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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ **CRL.L.P. 255/2022**

STATE NCT OF DELHIPetitioner
Through: Mr. Sunil Kumar Gautam,
APP for the State with SI
Maya Shankar, PS Preet
Vihar.

versus

PRATAP BARIKRespondent
Through: Mr. Varun Dev Mishra,
Mr. Mrinmoi Chatterjee
and Ms. Kirti Lal, Advs.

CORAM:
HON'BLE MR. JUSTICE AMIT MAHAJAN

ORDER
04.08.2025

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1. The present petition is filed under Section 378 of the Code of Criminal Procedure, 1973 ('CrPC') seeking grant of leave to challenge the judgment dated 04.08.2020 (hereafter '**impugned judgment**'), in Sessions Case No. 2298/2016 arising out of FIR No. 335/2016, registered at Police Station Preet Vihar, whereby the learned Trial Court acquitted the accused/respondent for the offence under Section 376(2)(n) of the Indian Penal Code, 1860 ('IPC').

2. The brief facts are that the accused/respondent was introduced to the prosecutrix by one of her friends in the year 2010, whereafter, he started frequently meeting her on different occasions.

3. It is alleged that on 12.09.2015 at around 10:00 p.m., the accused/respondent along with his friend came to the house of

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the prosecutrix and asked her to meet them. Initially, the prosecutrix objected due to late hours, however, upon their insistence she agreed to meet them.

4. It is alleged that all of them went to a restaurant to have dinner, whereafter, the accused/respondent told the prosecutrix that he loves her and thereafter proposed her to get married.

5. It is alleged that thereafter the accused/respondent started regularly visiting the house of the prosecutrix, however, the prosecutrix asked the accused/respondent to not visit her house before marriage.

6. It is alleged that on 08.11.2015, the accused/respondent visited the house of the prosecutrix and established forceful physical relations with her, whereafter, the accused/respondent tried to convince the prosecutrix that nothing wrong has undergone and they will be husband and wife after marriage.

7. It is alleged that the prosecutrix used to frequently ask the accused/respondent regarding their marriage, however, he used to avoid the same.

8. It is alleged that the accused/respondent repeatedly established forceful sexual relations with the prosecutrix from 08.11.2015 to 13.04.2016, whereafter, the accused/respondent stopped talking to the prosecutrix.

9. Pursuant to which on the basis of the compliant given by the prosecutrix, the police registered FIR No. 335/2016 under Sections 376/120B/34 of the IPC.

10. The police thereafter recorded the statement of the prosecutrix under Section 164 of the CrPC and subsequently arrested the accused/respondent.



11. After completion of investigation, chargesheet was filed against the accused/respondent under Sections 376/376(2)(n) of the IPC.

12. The learned Trial Court *vide* order dated 03.04.2018 framed charges under Section 376(2)(n) of the IPC against the accused/respondent to which he pleaded not guilty and claimed trial.

13. The accused/respondent in his statement under Section 313 of the CrPC denied the entire evidence against him and stated that he has been falsely implicated in the present case.

14. The learned Trial Court noting the inconsistencies in the statement of the prosecutrix acquitted the accused/respondent by the impugned judgment.

15. The learned Additional Public Prosecutor for the State submits that the learned Trial Court failed to appreciate the fact that the accused/respondent had first assured her that he will marry her and thereafter established sexual relations with the prosecutrix.

16. He submits that the learned Trial Court failed to appreciate the fact that all though the prosecutrix has not mentioned the specific dates on which the accused/respondent had established sexual relations with her, however, in her testimony she had deposed that the accused/respondent had repeatedly established forceful sexual relations with her.

17. *Per contra*, the learned counsel for the accused/respondent vehemently opposes the arguments raised by the learned Additional Public Prosecutor for the State and consequently prays that the present petition be dismissed.



18. I have heard the learned counsel for the parties and perused the record.

Analysis

19. It is trite law that this Court must exercise caution and should only interfere in an appeal against acquittal where there are substantial and compelling reasons to do so. At the stage of grant of leave to appeal, the High Court has to see whether a prima facie case is made out in favour of the appellant or if such arguable points have been raised which would merit interference. The Hon'ble Apex Court in the case of ***Maharashtra v. Sujay Mangesh Poyarekar***: (2008) 9 SCC 475 held as under:

“19. Now, Section 378 of the Code provides for filing of appeal by the State in case of acquittal. Sub-section (3) declares that no appeal “shall be entertained except with the leave of the High Court”. It is, therefore, necessary for the State where it is aggrieved by an order of acquittal recorded by a Court of Session to file an application for leave to appeal as required by sub-section (3) of Section 378 of the Code. It is also true that an appeal can be registered and heard on merits by the High Court only after the High Court grants leave by allowing the application filed under sub- section (3) of Section 378 of the Code.

20. In our opinion, however, in deciding the question whether requisite leave should or should not be granted, the High Court must apply its mind, consider whether a prima facie case has been made out or arguable points have been raised and not whether the order of acquittal would or would not be set aside.

21. It cannot be laid down as an abstract proposition of law of universal application that each and every petition seeking leave to prefer an appeal against an order of acquittal recorded by a trial court must be allowed by the appellate court and every appeal must be admitted and decided on merits. But it also cannot be overlooked that at that stage, the court would not enter into minute details of the prosecution evidence and refuse leave observing that the judgment of acquittal recorded by the trial court could not be said to be “perverse” and, hence, no leave should be granted.”

(emphasis supplied)

20. The learned Trial Court vide the impugned judgment
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acquitted the accused/respondent for the said offences on the ground that there were material inconsistencies in the depositions made by the prosecutrix.

21. PW-1, the prosecutrix in her cross-examination deposed that the accused/respondent had allegedly proposed to her for the first time in 2011 and she had accepted the said proposal. However, she had not disclosed the same in her complaint and had only stated that the accused/respondent had proposed to her on 12.09.2015 while they were having dinner at a restaurant.

22. The prosecutrix further deposed that on 12.09.2015 the accused/respondent had allegedly stayed with her for three hours and kept on convicting her regarding their marriage, however, the said fact has not been disclosed by the prosecutrix in her complaint.

23. The learned Trial Court noted that the prosecutrix in her complaint has only deposed regarding one alleged incident of sexual intercourse that is on 08.11.2015 and had given a vague statement that the accused/respondent had repeatedly established sexual relations with her.

24. In her examination-in-chief the prosecutrix stated that the accused/respondent had allegedly established forceful sexual relations with her on four occasions being 08.11.2015, December 2015, January 2016 and April 2016.

25. It is trite law that the accused can be convicted solely on the basis of evidence of the prosecutrix as long as same inspires confidence and corroboration is not necessary for the same [Ref. **Moti Lal v. State of M.P. : (2008) 11 SCC 20**]. However, as noted above, the testimony of the prosecutrix is full of



inconsistencies and the same does not inspire confidence. The benefit of the same has to go to the accused/respondent.

26. In the present case, the prosecutrix had deposed that the accused/respondent had allegedly established forceful sexual relations with her on many occasions. However, neither in her compliant, statement under Section 164 of the CrPC nor her testimony before the learned Trial Court has, she deposed that she resisted or raised an alarm while the accused/respondent was committing the alleged offence.

27. The learned Trial Court in the impugned judgment noted that the prosecutrix had deposed that the accused/respondent used to visit her house after confirming from her whether she was alone or not.

28. If the accused/respondent had allegedly established forceful sexual relations with her on 08.11.2015, then she should have not allowed the accused/respondent to enter her house again and commit the alleged offence yet again.

29. Further, the allegations levelled against the accused/respondent were not supported by any other corroborative evidence either in the form of the evidence given by any of the prosecution witnesses or any medical evidence.

30. In the present case, it is not denied that the prosecutrix had known the accused/respondent for a long time. The alleged incident is stated to have taken place for the first time in the month of November, 2015 however no complaint was made at the time.

31. Thereafter, the prosecutrix alleges that she succumbed to the entreaties of the accused/respondent to have sexual relations



with him, on account of the promise to marry, and therefore continued to have sex on several occasions and even then, no complaint was made by her.

32. The prosecutrix further alleged that the last alleged incident took place on 13.04.2016 and subsequently, the FIR was registered on 06.10.2016, that is, almost one year from the first alleged incident.

33. The Hon'ble Apex Court, in the case of **Meharaj Singh (L/Nk.) v. State of U.P. : (1994) 5 SCC 188**, held as under:

“12. ...Delay in lodging the FIR often results in embellishment, which is a creature of an afterthought. On account of delay, the FIR not only gets bereft of the advantage of spontaneity, danger also creeps in of the introduction of a coloured version or exaggerated story...”

34. It is not disputed that the prosecutrix was a major at the time of the alleged incident. Further, the prosecutrix and the accused/respondent were in a relationship and enjoyed each other's company.

35. In the case of **Mahesh Damu Khare v. State of Maharashtra : 2024 SCC OnLine SC 3471**, the Hon'ble Apex Court reiterated the legal principles concerning consensual relationships and the initiation of criminal proceedings on allegations of sexual relationship on the false promise of marriage. The Hon'ble Apex Court quashed the FIR against the appellant therein and held as under :

“22..... Thus, in a situation where physical relationship is maintained for a prolonged period knowingly by the woman, it cannot be said with certainty that the said physical relationship was purely because of the alleged promise made by the appellant to marry her. Thus, unless it can be shown that the physical relationship was purely because of the promise of marriage, thereby having a direct nexus



with the physical relationship without being influenced by any other consideration, it cannot be said that there was vitiation of consent under misconception of fact.

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27..... In our opinion, the longer the duration of the physical relationship between the partners without protest and insistence by the female partner for marriage would be indicative of a consensual relationship rather than a relationship based on false promise of marriage by the male partner and thus, based on misconception of fact.”

28. Moreover, even if it is assumed that a false promise of marriage was made to the complainant initially by the appellant, even though no such cogent evidence has been brought on record before us to that effect, the fact that the relationship continued for nine long years, would render the plea of the complainant that her consent for all these years was under misconception of fact that the Appellant would marry her implausible. Consequently, the criminal liability attached to such false promise would be diluted after such a long passage of time and in light of the fact that no protest was registered by the complainant during all those years. Such a prolonged continuation of physical relationship without demurrer or remonstrance by the female partner, in effect takes out the sting of criminal culpability and neutralises it.

29. It will be very difficult to assume that the complainant who is otherwise a mature person with two grown up children, was unable to discover the deceitful behaviour of the appellant who continued to have sexual relationship with her for such a long period on the promise of marriage. Any such mendacious act of the appellant would have been exposed sooner without having to wait for nine years. The inference one can draw under the circumstances is that there was no such false promise made to the complainant by the appellant of marriage by continuing to have physical relationship so as to bring this act within the province of Section 376 IPC and therefore, there was no vitiation of consent under misconception of fact.

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31. In our view if criminality is to be attached to such prolonged physical relationship at a very belated stage, it can lead to serious consequences. It will open the



scope for imputing criminality to such long term relationships after turning sour, as such an allegation can be made even at a belated stage to drag a person in the juggernaut of stringent criminal process. There is always a danger of attributing criminal intent to an otherwise disturbed civil relationship of which the Court must also be mindful.

36. It is not disputed that the prosecutrix and the accused/respondent met for the first time in 2010 and thereafter on several occasions.

37. From a perusal of the statement of the prosecutrix and the materials on record, it cannot be said that the prosecutrix entered into a physical relationship with the accused/respondent solely on account of the alleged promise to marry made by the accused/respondent.

38. Therefore, in the opinion of this Court the learned Trial Court has rightly acquitted the accused/respondent for the said offence.

39. In view of the aforesaid discussion, this Court is of the opinion that there is no infirmity with the impugned judgment passed by the learned Trial Court and the State has not been able to establish a *prima facie* case in its favour and no credible ground has been raised to accede to the State's request to grant leave to appeal in the present case.

40. The leave petition is dismissed in the aforesaid terms. Pending application(s), if any, also stand disposed of.

AMIT MAHAJAN, J

AUGUST 4, 2025