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

DECIDED ON : 3rd APRIL, 2018

+ **CRL.L.P. 9/2018 & CRL.M.A.No.76/2018**
STATE (GNCT OF DELHI) Petitioner
Through : Ms.Radhika Kolluru, APP.

versus

ANOOP SINGH Respondent
Through : None.

CORAM:
HON'BLE MR. JUSTICE S.P.GARG

S.P.GARG, J. (Oral)

1. Present leave petition has been preferred by the State to challenge the legality and correctness of a judgment dated 17.03.2017 whereby the respondent Anoop Singh has been acquitted of the charges for commission of offences punishable under Sections 376/328 IPC in case FIR No.16/2016 registered at Police Station Dwarka Sector-23.

2. I have heard the learned APP and have examined the file. The FIR was lodged on the complaint of the prosecutrix 'X' (assumed name) aged around 35 years on 07.01.2016 when she reported sexual assault upon her in a park after administering stupefying substance by the respondent who was known to her. The prosecution examined eleven witnesses to establish its case. In 313 Cr.P.C. statement the respondent denied his complicity in the crime and pleaded false

implication. It was further claimed that two separate complaints dated 21.11.2015 and 23.12.2015 were lodged against the prosecutrix at PS Dabri and in the office of DCP. The respondent examined DW-1 (HC Sunil) and DW-2 (HC Hari Ram).

3. After appreciating the evidence and considering the rival contentions of the parties, the respondent was acquitted of the charge. Aggrieved by the said order, the present leave petition has been preferred by the petitioner. It is not clear if the acquittal has been challenged by the victim.

4. On perusal of the impugned judgment, this Court finds no illegality and material irregularity to grant leave to the State to file appeal. It is relevant to note that the prosecutrix and the respondent were acquainted with each other prior to the incident. The complainant had no grievance against him. Contrary to that, it has come on record that two separate complaints dated 21.11.2015 and 23.12.2015 were filed against the prosecutrix prior to the lodging of the FIR. Since the relations between the respondent and the prosecutrix were inimical, statement of the prosecutrix is to be perused with great care and caution.

5. No independent public witness was associated at any stage of the investigation despite their availability. The incident is stated to have occurred in a park where some individuals were present. However, none of them was asked to join the investigation. The prosecutrix did not raise any alarm or noise at any stage when she was being taken on a motorcycle by the respondent to the park. Even at the time of the commission of the offence, no such alarm was raised to

attract the attention of the public persons present inside the park. Information to the police was conveyed after considerable delay. The prosecutrix was taken for medical examination. However, no fresh injuries on her private parts were found. The medical examination disclosed that the hymen was old torn. The exhibits were sent to Forensic Science Laboratory. As per FSL report (Ex.PA), the DNA profile generated from the source of Ex.S-11 (Blood stained gauze of accused) did not match with the DNA profile generated from the source of Ex.S-3, Ex.S-4, Ex.S-5 & Ex.S-6 (Vaginal swabs and smear), Ex.S-8 (Cervical swab) and Ex.S-10e (underwear of the victim).

6. The Trial Court noted various discrepancies and improvements in the statement of the prosecutrix which need not to be elaborated. It is highly unbelievable that the prosecutrix who was allegedly returning to the home after purchasing vegetables would consume cold drink on the asking of the respondent on the way. It is pertinent to note that during the whole episode the prosecutrix did not inform her husband regarding the occurrence and he did not join the investigation at any stage.

7. The Trial Court has noted various other deficiencies in the case of the prosecution which make the testimony of the prosecutrix suspect.

8. The State did not file the leave petition promptly and there is a delay of 191 days in filing the leave petition which has again remained unexplained.

9. Considering the facts and circumstances of the case, I find no merit in the leave petition and it is dismissed.
10. Pending application also stands disposed of.
11. Trial Court record be sent back forthwith with the copy of the order.

(S.P.GARG)
JUDGE

APRIL 03, 2018 / tr

