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

+ CRL.M.C. 3628/2011

% Judgment delivered on:16th November, 2011

ANEESA & ANR Petitioner
Through: Mr. R.K. Bachchan, Adv.

versus

STATE & ANR Respondent
Through: Mr. Navin Sharma, Adv.

CORAM:
HON'BLE MR. JUSTICE SURESH KAIT

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

SURESH KAIT, J. (Oral)

1 Vide the instant petition, the petitioners have sought quashing of FIR No. 88/2011, dated 06.04.2011, registered

against them under Sections 376/498 A/420 of Indian Penal Code, 1860 in P.S. Ashok Vihar, District North West, Delhi

2 In the present case, the charges against the petitioners have been framed and the case is at the stage of recording Prosecution Evidence at Trial Court.

3 I note, this case is very peculiar in nature as the allegations of rape were being made by the Prosecutrix/petitioner No. 2/ Ms. Rukhsar on 06.04.2011, whereas the alleged incidence took place on 06.10.2010.

4 As per the allegations, the prosecutrix was 17 years old and her parents had gone to Clearisharif on 06.10.2010. On that day, the son of her maternal Aunt (Khala) who was resident of House No. 354 Gaon Chodhriyan, P.S. Bchchrau, District Jyoti Baa Fule Nagar, Uttar Pradesh, namely Saleem, who was residing with the family of Prosecutrix had forcefully committed raped on her. When the parents of prosecutrix returned from Clearisharif, her mother called the mother of Saleem namely Aneesha. Prosecutrix was taken to Jahangir Puri hospital by her mother, where her medical was going to be performed. At that point of time, mother of Saleem, Aneesha came there and she begged pardon from the mother

of prosecutrix and said she will perform the marriage of prosecutrix with her son Saleem and she further assured that after fixing date of marriage she would bring Barat at the house of prosecutrix for marriage.

5 Prosecutrix further stated that she was misguided by the mother of Saleem/petitioner No. 1 and she came back with her mother without being medically examined. After few days, the marriage of prosecutrix was performed with Saleem but after marriage she was being told by her in-laws that the marriage was performed just to save Saleem from prosecution and they had no concern with prosecutrix . Mother of Saleem, Aneesha stated that she will perform marriage of her son Saleem where petitioner No.2/she would get One Lac rupees and Saleem will not be allowed to stay with petitioner.

6 On the above allegations of prosecutrix, the above mentioned FIR was registered against the petitioners.

7 Learned counsel for the petitioner submits that she was medically examined on 10.10.2010, wherein she refused to get internally examined.

8 Again on 06.04.2011, the prosecutrix was medically examined after the registration of FIR, wherein, it has been

recorded that at that time after lapse of time, the Doctor could not make any observation with regard to sexual assault.

9 Learned counsel further submits that there is no evidence on record except the statement of prosecutrix.

10 Learned counsel further submits that at the time of her second medical examination, the prosecutrix was already married and the recording of fact about torn hymen is, therefore, irrelevant.

11 Learned APP for State, on the other hand submit that the Prosecutrix was minor at the time of sexual assault and on her statement, the present FIR is lodged. In MLC, the hymen was found torn. She alleged that the rape was committed by petitioner No. 2/Saleem.

12 The respondent No. 2/Ms. Rukhsar is personally present in the court today with her parents and submits that she was married to petitioner No.2/Saleem on 11.10.2010. They stayed together after marriage, but she was not comfortable at her in-laws house and therefore, she made allegations and got the above mentioned FIR lodged. In fact, nothing happened as such.

13 On specifically being asked by the court from the parents

of prosecutrix that when their marriage took place, they replied that their marriage took place in May, 1984 and their first child i.e prosecutrix was born after the one year of their marriage i.e. in the year 1985. Thereafter, 06 siblings to prosecutrix were born.

14 Mr. Anish Ahmed and Ms. Shahnaz Ahmed, parents of the Prosecutrix submits that at the time of getting admission in Government Co-Education School, Wazirpur, the date of birth of respondent No. 2 was recorded as 23.11.1996, which was less than the actual age of the Prosecutrix. Copy of the same is kept on record.

15 Respondent No. 2 submits that she wants to live with petitioner No. 2, who is in Jail now and she has settled all the issues qua the aforesaid FIR against the petitioners and she does not want to pursue the case further. She further submits that she has no objection if the present FIR is quashed.

16 In addition to that, respondent No. 2 has produced Ration Card issued by Food and Supply Department of NCT of Delhi pertaining to year 2002. In the Ration Card, the age of Prosecutrix has been recorded as 09 years. Accordingly, the age of the prosecutrix on the alleged day of incidence would

be more than 16 years. Copy of the relevant page of Ration Card is kept on record.

17 More so, Progress Report of MCD Primary School, Nimri Colony, Delhi, wherein the Admission of the respondent No. 2 was registered at Serial No.7096 has also been produced. Respondent No. 2 was in Class-II in the year 1998-99. Copy of the same is placed on record. Thus, she was more than 16 years at the time of alleged incident.

18 Learned counsel for the petitioner submits that perusal of the above-mentioned documents suggests that the prosecutrix was more than 16 years of age at the time of alleged incidence of rape.

19 Admittedly, the petitioner No. 2 has married with Petitioner No. 2. Respondent No. 2 wants to live with petitioner No. 2 as husband and wife and she does not want to pursue the case further.

20 In similar situation, this court has taken a view of quashing the FIR in Criminal M.C. 3030/2011 decided on 10.09.2009 and in another case of Chander Mohan @ Bunt V. State of Haryana and Ors. 2011 CrI. LJ. 898, wherein the FIR under Sections 376/328 IPC was quashed.

21 The law is very settled and this court has held in a case of Masroor Ahmed V. State (NCT of Delhi) and Anr. 2008 (103) DRJ 137, whereby an FIR under Sections 376/328 IPC was quashed by exercising inherent powers of quashing under Section 482 Cr.P.C.

22 It has emerged from the statement of Respondent No. 2 that the present FIR was lodged on her giving false information. Since, she was not comfortable at her matrimonial house, therefore, she made allegations of rape even against the husband. In fact nothing happened as stated by the respondent No.2. In CrI.M.C. 3030/2009 also this Court vide order dated 10th September, 2009, quashed the FIR under Sec. 376 of Indian Penal Code, 1860.

23 In the interest of justice and in view of the above discussion, I deem it appropriate to quash the FIR 88/2011, P.S. Ashok Vihar, under Sections 376/498 A/420 Indian Penal Code, 1860 and the proceedings emanating therefrom.

24 Since the FIR in the instant case has been quashed along with all the emanating proceedings therefrom, I direct the jail authorities to release the petitioners forthwith.

25. Though, prosecution can be initiated against the

respondent no.2 on what has been stated above, however, keeping in view the welfare of the family and age of the said respondent, I refrain myself from taking any legal/coercive action against the respondent no.2.

26 No order as to costs.

27 Criminal M.C. 3628/2011 is allowed and disposed of accordingly.

SURESH KAIT, J

NOVEMBER16, 2011/j