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

+ CRL.M.C. 5726/2019

SHIVRAJ @ SONU

..... Petitioner

Through: Ms. Shivani Luthra Lohiya with Ms.
Asmita Narula, Advs.

versus

STATE OF NCT OF DELHI

..... Respondent

Through: Mr.Panna Lal Sharma, APP for State.
SI Yogesh Tanwar, PS Amar Colony

CORAM:

HON'BLE MR. JUSTICE SURESH KUMAR KAIT

ORDER

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13.11.2019

CRL.M.A. 40012/2019 (Exemption)

Allowed, subject to all just exceptions.

This application is, accordingly, disposed of.

CRL.M.C. 5726/2019

Vide the present petition, the petitioner seeks direction thereby to set aside the impugned order dated 03.08.2019 passed by the Ld. Additional Sessions Judge, Saket District Courts, New Delhi and to allow the present petition and to re-call the prosecutrix for her cross-examination.

Learned counsel appearing on behalf of the petitioner submits that in her statement recorded under Section 164 Cr.P.C. the prosecutrix stated that at her residence, there was a fight between her sister and her brother-in-law in which she took her sister's side because of which her brother-in-law

scolded her a lot. She left her house and while leaving, Shivraj (the petitioner herein) approached her, who lives in the neighbouring room. She told him that there was a fight at her residence. He said that he will take her to Patna and will keep her very happy and, accordingly, she went with him. She further stated that she stayed in a park with him for a night. Next day, he took her to the railway station and then he took her to his house in Patna by train. His brother and mother were there in the house and he told them he wanted to get married to her. His mother told that first, you take her back and then do anything. In the village, she told the villagers that she was Shivraj's wife (the petitioner herein). Though they did not marry there yet she used to stay like his wife and used to wear a saree. They used to sleep together there, like husband and wife. Further stated that she did not want to return to her house because she was scared of her mother and her father. Petitioner Shivraj wanted to bring her back home when the police officials came to the village. After 2-3 days of her stay at Patna, she called her sister on her phone in Delhi. She and her sister used to talk regularly on the phone. Her sister asked her to come back, but she did not go back because she was scared of the consequences.

In her affidavit dated 29.04.2014 prepared at Patna stated that she has married to Sonu Kumar (petitioner herein) aged about 26 years, resident of Village Shivpuri, Police Station Gardanibagh, Jila Patna which was solemnized on 22.04.2014 according to hindu rites and rituals and got it registered with Notary Public at Patna Court. Both of them willingly and happily married accordingly to Hindu customs without fear, greed and without dowry dealings. Both of them were adults at the time of marriage.

Learned APP has opposed the present petition on the ground that the

prosecutrix has already been cross examined and the lacuna of the cross examination cannot be allowed, therefore, the present application is liable to be dismissed.

On the perusal of the cross examination of the prosecutrix, the learned counsel for the petitioner has not confronted her on the statement recorded under Section 164 Cr.P.C. and the affidavit dated 29.04.2014. The said two evidences are the most important and without cross examining the prosecutrix, great prejudice would be caused to the petitioner.

The age of the prosecutrix as per school leaving certificate on the date of incident is 17 years, 8 months and 19 days. But in the affidavit she has stated that she was major on the date of marriage.

Accordingly, I hereby set aside the order dated 03.08.2019 passed by Trial Court and direct to give the opportunity to the petitioner to cross examine the prosecutrix on the above mentioned aspects.

The petition is, accordingly, allowed and disposed of.

SURESH KUMAR KAIT, J

NOVEMBER 13, 2019

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