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IN THE HIGH COURT OF DELHI AT NEW DELHI

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CRL.REV.P. 236/2011 & CrI.M.A.5925/2011

Date of decision: 24.05.2011

MUZIBULLAH ANSARI

..... Petitioner

Through Mr.S.K.Rai, Adv.

versus

STATE OF NCT OF DELHI

..... Respondent

Through Mr.N.Sharma, APP

CORAM:

HON'BLE MR. JUSTICE V.K. SHALI

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

V.K. SHALI, J. (oral)

1. This is a Revision Petition filed by the petitioner against the judgment dated 26.04.2011 passed by Shri N.K. Kaushik, learned Additional Sessions Judge-02, District Courts Dwarka, New Delhi, confirming the conviction and sentence passed by the learned trial Magistrate under Section 354 IPC and sentencing him to simple imprisonment for four months and a fine of Rs.1000/-
2. Briefly stated, the facts of the case are that the present petitioner was posted as a Ward Boy in Divya Prastha Diagnostic Hospital,

Main Road, Palam, New Delhi. PW-3 Neetu Singh, the complainant had got admitted in the said hospital on 30.12.2008 on account of some calcium deficiency and consequent difficulty being felt by her in moving her limbs. It is the case of the prosecution that two months prior to the date of admission, she had delivered a baby which had resulted in this calcium deficiency. She was kept in ICU on 30th, 31st December 2008 and 1st January, 2009. She was shifted to the Private Ward and finally discharged on 2nd January, 2009. In the ICU, there used to be only one nurse apart from the present petitioner who used to visit as a Ward Boy. PW-3 Neetu Singh lodged a complaint on 2nd January, 2009 and made a statement to S.I. Anish Sharma which is proved as Ex.PW-3/A on which he made an endorsement Ex.PW-5/B on the basis of which an FIR No. 3/2009, u/s 354 IPC in PS Palam Village was registered.

3. It was stated by PW-3 Neetu Singh that when she was in ICU on 30th and 31st December, 2008 the present petitioner used to come alone and used to pose that before the examination of the doctor, he has to conduct an examination and he would, under that pretext, touch the private parts of the complainant. She remained in the ICU till 1st January, 2009 and thereafter when she was shifted to the Private Ward, she made this fact known to her husband and at the time of discharge on 2nd January, 2009, she lodged a complaint with the police and her statement as stated above was recorded and the FIR was registered.

4. After investigation, the charge sheet was filed and the prosecution examined six witnesses in order to bring the guilt of the petitioner home. Two of the material witnesses examined by the prosecution are PW-3 Neetu Singh and her husband PW-4, Lokesh Kumar. Both of them have supported the prosecution case and PW-4 has corroborated the testimony of PW-3 Neetu Singh that the present petitioner on the pretext of checking the lady while she was admitted in ICU, would come and touch her private parts. Later on, both the witnesses were extensively cross examined and nothing could be brought about in their cross-examination which would discredit either of the two witnesses. The remaining four witnesses including the doctor from the hospital, who were examined, have testified in favour of the prosecution although their testimony more or less is formal in nature.
5. The learned Magistrate, after hearing the arguments, convicted the petitioner for an offence under Section 354 IPC and sentenced him to a very lenient punishment of simple imprisonment for four months and a fine of Rs. 1000/-.
6. The petitioner, feeling aggrieved by the said conviction and sentence, preferred an appeal before the Court of Sessions, which was heard and dismissed on merits by the learned Additional Sessions Judge-02 vide judgment dated 26.04.2011. The petitioner still feeling aggrieved, has chosen to file the present revision petition against the concurrent finding of fact holding him guilty for an offence of molestation and outraging the modesty of a woman.

7. I have heard the learned counsel for the petitioner and the learned APP.
8. The learned counsel for the petitioner has raised only two points before this Court. The first point urged by him is that the petitioner has been falsely implicated in the instant case on account of the fact that the complainant and her husband PW-3 and PW-4, respectively had some dispute regarding billing with the hospital and in order to settle the score with the hospital, they have falsely implicated the present petitioner. In order to support his point, the learned counsel for the petitioner took the Court through the testimony of PW-6, Dr. Charu Shrivastava, who in her cross-examination admitted that there was some dispute regarding billing.
9. The second point which has been urged by the learned counsel for the petitioner is that according to the prosecution case, the FIR has been registered on the basis of the complaint of the husband who has made a statement in this regard whileas the actual FIR No. 3/2009 shows that it has been registered on the basis of the statement of PW-3, the complainant herself and, therefore, an advantage was sought to be drawn that he has been falsely implicated.
10. I have carefully considered the submissions made by the learned counsel for the petitioner and gone through the record including the judgments passed by the learned Magistrate and the learned Additional Sessions Judge. So far as the question of the identity of

the petitioner and his presence in the hospital on 30/31st December, 2008 including 1st January, 2009 is concerned, that has not been disputed. On the contrary, it has come on record that on 2nd January, 2009, when the complaint was lodged, it seems that the petitioner has got a whiff of the matter against him and he absented on that day and that is why he was arrested on 3rd January, 2009. The plea of the petitioner that he has been falsely implicated on account of some billing dispute of the complainant PW-3 and her husband PW-4 with the hospital, has already been dealt with by the learned Magistrate in detail and disbelieved. The reason for this disbelief by the learned Magistrate is on account of two grounds. Firstly, it has been observed by the learned Magistrate that this line of defence that he has been falsely implicated on account of billing dispute has not been supported by either the complainant or her husband in their cross examination, therefore, it seems that it is an after-thought. Even in his statement under Section 313, Cr.P.C., this defence of false billing and the consequent false implication taken by the petitioner has also although he makes an oblique reference to some dispute. This aspect has also been dealt with by the learned Magistrate and disbelieved. Even the learned Additional Sessions Judge did not seem to have found any merit in this contention of the petitioner. I do not find any convincing reason to hold differently. On the contrary, it sounds to me a ridiculous and absurd contention. Even if there was a billing dispute between the complainant PW-3

and the hospital, as has been sought to be brought about in the cross-examination of PW-6, Dr. Charu Shrivastava, this is only an after thought and a false defence on account of the fact that if at all there was such a dispute, there was no reason for implicating the petitioner falsely, who is only a IV class employee. The complainant would have named a doctor, or the owner or the accountant of the hospital rather than a ward boy with whom she could not be expected to have any kind of grievance much less would have been he responsible for inflating the bill. In addition to the non-putting of questions to the complainant PW-3 and her husband PW-4 as well as not even taking this defence in the statement under Section 313, Cr.P.C., corroborates that this is at best an after-thought in order to wriggle out from the case.

11. So far as the cross-examination of Dr. Charu Shrivastava on these lines is concerned, I am of the view that she has admitted that she had no personal knowledge of the incident as she had joined 7-8 months later. So far as the dispute about the billing is concerned, there may have been some dispute regarding the bill but that is dehors the illegal conduct in which the petitioner is found to have indulged and it seems that he has tried to take an advantage of the same though that too belatedly. I do not, therefore, find any merit in this submission of the learned counsel for the petitioner to upset the concurrent finding of fact holding the petitioner guilty of the most obnoxious crime of outraging the modesty of a woman, while she was in ICU, under the pretext of examining her.

12. So far as the second ground of there being a variation in the registration of FIR is concerned, that is of not much consequence because the FIR has been admittedly registered on the basis of the statement Ex. PW-3/A given by the complainant PW-3 on which PW-5 Avnish Singh, SI had made an endorsement and sent 'rukka' which resulted in registration of FIR. It is possible that the complainant may also have made a complaint separately as claimed by him but as the FIR itself has been registered, on the complaint of the complainant. The complaint of PW-4, Lokesh Kumar, husband of the complainant, does not detract in any manner from the credibility of the case of the prosecution.
13. In any event, even if both the complaint and the FIR which was registered on the basis of the written complaint of PW-3 Neetu Singh are considered, they do not seem to be contradictory in material particulars. Therefore, this is only a last ditch effort and to get an advantage of the fact that more than one complaint was lodged with the police in writing. This point also, in my view, is of no relevance.
14. I, therefore, feel that there is no incorrectness, impropriety or illegality in the judgment and order of sentence passed by the learned Magistrate on 07.02.2011 and 10.02.2011 respectively or for that matter, even in the order of confirmation of conviction and sentence passed by the learned Additional Sessions Judge. As a matter of fact, the learned Magistrate has let off the present petitioner with a very moderate sentence of four months. Though,

this Court has a feeling in this regard and this has been noticed by the learned Additional Sessions Judge also that undue leniency has been shown to the petitioner.

15. This Court, in exercise of its power of revision, does not intend to enhance the sentence. I, accordingly, do not find merit in this Revision Petition and, therefore, the same is accordingly dismissed.

MAY 24, 2011
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V.K. SHALI,J