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

+ CRL.REV.P. 1073/2018

AMAN DAHIYA

..... Petitioner

Through Mr. Jatan Singh and Mr. Pawan
Madhukar, Advs.

versus

THE STATE (NCT OF DELHI) & ANR

..... Respondents

Through Dr. M.P. Singh, APP with SI Harish,
P.S. S.B. Dairy

CORAM:

HON'BLE MR. JUSTICE A.K. PATHAK

ORDER

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04.12.2018

Crl. M.A. no.48701/2018 (exemption)

Allowed, subject to all just exceptions. Application is disposed of.

CRL.Rev. P. No.1073/2018 and Crl. M.A. no. 48700/2018 (stay)

Petitioner is aggrieved by the framing of charge under Sections 376/511 IPC by the trial court against the petitioner. Petitioner is *devar* (brother-in-law) of prosecutrix. In the FIR, prosecutrix has stated that one day she found her devar Aman Dahiya watching from the window when the prosecutrix and her husband were having sex; when prosecutrix told this to her husband and mother-in-law, they beat her up. In the month of March,

2016, on Sunday, petitioner came to her room in absence of her husband, mother-in-law and sister-in-law. He started making physical relations with her by saying: “my brother is impotent and I wish to show you the real fun of life and you get more enjoyment with me”. She categorically stated that petitioner tried to rape her but due to her best efforts and shouting, she succeeded in running away from the clutches of petitioner.

Learned counsel for the petitioner submits that this statement is not sufficient to frame charge of attempt of rape against the petitioner as in her subsequent statement under Section 164 Cr.P.C., prosecutrix has not corroborated this version. In her this statement she has simply stated that petitioner tried to establish physical relations with her. He has placed reliance on State vs. Gajraj Singh, MANU/DE/0205/2017. By placing reliance on Union of India (UOI) vs. Prafulla Kumar Samal and Ors., MANU/SC/0414/1978, it is contended that before charges are framed prosecutrix has to establish that grave suspicion arises against the accused for the offences with which he has to be charged. He contends that no grave suspicion arises against the petitioner for committing offence of attempt to rape, in view of the vague statement made in the FIR, which has not been supported by the prosecutrix in her statement under Section 164 Cr.P.C.

I have perused the judgments relied upon by the learned counsel. The said judgments are in the context of different facts and are of no help to the petitioner. In State vs. Gajraj Singh (supra), prosecutrix had completely exonerated the accused in her statement under Section 164 Cr.P.C. However, in this case, prosecutrix has categorically stated in the FIR that in the month of March, 2016 on a Sunday, petitioner came to her room in absence of her husband, mother-in-law and sister-in-law and tried to rape her by uttering the words, which have been reproduced hereinabove. She succeeded in running away from the clutches of the petitioner. In her statement under Section 164 Cr.P.C., she has not absolved the petitioner completely as she has stated that petitioner tried to establish physical relations with her. Veracity of the version of prosecutrix can be tested only during the trial. At the stage of framing of charge only a prima facie view is to be made out. Statement of the witnesses have to be taken as correct at the time of framing of charge.

For the foregoing reasons, I do not find any irregularity, illegality or impropriety in the impugned order. Petition is dismissed. Miscellaneous application is disposed of as infructuous.

A.K. PATHAK, J.

DECEMBER 04, 2018/r.bararia