aware of the factum of the prior marriage of the accused at the relevant time.

We find no merit in this petition. Dismissed.

VIPIN SANGHI, J

I.S.MEHTA, J

OCTOBER 15, 2018

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