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

+ CRL.L.P. 107/2018, CRL.M.A. 2701/2018

RITU

..... Petitioner

Through: Mr. Kapil Jain, Proxy Counsel.

versus

THE STATE GOVT OF NCT OF DELHI & ANR Respondents

Through: Mr. Tarang Srivastava, APP for State
with SI Amit K., PS-Moti Nagar.

CORAM:

HON'BLE MR. JUSTICE NAJMI WAZIRI

ORDER

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11.07.2018

This petition seeks leave to appeal against the order of the learned Additional Sessions Judge dated 03.11.2017 dismissing her complaint against the accused. The learned Additional Public Prosecutor for the State submits that no case for grant of leave is made out because the complainant herself did not support her complaint in the statement recorded on 13.06.2016 under section 164 Cr. P.C..

The accused was granted bail on 13.06.2016 on the basis of the said statement. It is not her case that she was under duress at the time of making of statement. Indeed, at the time of bail, she appeared in the proceedings and had stated that the alleged relations were consensual. Keeping these facts in mind, the Trial Court had acquitted the accused. It has reasoned as under:-

“Ld. Counsel for applicant submits that the prosecutrix has established relations with her consent and during investigation statement of prosecutrix was recorded U/s 164 Cr.PC. It is also contended that in her statement she has not supported the allegations levelled by her in the FIR. I have perused the statement of the prosecutrix recorded U/s 164 Cr.PC. She has deposed in her statement that she has established physical relations with her consent and she has lodged a false complaint against the applicant.

She also deposed that she does not want any action against the applicant/accused. Today also statement of complainant is recorded that she has no objection if the bail is granted to applicant/accused.

Taking into consideration that the prosecutrix has not supported the case of prosecution in her statement U/s 164 Cr.PC and taking into consideration that today the prosecutrix has stated that she has no objection if the applicant/accused is admitted to bail, applicant/accused is admitted to bail on his furnishing personal bond in the sum of Rs.25,000/- with one surety in the like amount to the satisfaction of Ld. MM concerned/Ld, Link MM/Ld. Duty MM”.

The petitioner had not complained any quarter to any authority that she was under coercion or duress to make the afore statement. Furthermore, the learned Trial Court notes in para 28 of the judgment that the accused was in judicial custody from 13.06.2016 till the recording of the evidence-in-chief. Therefore, there would be no case of threat being extended to the complainant. In any case, no complaint or threat to her from the accused was ever made by the prosecutrix.

It was noted that the petitioner had made different statements at different stages, therefore, the prosecution's case had to fail, in the absence of reasonable ground to convict the accused. of the offences alleged.

The impugned order has reasoned as under:-

“27. Further, as per the statement given by the prosecutrix u/s 164 Cr.P.C, it is clear that before Ld MM, she had specifically stated that she was under no threat or pressure and at that time, she had given a statement to Ld MM that no rape has been committed upon her by the accused and it was only because, she had some quarrel with accused, as accused had refused to drop her at her house, that she had lodged the present false case against her. Thus, in her statement recorded u/s 164 Cr.P.C by Ld MM, prosecutrix (PW1) had categorically stated that she had filed a false case against accused & the physical relations were established

between them out of her own consent. Further, admittedly during the hearing of bail application of the accused, prosecutrix along with IO was present. prosecutrix had submitted before Ld. Bail Judge that she does not want any action against applicant-accused and she has no objection if the bail is granted to applicant-accused. On the statement of the prosecutrix, accused was admitted to bail & bail order is Ex.PW1/DX. In the cross-examination of prosecutrix, when these questions were put to the prosecutrix, she had denied giving any such statement before Ld. MM but these facts have been corroborated by the testimony of her husband, PW-2, who was not present in Delhi or at the place of incident, when this alleged incident had taken place but he had categorically admitted in cross- examination that on 13/06/16 he had appeared along with his wife i.e. prosecutrix during bail application of the accused and in his presence, prosecutrix had stated that she had established physical relations with accused with her own consent and that she had lodged false complaint before police against accused. Although, after admitting this, PW2 had tried to say that at that time, prosecutrix was under the pressure of accused but admittedly on 13/06/16 accused was in Judicial Custody and therefore, no pressure could have been exerted by the accused upon the prosecutrix. Neither any such complaint has been lodged by the prosecutrix, of being under threat or pressure from the accused or his family, when her statement was recorded u/s 164 Cr.P.C by Ld MM.”

In view of the above, the Court does not find any reason to interfere with the impugned order. Accordingly, the petition is dismissed.

NAJMI WAZIRI, J

JULY 11, 2018

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