

Present: Mr. S.L. Barwala Advocate,
for the applicant.

This application is filed under Section 378(4) of the Cr. P.C. for seeking leave to file appeal against the order dated 03.01.2018 passed by the learned trial Court by which respondent No. 2 has been acquitted after having been tried in a case registered vide FIR No. 253 dated 24.06.2016 under Sections 354, 376(2)(n) 452, 506 of Indian Penal Code.

The brief facts of this case are that the aforesaid FIR was registered by one Parveena widow of Ranbir Singh, mother of the prosecutrix against respondent No. 2, alleging that he is a man of a bad character and keeps an evil eye on the ladies. He entered her house on 23.06.2016 at 8 a.m. when her 20 year old daughter was alone. He had allegedly taken her inside the room forcefully but her daughter raised an alarm. Initially, a case was registered against respondent No. 2 under Section 452 and 354 of the IPC but on the supplementary statement suffered by the prosecutrix, offence under Section 376(2)(n) and 506 of the IPC was also added on the ground that respondent No. 2 had in the past committed rape for 5 to 6 times in her house whenever he had been found the opportunity.

Since, the case was triable by the Court of Sessions, the JMIC remitted the case to the Court of Sessions. The charge-sheet against respondent No. 2 for the alleged offenses was prepared vide order dated 25.10.2016. In order to prove the case, the prosecution examined as many as ten witnesses, whereas, respondent No. 2, while denying the

allegations, recorded the statement under Section 313 of the Cr. P.C. but did not lead any evidence in defence.

The learned Court below, after taking into consideration the evidence lead by the prosecution, came to the conclusion that the entire version is concocted as respondent No. 2 had allegedly to recover a sum of ₹30,000/- from the brother of the prosecutrix which he had advanced as a loan and in order to escape from the said liability, the allegations have been made in regard to outraging the modesty of the prosecutrix but later on supplementary statement was recorded by the prosecutrix for the purpose of making the offence more heinous.

Learned court below had taken into consideration the fact that statement of the prosecutrix was recorded on 24.06.2016 which is exhibited as Ex. P1 and had also recorded the statement under Section 164 of the Cr. P.C. exhibited as Ex. P2 but in those two versions, there was no allegation of rape but after the arrest of respondent No. 2 on 01.07.2016, she changed her version on 02.07.2016 (Ex. P-4) to the effect that respondent No. 2 had committed rape on her 5-6 times in her house but the same was not disclosed by her out of fear.

Learned trial court has also found that there was no injury on the private parts of the prosecutrix and the statement made by the prosecutrix after about 8 days of the alleged incident of having committed rape by respondent No. 2 that too 5 to 6 times in the past six months was a concocted version.

Learned counsel for the applicant has submitted that trial Court has erred in appreciation of the available facts on record in passing the order

of acquittal in favour of respondent No. 2 only on the ground that the supplementary statement is a concocted version on the part of the prosecutrix.

We have heard learned counsel for the applicant and after perusing the available record, are of the considered opinion that there is no error committed by the trial Court in passing the order of acquittal in favour of respondent No. 2 because the first version of the prosecutrix after the alleged incident on 23.06.2016 was recorded on 24.06.2016 in which she did not utter a word about the past conduct of the respondent No. 2 of having raped her. In her statement recorded under Section 164 of the Cr. P.C. before the JMIC where there was no pressure upon her, the statement remained the same i.e. only regarding outraging the modesty by pulling her inside the room for the purpose of committing some kind of sexual offence. Therefore, it is apparent that the prosecutrix had an axe to grind because it has come on record that her brother was to pay ₹30,000/- to the respondent No. 2 and in order to deny to repay the said amount, which was taken as loan respondent No. 2 was tried to be involved in more heinous offence.

No other point has been raised. In view of the above, we do not find any merit in the present application much less the appeal for the purpose of interference and the same is hereby dismissed.

(RAKESH KUMAR JAIN)
JUDGE

April 23, 2019
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(HARNARESH SINGH GILL)
JUDGE