संलग्नक-20/7/1

Case Crime No. 904 of 2012 under sections 363/366/376/323/504/506 I.P.C. Police Station Izzatnagar Bareilly Sessions Trial No. 124/2013

IN THE HIGH COURT OF JUDICATURE AT ALLAHABAD

******** 362

~~Special~~ Leave to Appeal Application No. of 2014

3568/14

On behalf of:

Rahul Pratap Bisariya
son of Ramesh Babu Bisariya
resident of House No. 10 Sant Nagar
near Airport Police Station Izzatnagar
District Barcilly .... Complainant/Appellant

IN

CRIMINAL APPEAL NO. OF 2014
(Under Section 372(2) Code of Criminal Procedure)

(**DISTRICT: BAREILLY**)

Rahul Pratap Bisariya
son of Ramesh Babu Bisariya
resident of House No. 10 Sant Nagar
near Airport Police Station Izzatnagar
District Bareilly
.... Applicant/Appellant

Versus

1. State of U.P.

2. Sanjay Mallah
son of Chote Lal

(2)

resident of A/211/2 Rajendra Nagar
Izzat Nagar District Bareilly.

.... Opposite parties

To,

The Hon'ble the Chief Justice and his other companion Judges of the aforesaid Hon'ble Court.

The humble application of the above named applicants, Most Respectfully showeth as under:-

1. That full facts of the case have been given in the accompanying affidavit which may be read as part of this application.

2. That in view of the facts and circumstances of the case it is expedient in the interest of justice that this Hon'ble Court may be pleased to grant Special Leave to Appeal from the order of acquittal dated 3.7.2013 by Sri Shiv Kumar Singh, Additional District and Sessions Judge, Court No. 10 Bareilly in Case Crime No. 904/2012 under sections 363/366/376/323/504/506 I.P.C. Police Station Izzatnagar of the instant Appeal pending before this High Court otherwise the applicant / Appellant shall suffer irreparable loss and injury.

PRAYER

It is, therefore, **Most Respectfully** prayed that this Hon'ble Court may be pleased to grant Special Leave to

Court No. - 36

Case :- CRIMINAL MISC. APPLICATION U/S 372 CR.P.C (LEAVE TO APPEAL) No. - 363 of 2014

Applicant :- Rahul Pratap Bisariya
Opposite Party :- State Of U.P. And Another
Counsel for Applicant :- Pankaj Saxena,Anupam Laloriya
Counsel for Opposite Party :- Govt.Advocate

Hon'ble Rakesh Tiwari,J.
Hon'ble Mrs. Vijay Lakshmi,J.

This appeal under section 372, Cr.P.C. has been preferred by the complainant against judgment and order dated 3.7.2013 passed by Additional Sessions Judge, court no. 10, Bareilly,in S.T. No. 124 of 2013, State Vs. Sanjay Mallah, under section 366,376,323,504,506 IPC.

We have heard Sri Pankaj Saxena, learned counsel for the appellant and learned A.G.A. and perused the impugned judgment.

The impugned judgment shows that learned trial court has disbelieved the documentary evidence adduced by the prosecution regarding age of the prosecutrix and has relied upon her medical examination report. While placing reliance on the law laid down by the Apex Court in recent case of **Jarnail Singh Vs. State of Haryana** (2013(7) SCC-283), learned trial court has held that prosecutrix was major at the time of occurrence and after appreciating the evidence at length, has come to the conclusion that prosecutrix being major,had left her home out of her own free will in odd hours of midnight after receiving a phone call from the accused. She travelled to various places with him on motorcycle and thereafter by train but she never tried to raise any alarm. No injuries were found on her person. On the basis of these facts, learned trial court has acquitted the accused after recording a clear finding that there was consent on the part of the prosecutrix so physical relations between the accused and prosecutrix cannot be termed as rape. On the aforesaid grounds, learned trial court has acquitted the accused - respondent of the charges under section 363,366,376,323,504,506 IPC.

The conclusions drawn by the trial court are based upon cogent reasons. We do not find it to be an appropriate case for grant of leave.

The application for leave is accordingly rejected and consequently the criminal appeal is also dismissed.

Sd/- Rakesh Tiwari J.

Sd/- Mrs Vijay Lakshmi J.

Order Date :- 9.10.2014
SNT/

27/10/14

27-10-2014