

**IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH**

CRA-AD-130-2022 (O&M)
Date of Decision: 05.08.2022

Vaishali

.....Appellant

V/s.

State of Haryana and another

.....Respondents

CORAM: HON'BLE MR. JUSTICE G.S. SANDHAWALIA
HON'BLE MR. JUSTICE VIKAS SURI

Present: Mr. Abhinav Sood, Advocate
for the appellant.

G.S. SANDHAWALIA, J. (Oral)
CRM-21940-2022

Application for condoning the delay of 92 days in filing the leave to appeal has been filed, which is duly supported by an affidavit.

Keeping in view the averments made in the application duly supported by an affidavit, sufficient cause has been made out to condone the delay. Accordingly, the application is allowed. Delay of 92 days in filing the leave to appeal is condoned.

CM stands disposed of.

CRA-AD-130-2022

Challenge in the present appeal is against the order of acquittal recorded on 18.09.2019 by the Fast Track Court, Faridabad in FIR No. 16 dated 21.06.2018 registered under Sections 323, 376, 342, 120-B IPC at Police Station Women, NIT Faridabad, District Faridabad.

Learned counsel for the appellant has vehemently argued that

under the pretext of marriage, the appellant was exploited by respondent No.2 and, therefore, the trial Court would not justify in recording the acquittal. It is submitted that she had also conceived as such and she was thrown out after having stayed with the respondents approximately seven months. The trial Court has noticed that there are two versions which have come forward and the first version noticed that the mother of the respondent had been admitted in B.K. Hospital, Faridabad for some surgery wherein the appellant had met the accused and his parents and the accused-respondent No.2 developed physical relations with her allegedly on the allurement of marriage. It is her case that on the pretext of marriage they took her to their home and when she asked the accused for marriage, then family members of accused confined her in their house and tortured her on 01.04.2018 and 02.04.2018.

The second version was that as per the statement under Section 164 Cr.P.C. she had been taken in an auto by the accused along with two other boys and they were not known to her and they put one blue cloth on her mouth due to which she became unconscious and when she regained consciousness she found herself in a room in Sanjay Colony and accused had committed rape upon her. After 3-4 days, mother of the accused had come to the room and she had requested her to release her but they inflicted injuries to her and accused continued to commit bad act for four months. Thereafter on 04.04.2018, accused, his mother and his brother shunted her out from their house and they gave beatings to her and her miscarriage was happened.

In the statement before the Court, her version was that the mother of the accused told her that she has no daughter and she wants to

treat her as her daughter and had taken her to their home and accused Abhishek committed rape upon her on the promise of marriage. She had become pregnant and when she disclosed the fact of her pregnancy to the family members of the accused, then they demanded money from her parents, which had been refused by her father, then they gave her beatings and on 03.04.2018, accused Abhishek and his mother had thrown her out from their house.

The fact remains that the complainant herself stayed with the accused for a period of four months. As per the Investigating Officer also, during investigation it came on record that they had solemnized marriage and they were living together in a rented accommodation. Trial Court came to the conclusion that she was consenting party as well. It is pertinent to notice that the FIR was lodged only on 21.06.2018 even two months after she was turned out. Such delay, as such, in lodging FIR as such is fatal in such cases on account of the fact that there has been due deliberation which comes into place. No explanation as such whatsoever has been given why the delay has taken place. It has been repeatedly held by the Hon'ble Apex Court that though on the statement of the victim conviction can be recorded but if there is delay in lodging FIR and there are contradictions, the Court has to be cautioned to award conviction solely on the statement of a victim. The facts of the case do not inspire any confidence in the statement of the victim and she cannot be said to be a person of sterling quality. Apparently, she was a working woman employed as a Trainee Nurse and went into a relationship with the accused and lived together. On account of relationship going sore the incident has been given the colour of criminal offence on the ground of allurement that consent had been wrongly obtained. The Supreme

Court has repeatedly held that such allurements as such are do not make out a case of criminal offence. Reference can be made to **Deepak Gulati Vs. State of Haryana, 2013(3) R.C.R. (Criminal) 96.**

Keeping in view the above fact, we are of the considered opinion that the trial Court was well justified in recording the acquittal as it examined the evidence in detail and there can be said to be no perversity in the reasoning arrived at. In the absence of any such finding having not been arrived at, this Court while examining the application of leave to appeal would have to keep in mind that there would happen to be double presumption of innocence of respondent No.2. In such circumstances, no case is made out to grant leave to appeal.

Dismissed.

(G.S.SANDHAWALIA)
JUDGE

(VIKAS SURI)
JUDGE

05.08.2022
Satyawar

Whether speaking/reasoned	Yes / No
Whether Reportable	Yes / No