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

+ CRL.L.P. 129/2018 & CrI. M.A. Nos.3173-74/2018

MS X (MINOR GIRL)

..... Petitioner

Through: Mr. Sitab Ali Chaudhary and Mr.
Azharuddin Chaudhary, Advocates

versus

THE STATE GOVT OF NCT OF DELHI & ANR

..... Respondent

Through: Ms. Aashaa Tiwari, APP for the State
with WSI Kamlesh Meena, PS
Mehrauli

CORAM:

HON'BLE MR. JUSTICE VIPIN SANGHI

HON'BLE MR. JUSTICE P.S.TEJI

ORDER

22.03.2018

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The petitioner has preferred the present leave petition to seek leave to appeal against the judgment dated 18.05.2017 passed by the learned ASJ-01, South, New Delhi in Sessions Case No.43/2017 arising out of FIR No.1657/2016 registered at PS Mehrauli. By the impugned judgment, the respondent/ accused has been acquitted of the offence punishable under Section 363/366/376(2) IPC and Section 6 of POCSO Act.

The petitioner is the prosecutrix through her mother. The Trial Court has acquitted the respondent / accused since the prosecutrix and her family

members including her mother turned hostile and did not support the case of the prosecution. The petitioner has stated in the present leave petition that they had not supported the case of the prosecution since the accused had promised to marry the prosecutrix. He has reneged from the said promise.

When the matter came up before this court on 20.02.2018, we recorded the following order:

“The present leave petition has been preferred by the victim through her mother. The impugned judgment shows that both the victim and the petitioner turned hostile and did not support the case of the prosecution. The ground taken by the petitioner is that they had turned hostile since the accused had promised to marry the victim. However, he has reneged from the said promise and, consequently, this petition has been preferred.

We cannot appreciate this submission of the petitioner. The petitioner cannot be permitted to abuse the process of the court. In any event, since a serious offence is stated to have been committed by the respondent under Section 363/ 366/ 376(2) IPC read with Section 6 and 5 of POCSO Act, we are inclined to examine the case. The TCR be requisitioned before the next date. List on 22.03.2018.

The Trial Court record has been received and we have perused the same. The medical examination of the prosecutrix shows that her hymen was torn and it was an old tear. As such, there is no medical evidence found on record to secure the conviction of the respondent. We may note that even when the statement of the prosecutrix was recorded under Section 164 Cr PC, after stating that the accused had committed rape upon her, she stated that she wishes to take back her complaint as it is a family matter. Even before the court, the prosecutrix did not support the case of the prosecution.

In these circumstances, we are not inclined to interfere with the impugned judgment. The petition and the applications are, accordingly, dismissed.

VIPIN SANGHI, J

P.S.TEJI, J

MARCH 22, 2018

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