

ITEM NO.45

COURT NO.9

SECTION II-C

S U P R E M E C O U R T O F I N D I A
R E C O R D O F P R O C E E D I N G S

SPECIAL LEAVE PETITION (CRIMINAL) Diary No(s). 19531/2018

(Arising out of impugned final judgment and order dated 31-01-2018 in CRLP No. 711/2017 passed by the High Court of Karnataka at Bengaluru)

ALOKA KUMAR

Petitioner(s)

VERSUS

THE STATE OF KARNATAKA & ORS.

Respondent(s)

(IA No.76208/2018-CONDONATION OF DELAY IN FILING and IA No.76210/2018-EXEMPTION FROM FILING C/C OF THE IMPUGNED JUDGMENT and IA No.76209/2018-EXEMPTION FROM FILING O.T.)

Date : 02-07-2018 This petition was called on for hearing today.

CORAM :

HON'BLE MR. JUSTICE ADARSH KUMAR GOEL
HON'BLE MR. JUSTICE S. ABDUL NAZEER

For Petitioner(s) Mr. Kunal Verma, Adv.
Mr. Yugandhara Pawar Jha, AOR
Mr. Piyush Bhardwaj, Adv.

For Respondent(s)

UPON hearing the counsel the Court made the following
O R D E R

Delay condoned.

1. This petition has been preferred against order rejecting prayer for quashing criminal proceedings against the petitioner.

2. The criminal case registered by respondent No.2 is to the effect that the petitioner and daughter of respondent No.2 lived together for six years. The petitioner had promised to marry her but backed down. Thus, she was induced for the intercourse during

the cohabitation on that consideration and not by free consent. The petitioner committed offence under Section 376 of Indian Penal Code, 1860. The trial Court having taken cognizance, the petitioner approached the High Court for quashing. The High Court rejected the prayer for quashing.

3. In connected matter, SLP(c) No.3348/2018, notice has been issued and stay granted. Accordingly, let this petition be heard along with the said matter. We also grant interim orders in same terms.

4. During the course of hearing, one of the question which has been taken up for consideration whether, on account of long cohabitation, even if the relationship is held to be consensual and the petitioner is not held liable for the offence alleged, the petitioner can be fastened the civil liability treating the relationship to be *de facto* marriage in view of long cohabitation. This interpretation may have to be considered so that a girl is not subjected to any exploitation and is not rendered remediless even if a criminal offence is not made out. Somewhat identical issue has been subject matter of consideration in several decisions, including *Vidhyadhari versus Sukhrana Bai*¹; *Pyla Mutyalamma Alias Satyavathi versus Pyla Suri Demudu*²; *Chanmuniya versus Virendra Kumar Singh Kushwaha*³ and *Badshah versus Urmila Badshah Godse*⁴. The

¹ (2008) 2 SCC 238

² (2011) 12 SCC 189

³ (2011) 1 SCC 141

⁴ (2014) 1 SCC 188

issue is also discussed in an Article published in (2012) 4 SCC J-19.

5. To consider the above issue, we have requested Dr. Abhishek Manu Singhvi, learned senior counsel, present in Court, to assist the Court as amicus.

6. Having regard to the nature of issue involved, we also issue notice to Attorney General of India and request the learned Attorney General to depute an Additional Solicitor General to assist the Court.

List the matter for further consideration on 12th September, 2018.

(SWETA DHYANI)
SENIOR PERSONAL ASSISTANT

(PARVEEN KUMARI PASRICHA)
BRANCH OFFICER