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

+ CRL.L.P. 35/2018

KAMLESH @ ANNU

..... Petitioner

Through: Counsel for the petitioner.
(appearance not given)

versus

THE STATE GOVT OF NCT OF DELHI & ORS

..... Respondent

Through: Mr. G.M. Farooqui, APP for State with
SI Pushpendra, P.S. Geeta Golony.
Mr. Sushant Mukund and Mr. Vikash Kumar,
Advs. for R-2.

CORAM:

HON'BLE MR. JUSTICE NAJMI WAZIRI

ORDER

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21.08.2018

It is the petitioner's case that she had not deposed against the accused at the time of trial because marriage had been promised to her by the accused. However, after acquittal, the accused refused to marry her. The learned counsel for the State submits that when she was presented before the learned Trial Court, she did not state that she was under any inducement or that she had been threatened or that a promise had been made for her marriage with the accused and therefore she was not deposing against him. If she was ever induced in carnal relations by the accused by fraud, then the petitioner should have stated so before the learned Trial Court. On the

contrary, she did not state even a word against the accused and therefore, in the absence of any incriminating evidence, the accused was acquitted. The impugned order records as under:

“12. At the outset, I may state that the prosecution has miserably failed to prove the present case against the accused. In the entire deposition of the prosecutrix before the court, the prosecutrix has not made any incriminating statement against the accused and has absolved completely the accused of all the charges.

13. Accused is facing trial for commission of offences punishable under Sections 376(2)(n)/313 IPC.

14. Prosecutrix (PWL) deposed that the accused never made physical relations with her at any point of time and also the accused never made any promise of marrying her.

15. Prosecutrix (PWL) further deposed that she never got pregnant from the accused and the accused never administered her any medicine causing miscarriage to her; She further deposed that she lodged the complaint against the accused under some confusion and at the instance of her friends.

16. Prosecutrix (PWL) was declared hostile and was cross examined at length by the Id. Substitute Addl. PP for the state. However, even during cross examination of the prosecutrix by the Ld. Substitute Addl. PP for the state, nothing material could be elicited from the mouth of this witness which could help the case of the prosecution. The prosecutrix has denied of making physical relations with the accused for 9-10 times or that the first time physical relations were made in the month of January 2015 on the pretext of marriage. She also denied that the physical relations continued till May 2016 or that she became pregnant in the month of May 2016. She further denied that the accused having been administered any medicine fraudulently mixing in

the milk due to which the child got aborted.

17. Prosecutrix deposed that though she has lodged the complaint exhibited as Ex. PWI/A but denied the contents of the same and stated that the said complaint was filed against the accused under some confusion.

18. In view of the deposition of the prosecutrix (as noted above), her statements and the complaint made by her during investigation which are in the nature of previous statements and not substantive pieces of evidence, would be of no help to the case of the prosecution.

19. The testimony of PW-2 Dr. Aditya Yadav from SDN Hospital, ^ Delhi is formal in nature inasmuch as he has medically examined the prosecutrix on 04.01.2017 vide MLC exhibited as Ex. PWI/C and referred the prosecutrix to Gynae department for examination.

20. Perusal of the MLC Ex. PWI/C shows that the prosecutrix refused to give permission for her internal examination. Thus, no sample from her body could be collected. Hence, there is no forensic or medical evidence to connect the accused with the charged offences. The case was based on the statement of the prosecutrix but the prosecutrix has not supported the case of prosecution.

21. In these circumstances, no substantive evidence has come on the record to show that the accused has committed the charged offences.”

The contention of the petitioner that she was misled into giving the aforesaid statement cannot be believed. In a way, in her own testimony before the Court she had established that the accused committed no offence. The petition is without merit and it is accordingly dismissed.

NAJMI WAZIRI, J

AUGUST 21, 2018/acm