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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**% **Date of decision: 27th March, 2025**+ **CRL.L.P. 345/2017****STATE NCT OF DELHI**

.....Petitioner

Through: Mr. Yudhvair Singh Chauhan, APP
for the State with SI Ramawati,
P.S. Maurice Nagar.

versus

KAPIL NOGIA

.....Respondent

s/o Trilok Chand Nogia

r/o 19/98,

West Moti Bagh, Delhi

Through: None.

CORAM:**HON'BLE MS. JUSTICE NEENA BANSAL KRISHNA****J U D G M E N T (oral)****CRL.M.A. 9592/2017 (Condonation of delay)**

1. Application under Section 5 of the Limitation Act read with Section 482 of the Code of Criminal Procedure, 1973 (*hereinafter referred to as 'Cr.P.C.'*) has been filed on behalf of the Petitioner/State seeking condonation of delay of 106 days in filing the accompanying Criminal Leave to Appeal.

2. For the reasons stated in the Application and in the interest of justice, the delay of 106 days in filing the accompanying Criminal Leave



to Appeal, is condoned and the Application is allowed.

3. The Application is disposed of accordingly.

CRL.L.P. 345/2017

4. Application under Section 378(1) Cr.P.C, has been filed by the Leave Petitioner for grant of Leave to Appeal against the Order of Acquittal dated 20.10.2016 in FIR No.118/2014 under Section 376/354/354D/506/509 IPC, 1860 (*hereinafter referred to as 'IPC'*), registered at Police Station Maurice Nagar.

5. It is further submitted that the Complainant had specifically averred that initially she had been compelled to establish the relationship and thereafter, allegedly a morphed CD was prepared of the Complainant, which compelled her to establish sexual relationship with the Appellant. There exist valid grounds to show that the relationship was not consensual.

6. It is submitted that the Leave to Appeal, be granted.

7. The Respondent has been served through mother, but none has appeared on his behalf.

8. **Submissions heard and the record perused.**

9. Considering the grounds sought for seeking Leave to Appeal, the Leave Petition is allowed.

CRL.A...../2025 (to be numbered)

10. The Appeal under Section 378(1) Cr.P.C has been filed by the Appellant/State against the Order of Acquittal dated 20.10.2016 in FIR No.118/2014 under Section 376/354/354D/506/509 IPC, Police Station



Maurice Nagar.

11. ***Briefly stated***, the Prosecutrix lodged a Complaint on 31.5.2014 at Police Station Maurice Nagar, Delhi against the Accused, Kapil Nogia for abducting the Prosecutrix on the inducement of returning obscene video recording and also forcibly, at knife point, had sexual intercourse with her on 23.05.2013 at Bonta Park, Delhi and twice on 16.08.2013 & 03.09.2013 at Hotel La Budha, near New Delhi Railway Station and forced her into having illicit intercourse against her consent and repeatedly raped her at knife point.

12. FIR No.118/2014 under Section 376/354/354D/506/509 IPC, was registered at Police Station Maurice Nagar.

13. It emerged during the investigations that that the Accused was working in the same Department as the Prosecutrix. He morphed and fabricated an obscene video of the prosecutrix which he showed her in the Office on a Computer in January 2013. When she demanded the CD, he refused to do so and said that she must do as he says or else he would ruin her reputation and upload the video on the internet.

14. On the pretext that he would give the CD to her only if she established physical relations with him, the Accused induced the Prosecutrix to go to Bonta Park. When she refused, the accused threatened to kill her by brandishing a knife. She got scared and went to Bonta Park, where he forcibly took her inside the bushes and committed rape. Thereafter, he called her to a Hotel 'La Budha' and repeatedly committed rape on 16.08.2013 and 03.09.2013. In the last instance, he also gave her beatings and threatened to kill her by throwing acid on her.



15. **The Prosecutrix got married on 29.04.2013.** However, the Accused continued to blackmail her stating that he would show the video to her husband and ruin her life. He continued to sexually exploit her and blackmail her. When she could not take it anymore, she revealed the incident to her husband on 29.05.2014. Thereafter, the present case was registered under Section 376(2)/506 of IPC. After investigations, Charge Sheet was filed on 08.08.2014.

16. **Charges** were framed for offences punishable under Section **366, 376(2)(n) and 506 IPC**, on 13.10.2014. Additional Charge under **Section 354-D IPC** was also framed on 3.12.2014.

17. The Prosecution examined ten Prosecution's witnesses. The accused led the evidence of three Defence witnesses.

18. **It is submitted on behalf of the Appellant/ State** that the testimony of the Prosecutrix was reliable, trustworthy, and inspired confidence. It is the settled proposition of law that conviction of the Accused can be based on the testimony of the Prosecutrix. Yet, the learned ASJ acquitted the Accused of all offences *vide* impugned Judgment and Order dated 20.10.2016.

19. **The acquittal is sought to be challenged on the grounds that** the impugned Judgment is based on conjectures and surmises and is contrary to both the evidence as well as settled law. The learned ASJ failed to appreciate that the testimony of the Prosecutrix, was reliable, trustworthy and inspired confidence and the conviction of the accused should have been done on the testimony of the Prosecutrix.

20. Furthermore, the learned ASJ did not appreciate that the Accused



had committed rape on the Prosecutrix at knife point as such the offence under Section 376 IPC had been proved, and also that the Accused had repeatedly committed rape on the Prosecutrix and specific dates and venue had been specified by the Prosecutrix and as such the offence under Section 376(2)(n) IPC, had been proved. The delay in registration of FIR has been duly explained.

21. Ld. ASJ further failed to appreciate that the Prosecutrix had no reason for falsely implicating the Accused.

22. The learned ASJ did not appreciate that the Accused had induced the Prosecutrix to accompany him to Bonta Park on the pretext of returning the obscene video and forced her into illicit intercourse in the park as such the offence under Section 366 IPC was proved. It was also not appreciated that the Prosecutrix had categorically deposed that the Accused had been stalking her on the way to Office and on the way to her home and as such offence under Section 354D IPC, was also proved.

23. The Complainant has fully supported the case of the Prosecution and also identified the Accused during trial. Thus, Order of acquittal is liable to set-aside and the Accused be convicted for the offences with which he was charged.

24. **Submissions heard and the Record perused.**

25. Admittedly, the Prosecutrix joined services on 29.05.2009 as Junior Assistant on contract basis in the Department of Faculty of Mathematical Sciences of Delhi University where Respondent, Kapil Nogia was working as Peon in the same Department. Essentially, the allegations made by the Prosecutrix are of being stalked by the



Respondent and of being blackmailed into establishing sexual relationship with the Respondent on three occasions on the threat of making the obscene CD of her, prepared by him, go public.

26. ***The first set of allegations*** as made by the Complainant was that the accused used to make '*Galat Isshare*' in her Complaint, Ex.PW-2/A while in her testimony as PW-1, she used the terms '*Gande Gande Isshare*' and has deposed that the accused/Respondent used to keep staring at her in the Office. Several times, she tried to make him understand to desist from doing so, but he persisted. Gradually, he started doing '*Gande Gande Isshare*' towards her.

27. First and foremost, aside from generically saying '*Galat Isshare*' or '*Gande Gande Isshare*', there is not an iota of evidence to explain the alleged acts, which she termed as '*Gande Isshare*' or '*Galat Isshare*'. Nothing much can be made out from these terms used by the Prosecutrix in her Complaint as well as in her testimony.

28. Pertinently, she has admitted in her cross-examination that four ladies including Section Officer, Ms. Sushma Kumari and PA to Dean, Ms. Kavita Rani, used to sit with her in one room in the Office, while the male staff used to be in the other room. Her seat was not visible from the other room and the Respondent could not see her from his work place while sitting during the Office hours. She further explained that there were three empty chairs in the room, and sometimes accused used to come and sit on the empty chair. There were total seven officials in both the rooms. Further, admittedly, there was a corridor between the two rooms and that there was a Security Guard posted outside their Office.



She admittedly did not make any Complaint to the Sexual Harassment Committee in the Department.

29. This testimony is corroborated by **PW-9, SI Gurdeep Kaur**, the Investigating Officer, who in her examination, has stated that she had visited the Department of Mathematics, Delhi University, several times in connection with the present case. She had noticed the sitting arrangement in the aforesaid Office. The Respondent, who was Office Attendant, was not having any fixed seat, but he used to often sit in the room directly opposite to the room where the Prosecutrix used to her work. She further admitted that the room where the Prosecutrix and where the Respondent used to sit, were opposite towards each other and there was a corridor in between. She further admitted that while sitting in the other room, the persons sitting in the room where the Prosecutrix used to sit were not visible unless the concerned person came to the door of the said room.

30. It is, therefore, evident that while the Prosecutrix claimed that the Petitioner used to do '*Gande Isshare*,' but she has neither given any date or any details of these alleged acts. In the absence of any cogent evidence in this regard, the learned ASJ has rightly concluded that the Prosecutrix failed to prove the alleged acts.

31. Furthermore, she had claimed that he used to stalk her from the Office to her house on many occasions but again, aside from bald assertions, there is no such cogent evidence in regard to him stalking the Prosecutrix. It is pertinent here to note that the suggestion had been given to the Prosecutrix that she was having a love affair with the Respondent since 2009 when she joined the Department, where the Respondent was



already working as a Peon.

32. *The learned ASJ has rightly held that no cogent evidence has been led to prove the offence under Section 354D and acquitted the Respondent.*

33. *The second Charge* against the Respondent was under **Section 366 IPC** of having abducted her within intent to commit rape upon her. Prosecutrix in her Complaint as well as in her testimony has empathically stated that the Respondent had told her that he has prepared a morphed CD. After she got married on 29.04.2013, the Respondent started blackmailing her that he would make the CD viral. The Prosecutrix had deposed that the alleged CD was shown to her on the Office computer by the Respondent. Pertinently, no such alleged CD has been recovered during the investigations. The mobile phone of the Respondent was seized and sent to FSL but thereto no such alleged video could be recovered. The assertions of the Prosecutrix that she was being blackmailed on the pretext of her morphed CD, is not established. In this context, it would be relevant to refer to the CD records of the mobile phone of the Prosecutrix, Ex.PW-7/E, which reveals that she used to frequently talk to the Respondent, a fact that has been admitted by her in her cross-examination.

34. From the testimony of the Petitioner and in the absence of recovery of any CD, there is no cogent evidence that she was induced to accompany the accused with the intent to force her to have illicit sexual relationship with him. In fact, the entire evidence leads to only one conclusion that she accompanied him voluntarily. The learned ASJ has



rightly concluded that no offence under Section 366 IPC is made out.

35. *The third Charge* against the accused/Respondent is that he blackmailed the Prosecutrix of making a CD viral and compelled her to accompany him on 23.05.2013 to Bonta Park at about 1:20 p.m. where he forcibly committed rape upon her. He again on 16.08.2013, after Office hours, at about 5:30 P.M. and again on 03.09.2013, blackmailed her to accompany him to La Buddha Hotel near New Delhi Railway Station on the pretext of returning the CD and on these two dates as well he committed rape upon her.

36. The Prosecutrix has deposed that while being put under threat and fear of her CD being made public, she was compelled by the Respondent, to accompany her on three occasions wherein he established sexual relationship. On all three occasions, she did not raise any alarm nor did she report this alleged incident of rape to any person in her Department or her family members.

37. *First and foremost*, it cannot be overlooked that she was confronted with her photographs, Ex.PW-2/D1, which were not denied by her, which clearly show her more than friendly relationship with the Respondent. The photographs tell the story of there being cordiality which was much more than that of a friend.

38. Furthermore, Prosecutrix has admitted that she used to exchange SMS messages. Though, these SMS messages were put to her but were unfortunately marked as Ex.PW-2/DA. Even if these SMS messages cannot be considered in the evidence but her own admissions and her conduct clearly reflects that she had voluntarily gone with the Respondent



and established physical relationship.

39. Section 375 IPC provides that any sexual intercourse without consent would amount to rape. *Section 90 of IPC provided that the consent is not consent if it is given by a person under fear or injury or under misconception of fact.*

40. As discussed above, the circumstances and testimony of the Prosecutrix does not establish that she was under any fear or threat of any CD of hers being made public, when no such CD has been brought on record.

41. It also emerges that from the testimony of **PW-3/Mr. Prayag Dixit**, husband of the Prosecutrix that he started receiving calls from the Respondent and when he confronted the Prosecutrix, she told him the same story of being blackmailed by the Respondent and being raped under the threat. Pertinently, the Prosecutrix PW-3, Prayag Dixit had deposed that he had received phone calls 3-4 times from an unknown number wherein he was threatened that the video of his wife would be made public, but pertinently, in his cross-examination, he has admitted that none of these facts as narrated in examination-in-chief, were told by him to the Police in his Statement under Section 161 Cr.P.C. Clearly his testimony of alleged threats being extended by the Respondent is nothing but an afterthought.

42. Section 375 of the IPC postulates that a person is said to have committed rape if he performs any of the sexual acts mentioned under sub-clauses (a), (b), (c) and (d), without the consent of the woman. As mentioned above, in terms of Section 90 of the IPC, if the consent is



given under a misconception of fact, such consent is no consent in the eyes of law and cannot be considered to be willful and voluntary consent.

43. The Apex Court has examined and considered recently in *Mahesh Damu Khare vs The State of Maharashtra & Anr.*, 2024 INSC 897, that if the person acts with an active understanding of the circumstances, actions and consequences of the act, it would indicate the presence of consent.

44. To conclude, the Prosecutrix is an educated woman employed in the Department of Mathematics of Delhi University where Respondent was working as a Peon since 2009. The CDR of the Petitioner also shows that they used to frequently talk to each other, a fact also admitted by the Prosecutrix, thereby establishing a friendship between the Prosecutrix and the Respondent. Further, testimony of the Prosecutrix leads to irresistible conclusion that the relationship established by her with the Respondent, was consensual and not under any threat or coercion, as has been claimed by her.

45. The learned ASJ has rightly appreciated the entire evidence in correct perspective, to conclude that no offence of rape or extending threats, are made out.

46. There is no merit in the present Appeal, which is hereby dismissed and disposed of.

(NEENA BANSAL KRISHNA)
JUDGE

MARCH 27, 2025
rk/RS