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

Date of decision:10.12.2019

+ CRL.REV.P. 19/2017 & CRL.M.A. 302/2017 (STAY)

SAKSHI MEHTA Petitioner

Through Mr. Siddharth Tyagi, Adv.

versus

STATE & ANR.

..... Respondents

Through Mr. P L Sharma, APP for State
Insp. Usha Sharma, ATO/Kanjhawla
& SI Vikram, PS Hari Nagar
Mr. S S Bhatia, Adv. for R-2

CORAM:

HON'BLE MR. JUSTICE SURESH KUMAR KAIT

J U D G M E N T (O R A L)

1. Vide the present petition, the petitioner seeks setting aside of order dated 26.09.2016 passed by Learned Additional Sessions Judge, (Special Fast Track Court) / 01, West District, Tis Hazari Courts, Delhi in S.C. No. 567405 of 2016 arising out of F.I.R. No. 1215/2014 registered at P.S. Hari Nagar for the offences punishable under Section 376/498A/406 IPC.
2. The brief facts of the petitioner's case are that in the year 2007, after completing her graduation from Ambala (Haryana), the petitioner had shifted to Gurgaon with relatives and later on rent basis and started working

in MNC namely, M/s. Omkar InfoTech Ltd. in the BPO - Travel (sales) Segment, where she met respondent no.2, who approached her for some office work. After the office, on that day itself, respondent no. 2 asked for coffee etc, to her and thereupon, she came to know that respondent no. 2 had already been stalking her since long and gathering knowledge about her, like from where she was, what does she wear, with whom does she live etc. Thereafter, soon their acquaintances turned into close friendship, they had been meeting regularly after their working shifts. During that time respondent no. 2 had an Alto car, in which they used to go both for long drives twice or thrice a week. In those days, the respondent no. 2 used to bring South Indian food from his home, which was being cooked by his mother to allure her.

3. Further, the case of the petitioner is that sometime in the year 2007, near the birthday of the petitioner, the respondent no. 2 drove her to Taj Mahal, Agra, where the respondent no. 2 proposed her and thereon, the friendship turned into relationship, based on future commitments to marry each other. It was late evening in Agra and the respondent no. 2 wanted to stay there in a hotel overnight but she was not comfortable with the same, accordingly, they returned the same night, post which the respondent no. 2

stayed at a friend's residence in Gurgaon. On 17.10.2007, the petitioner had gone to USA with her maternal grandfather, even there also they were in regular contact with each other but respondent no. 2 grew insecure about the petitioner, being miles away for 3 months as her trip was scheduled. When she informed respondent no. 2 that she was also aspirant for her further education in the USA, the respondent no. 2 insisted that he wanted to join too and on checking, the petitioner found that the respondent no. 2 cannot join there, because he did not have a regular bachelor's degree. Due to this reason, the respondent no. 2 wanted the petitioner to return sooner, accordingly, returned from USA to India in February, 2008. Thereafter, found that respondent no. 2 may be eligible for an admission in Malaysia, but he was adamant that they should apply only to Malaysia and nowhere else. When their admission was confirmed in Malaysia, the respondent no. 2 wanted them to live together in Malaysia, but the petitioner told that same would not be possible before marriage. Thereafter, respondent no. 2 told her that his family would not agree for the petitioner as she was a Punjabi girl and he was a Tamil Brahmins so, only way was to first marry and then disclose the same to the families. When she told her family about respondent no.2, they too disagreed, stating reason that he is not the right person for her,

therefore, they planned to marry on 08.07.2008 without informing their families.

4. Accordingly, the petitioner had to arrange the clothes and jewellery including ring etc. for both of them and the respondent no. 2 had to arrange the temple and material required for the ceremonies of the marriage. Marriage was solemnized on 08.07.2008 at Venkateswara Temple, Sector-3, R.K. Puram, New Delhi, before 2 priests with all requisite formalities and the temple fee/donation was paid by respondent no.2. On the date of marriage, they were accompanied by some friends too. Thereafter, they went to Ambala to her house to disclose the marriage to her parents. Family of the petitioner lost their temperament at the first sight but accepted the marriage later on. Thereafter, they went to respondent no.2's sister's house in Dilshad Garden, Delhi and informed about the marriage. The parents of the respondent no. 2 created a complete melodrama, but finally accepted the marriage on the condition that the said marriage will not be disclosed to the public at large until they complete their MBA and return to India.

5. Accordingly, they went to Malaysia and took a premise to reside on joint basis in Cempaka, Malaysia in a rented home from Lee Huey Miin (Athena) and the petitioner used to pay the rent alone and take care of all the

household expenses. The respondent no. 2 used to say that he had asked his family for money too whereas she wondered where the respondent no. 2 used it. She also argued with him about where the money went because she figured out that the respondent no. 2 was using money on movies, visiting dirty areas, stalking girls and consuming alcohol. When petitioner confronted to him, he replied it was none of her business and beat her black and blue. He used to beat her on several occasions because of which she almost lost her right eye sight and took treatment at Columbia Asia Hospital.

6. Further case of the petitioner is that in Malaysia, respondent no. 2 suddenly started a new phenomenon of having unnatural sex like oral sex during her periods and anal sex etc. Whenever, the petitioner revolted, the respondent no. 2 threatened her that he will go to other girls. It was disclosed to all their friends in Malaysia that they got married in India and are husband and wife. They celebrated their marriage anniversary and Karva Chauth in Malaysia. They had also gone for holidays in Malaysia with other common friends, one of which was 100% sponsored by one of her lecturer Mr. Baharin, who the petitioner assisted in teaching at the university.

7. One day the petitioner come to know that respondent no. 2 was in a relationship with a girl named Erina and thereafter, when she confronted

him about the same, he fought with her and therefore, the petitioner planned to come back to India. Respondent No. 2 being afraid also travelled with her and they left their research and internship in Malaysia incomplete and returned to India.

8. Further, the case of the petitioner is that, after returning from Malaysia in October 2009, the petitioner and the respondent no. 2 both were residing separately, and the petitioner was living with her parents in Ambala, however, she was very disturbed due to respondent no. 2's illegitimate relationship which she had found in Malaysia and his family's reaction to her complaints. She decided to travel to USA to her relatives for a while, so she left in November, 2009 for USA. When she was in USA, he tried to contact her several times promising that if she would come back, he would change. Accordingly, the petitioner came back to India from USA, they were still residing separately due to the fear of society because their marriage was not disclosed in public, but they were in touch with each other all time. The respondent no. 2 suggested her to live in the same old rented PG as the respondent no. 2 had more access there since it was close. Thus, in this manner the marriage was kept secret from the society.

9. As the respondent no. 2 has weak eyesight it is tough to ride a bike to

office at night. Respondent No. 2's parents promised that upon compliance of this condition, soon the marriage will be disclosed to the public by performing fresh set of formalities in front of relatives. It was also insisted that petitioner's parents should give her all their money as the petitioner is the only daughter, they must do best possible for respondent no.2. Being helpless, her parents asked respondent no. 2 to look for a decent flat and in June 2013, respondent no. 2 found out a flat in Sector-37, Gurgaon, of BPTP builders for a total consideration of Rs. 40 Lacs which was near his office too. The respondent no. 2 paid about 50,000 for her ring but took the money back in cash. The respondent no. 2 asked her to purchase clothes and shoes for him for the engagement, which she did. For the flat, respondent no. 2 had suggested, payment of Rs. 20 Lacs to be paid in September 2013. But due to the reasons of financial crunch, the said payment could not be made to the builder, therefore, on 08.12.2013, the respondent no.2's parents did not attend the engagement ceremony and it was a huge shock to the petitioner and her family. In addition to this, respondent no. 2 even deactivated his Facebook profile so that no one, except the guests at the engagement and his office colleagues, would become aware of this engagement.

10. It has been observed vide impugned order dated 26.09.2016 passed by the ASJ (Special Fast Track Court) that no case under Section 376 IPC is made out against respondent no. 2. As far as Sections 498A & 406 IPC are concerned, the same are triable by Metropolitan Magistrate. Accordingly, the case file has been returned with a request to assign the same to a court of competent jurisdiction for disposal as per law.

11. During the course of arguments, learned APP for the State submits that there are specific allegations levelled against the respondent no. 2 for committing sexual exploitation of the petitioner and hence the discharge under Section 376 IPC is illegal and perverse.

12. It is not in dispute that petitioner had married accused / respondent no. 2 on 08.07.2008 at Venkateswara Temple, Sector-3, R.K. Puram, New Delhi but the fact of marriage was not disclosed to the society at large as per insistence of her husband (respondent no. 2). However, both stayed as husband and wife for 6 years, including their stay in Malaysia.

13. The petitioner alleged demand of dowry by the parents of respondent no. 2 including demand of flat, gold jewellery etc. though no arguments have been advanced by the learned counsel for Respondent no. 2 on this aspect. But it has nowhere been claimed by the petitioner that even once

respondent no. 2 had denied the function of their marriage.

14. During the course of arguments, learned counsel for complainant / petitioner had argued that since the accused had denied having been married with her, it becomes the case of commission of rape on the part of accused, hence, offence u/s 376 read with section 493 IPC is made out. As discussed hereinabove, no case is made out under Section 376 IPC. As regards section 493 CrPC, for the sake of convenience, the same is reproduced hereunder:-

“493. Cohabitation caused by a man deceitfully inducing a belief of lawful marriage.—Every man who by deceit causes any woman who is not lawfully married to him to believe that she is lawfully married to him and to cohabit or have sexual intercourse with him in that belief, shall be punished with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine.”

15. It is observed by the Trial Court that there is no accusation of any deception by the respondent no. 2 to the petitioner in the entire revision petition, admittedly, the parties entered into sexual intercourse, post their marriage. And hence, applicability of section 493 IPC is also ruled out.

16. Considering the fact that even if it is presumed for a moment that no formal marriage took place, yet both of them had consenting sexual relations and hence does not attract 376 IPC. Therefore, Trial Court has rightly discharged respondent no. 2 under Section 376. Further, since it is an

admitted fact of the petitioner that the parties have solemnized the marriage on 08.07.2008 and have lived together as husband and wife for 6 years, and only thereafter, physical relations were established between them, thus, no case u/s 376IPC is made out against the accused as marital rape has not been recognized in India till date.

17. Keeping in view the facts mentioned above, I find no perversity or illegality in the impugned order dated 26.09.2016 and the same calls for no interference by this Court.

18. The petition is accordingly dismissed.

19. The pending application also stands disposed of.

(SURESH KUMAR KAIT)
JUDGE

DECEMBER 10, 2019/sm