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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

% Judgment Delivered on : September 1, 2011

+ **CRL.REV.P. 65/2011**

STATE Petitioner
Through : Ms.Rajdipa Behura, APP

versus

RANI Respondent
Through : Mr. R S Juneja, Adv.

CORAM:
HON'BLE MR. JUSTICE SURESH KAIT

1. Whether the Reporters of local papers may be allowed to see the judgment? No.
2. To be referred to the Reporter or not? No.
3. Whether the judgment should be reported in the Digest? No.

SURESH KAIT, J. (Oral)

Crl.M.A.1466/2011 (Delay)

For the reasons stated in the application, the delay of 199 days in filing the revision petition is condoned.

CRL.REV.P. 65/2011

1. Vide this petition, the State has challenged the impugned

order dated 22.04.2010, whereby, the respondent/accused Rani has been discharged from the case.

2. As per prosecution story in the intervening night of 13/14.09.2007, the prosecutrix Anita was kidnapped from the lawful guardianship and has been taken by the accused Rani with the purpose of marrying her with one Neeraj who was known to her. The co-accused Neeraj had committed rape upon her.

3. In the statement of prosecutrix it is stated that she had gone to her sister's residence, as her sister had to deliver the child. Accordingly, her sister got admitted in the hospital on 13.09.2007. Her landlady Rani was with her. She was alone at her house. Respondent/accused Rani had asked her by calling her on telephone to come in the evening along with the food for her sister.

4. Accordingly, she had prepared the food and went to the hospital along with one Neeru, the friend of her sister. They both had reached at the hospital. There, Rani and her brother in law had taken the food. Neeru had gone to his house. Rani had asked them to go the person who is known to her and

residing nearby.

5. In the evening, at about 10.00 p.m. Rani had taken her in the Auto and at about 11.00 p.m. had got stopped the TSR at one place and went to tea stall. One boy was already present there. Rani had introduced him stating that he was the boy of her friend. There, prosecutrix and Rani had taken the tea. She felt drowsy and became unconscious. When, she regained her consciousness on the next day i.e.14.09.2007, she found herself in the room and her clothes were removed. In the meantime, Rani had come and got wore the clothes. Thereafter, they came to the hospital. In the night, her sister had delivered the child. She along with sister and brother and Rani had come to Kaushik Gali. On 15.09.2007 she disclosed all the facts to her sister.

6. Ld. trial Judge, while passing this impugned order found that the police could not trace the person namely Neeraj, who was alleged to have committed the rape of the prosecutrix. Police had not even noted down physic and features of Neeraj nor the prosecutrix has been asked to disclose the name.

7. SHO and both the two women Sub-Inspectors who were

entrusted the investigation, have been called by the court but no one has given the reason, as to why they had not noted down the physical feature of Neeraj. They further had not given any answer as to why Rani was not asked to give the particulars of Neeraj, in spite of the fact, his name has been figured in the MLC of Anita.

8. Further Id. trial Judge has perused the record and found the statement of Priyanka, Neeru, Anita and Rajesh Kumar. None of the witness had ever said to the police about the age of the prosecutrix. The police had also not collected the age proof of the prosecutrix, whether, she was of 17, 18, 19 or 20 at the time of incident.

9. As is recorded by the Id. trial Judge that Id. APP had conceded that the charge under Section 376 cannot be framed against the respondent/accused Rani. According to Id. APP, Rani has committed an offence under Section 328/366 Indian Penal Code, 1860.

10. As per the statement of the complainant, she has been administered the intoxicating substance in the tea at a hotel by Neeraj, in furtherance of their common intention she had

been kidnapped/abducted with intent to prosecutrix may be compelled or knowing it to be likely that she will be compelled to marry any person against her will, or in order that she may be forced or seduced to illicit intercourse. As was submitted by Id. APP, from the statement of the prosecutrix, prima facie case has been made out against the accused under Section 366/328 Indian Penal Code, 1860.

11. Ld. counsel for the respondent has urged before the Id. trial Judge that, firstly, no age proof has been collected by IO, by which it can be said that the prosecutrix was minor. According to him, requirement of Section 366 Indian Penal Code, 1860 is the abduction or kidnapping. So far so, the kidnapping or abduction is concerned, the person should be below the age of 18 years. So far as, the offence under Section 328 Indian Penal Code, 1860 is concerned, according to him Neeraj has not been caught, nor, his whereabouts has been known, nor his physic has come in appearance before the Court. Moreover, police was not able to seize the glass or trace the shop keeper, where, as has been alleged that she had been administered any intoxicating substance, nor,

medical reports say so.

12. Ld. trial Judge has also observed that Neeru is allegedly the girl to whom the prosecutrix has accompanied to the hospital along with the food. Neeru had said nothing except going with the prosecutrix. The witnesses Priyanka and Rajesh Kumar had also not said anything regarding the age of the prosecutrix. There is only the statement of Anita, whereby, she alleged that Rani had taken her. So far so, the Section 328 Indian Penal Code, 1860 is concerned, requirement is administering of intoxicating substance. The evidence available with the prosecution does not disclose, whether, any intoxicating substance has been administered. There is no medical evidence by which it suggests that intoxicating substance had been administered to the prosecutrix. The glass in which the tea has been served or the shop, where, the intoxicated substance in tea has been administered, has also not been traced or located during the course of investigation. Moreover, in the instant case, the alleged Neeraj, who is king pin of the offence has not been traced. Neither his whereabouts are known.

13. Ld. trial Judge had also called all the three investigating officers in the present case and revealed none of them had ever asked from the accused Rani about the physical features of Neeraj who had committed the offence of rape. IO had just completed his job, therefore, the evidence available on record, not found sufficient to attract the Section 328 Indian Penal Code.

14. As the offence under Section 366 Indian Penal Code is concerned, Id. APP for State had vehemently argued that from the statement of prosecutrix, prima facie case has been disclosed because of the intention, the prosecutrix was taken with intent to compel her to marry with another person or seduced her.

15. Ld. APP submits that Id. trial Judge has discharged the respondent Rani merely on the basis that the IO has neither investigated the case properly nor the age of the prosecutrix has been ascertained, nor the whereabouts of co-accused Neeraj has been verified or established during the investigation. She submits that for the lacunae of the investigating authority, the respondent/accused Rani should

not have been allowed to be discharged. However, the case is made out against the respondent under Section 366A and 328 Indian Penal Code.

16. In my opinion, as per the requirement of Section 366A Indian Penal Code, the first requirement is, whoever induces any minor girl under the age of eighteen years and second is to be abducted from any place or to do any act with intent that such girl may be, or knowing that it is likely that she will be, forced or seduced to illicit intercourse with another person.”

17. However, in the present case, it is not established whether the prosecutrix was minor or major. Therefore, Id. trial judge has rightly discharged the respondent Rani from the charges against her.

18. As far as Section 328 is concerned, i.e. by causing hurt by means of poison, etc., with intent to commit an offence. Therefore, to establish the offence under the aforesaid Section, at least it is to be established that a person who administers to or causes to be taken by any person any poison or any stupefying, intoxicating or unwholesome drug, or other thing with intent to cause hurt to such person, or with intent to

commit or to facilitate the commission of an offence or knowing it to be likely that he will thereby cause hurt.

19. In the present case, neither the prosecutrix has been examined nor the IO could trace any of the substance by which it could be proved that offences have been committed under above two Sections.

20. I find no discrepancy in the order, therefore, I concur with the same. Accordingly, CRL.REV.P. 65/2011 is dismissed.

21. No order as to costs.

SURESH KAIT, J

SEPTEMBER 01, 2011

Vld/RS