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

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*Decided on: 04.12.2018*

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**CRL. L.P. 800/2018, CRL. M.A. 48696/2018**

PARVEEN @ SHAMA

..... Petitioner

Through: Ms. Monika Tripathy, Mr. Ashutosh  
Kaushik and Ms. Raveena Tandon,  
Advocates.

Versus

STATE & ANR.

..... Respondents

Through: Mr. G.M. Farooqui, APP for State  
with SI Praveen Kumar, PS-Sangam  
Vihar.

**CORAM:**

**HON'BLE MR. JUSTICE NAJMI WAZIRI**

**NAJMI WAZIRI, J. (Oral)**

This Criminal Leave Petition under section 378(4) of the Code of Criminal Procedure, 1973 is against the impugned judgment dated 09.08.2018 passed by the learned Additional Sessions Judge, thereby acquitting the accused for offences punishable under sections 376, 495, 193 and 199 of the Indian Penal Code, 1860 in case FIR no. 541/2016.

The learned ASJ held that the case of the prosecution was full of loopholes and that the prosecution failed to prove its case against the accused beyond reasonable doubt. It was also held that the prosecution

failed to prove that the accused had committed forcible sexual intercourse with the prosecutrix against her will and consent.

The brief facts of the case according to the learned counsel for appellant/complainant are, that the accused/R-2 and the appellant came in contact with each through WhatsApp in January, 2016. The appellant met the accused for the first time in Saket Mall and after 2-3 days the accused took the appellant to a place where he offered her Pepsi, after which the appellant felt giddy and lost her consciousness. When she regained her consciousness, she noticed that 2-3 buttons of her shirt were open and when she asked the accused about the same, he didn't give a satisfactory answer. The accused again tried to meet the appellant and when she refused, he threatened and blackmailed her that he had offensive photographs of her and if she denied meeting him, he would upload the same on social media. Fearing defamation she met him and he promised to marry her and they entered into a physical relationship which continued for some time. It is also stated that the accused also used to give anti-abortion tablets to the appellant. On 07.04.2016 the accused deleted all her offensive photographs from his phone and threatened that he would tell her husband everything if she did not marry him. Subsequently, he took her to Patiala House Court where their marriage was solemnized.

The learned counsel for the appellant further states that after the marriage, the accused took the appellant to his village where his sisters used to beat her mercilessly because of which she suffered a miscarriage. The appellant also got to know that the accused was known for marrying and leaving girls and that he had already married 4 other girls prior to his

marriage with her. It is also stated that the accused himself told her that he had enacted the drama of marriage only to ensure that she did not file a police complaint against him. Subsequently, the accused brought the appellant back to her mother's place and abandoned her and also took Rs. 50, 000 and a mobile phone from the appellants house. During the hearing of the bail application of the accused, he agreed to reside with the appellant and therefore they lived together for 3-4 months in a rented accommodation. During this period, the appellant also became pregnant. One day, the accused gave her poison and left her alone in the rented premises. She was later admitted to hospital for 3-4 days. Hence, FIR no 541/2016 was registered of offences punishable under sections 376/495/193/199 IPC; the accused was arrested and charges were framed under sections 506/376 IPC.

The learned counsel for appellant argues that the Trial Court has failed appreciate that the statements and testimonies of the prosecution witnesses are without any contradictions; that the prosecutrix in her own statement before the Trial Court and in her statement before the learned MM under section 164 Cr. P.C has categorically proved her case against the accused without an iota of doubt; that the accused tried to defame the appellant by threatening her that he will circulate/upload her objectionable photographs on social media; that the accused got married to the appellant by blackmailing and threatening her; that the marriage was entered into by the appellant under duress and compulsion; the accused was already married at time of his marriage with the appellant and he concealed this fact and hence the marriage was solemnized under deliberate misrepresentation; that the accused himself told the appellant that he had enacted the drama of

marriage only to ensure that she did not file a police complaint while he continued to exploit her sexually; that since the very beginning the only intention of the accused has been to exploit the appellant sexually; that she was mercilessly beaten and ill-treated by the sisters of the accused because of which she suffered a miscarriage; that the accused also stole Rs. 50,000/- and a mobile phone from the petitioner's house.

The accused in his statement under section 313 Cr. P.C denied all the allegations and pleaded not guilty. He stated that the prosecutrix had concealed her previous marriage and after his marriage with the prosecutrix, he came to know about her first marriage. When he asked to divorce her first husband she refused to do so as she was getting maintenance from him. Hence, he refused to stay with her as their marriage was not valid and therefore the prosecutrix made a false complaint against him. It is his case that they were having a consensual relationship.

This court finds that from the statements made by the prosecutrix during the trial of the instant case, it is clear that she was married woman with two children and her marriage was not dissolved and thus, she was not legally entitled to marry the accused. In her cross examination, she admitted that she had not mentioned in her complaint to the police that she was already married to another person when she met the accused. She even concealed the fact that she had filed a case under the Domestic Violence Act against her first husband wherein she was granted maintenance by the court. In her complaint, she also failed to mention anywhere that she was forced to make physical relations with the accused on the first occasion. There is neither a promise to marry nor an allegation of use of force at this stage. It is

also important to note that no obscene photographs have been produced till date by the prosecutrix to prove that she was blackmailed or threatened by the accused to meet his demands.

PW-10 i.e. SI Margrita, deposed that she did not seize the mobile phones of the accused and the prosecutrix on which they had been exchanging WhatsApp messages. She explained that she had asked the prosecutrix to submit her phone for investigation but she refused. This raises a doubt as to whether any obscene photographs ever existed. PW-10 further deposed that she did not make inquiry from the stamp vendor, Notary or Qazi, who were involved in the preparation of the documents as well as in Nikaah. She further deposed that the prosecutrix was also unable to locate the place at Sarai Kale Khan where she was raped for the first time by the accused.

After their marriage was solemnized, they started living together but again there isn't any mention of use of force or threat by the accused. The prosecutrix made several improvements in her statement under section 164 Cr.P.C than what was stated by her in her complaint. Also, she is completely silent about the fact that whether she asked the accused to confirm that he actually had her objectionable pictures with him. The appellant also pointed out a relationship of the accused with one Rahilla before the Trial Court but her statement in this regard is confusing and unclear, as initially she claimed that Rahilla was his wife but later stated that she was not his wife, but had an agreement with the accused that he if left her(Rahilla), then he would pay Rs. 2-3 lacs. Further, in her deposition she stated that her second meeting with the accused took place after about a week but in her statement under

section 164 Cr.P.C, she stated that the accused called her after 2 days after which she went to his house to celebrate his birthday party. It is also clear from the facts that the prosecutrix helped the accused to stay at her parental home and she also introduced him as a friend; thus, it can be said that the prosecutrix was acting in tandem with the accused as she introduced him to his family as a friend and concealed her affair with him.

It is clear that the accused had married the prosecutrix as per Muslim law but the prosecutrix could not enter into a legal marriage with the accused as she was already married, which made her marriage with the accused void ab-initio. The Trial Court was right in acquitting the accused in the present case as the prosecutrix has made many additions, improvements and alterations in her statements and has not been consistent on her stand. The record also shows that she even appeared before the court when the bail application of the accused was being heard and stated that she had got the FIR registered due to some misunderstanding and did not want any action against him. She also filed an affidavit towards the same and stated that she had no objection if the accused was granted bail.

In view of the above, no sufficient grounds are made out for setting aside the impugned judgment dated 09.08.2018. The petition is dismissed accordingly.

**NAJMI WAZIRI, J.**

**DECEMBER 04, 2018**

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