

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

+ **CRL.M.C. 2776/2011**

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Reserved on: 21st March , 2012

Decided on: 10th April, 2012

COURT ON ITS OWN MOTION
Through

..... Petitioner

versus

STATE

..... Respondent

Through Mr. Dayan Krishnan, ASC for State
 with SI Arun Kumar PS DBG Road.
 Mr. Haneef Mohammad, Mr. Anil
 Vyas, Advs. for 3 accused i.e.
 Mukesh, Saroj & Ashu.
 Ms. Geeta Luthra, Sr. Adv. with Ms.
 Vriti Anand, Ms. Ashley, Advs. for
 accused Ranjana Gupta.

Coram:
HON'BLE MS. JUSTICE MUKTA GUPTA

1. The present reference has been received from the Learned Additional Sessions Judge in Sessions Case No. 43/11 titled as State Vs. Deepak and Ors in FIR No. 34/2011 under Section 376/342/312/506/34 IPC registered at PS DBG Road for rectification of the committal order in terms of the decision of the Hon'ble Supreme Court in *Ranjit Singh Vs. State of Punjab AIR 1998 SC 3148*.

2. As per the reference order on proper evaluation of the report the brief facts are that on 7th March, 2011 the prosecutrix 'M' lodged a complaint with PS DBG Road to the effect that she was resident of Faiz Road, Karol Bagh

and was in private service. Her neighbour namely Deepak befriended her and had forcible sexual relations with her in the name of marrying her. When she became pregnant in November, 2010, she asked Deepak to marry her. However, he pressurized her for abortion. When she refused for abortion, she was threatened that he would marry her only if she undergoes abortion. Despite no consent being given by the prosecutrix, on 5th March, 2011 in the morning Deepak took her to hospital where she was administered an injection by the attendant doctor. When she regained consciousness on the morning of 6th March, 2011, she found that her child was forcibly aborted. She was threatened by the parents and younger brother of Deepak in the hospital that in case she tells about the abortion to any person, she would be killed. On this statement of the prosecutrix, the FIR was registered and she was medically examined. Necessary documents relating to abortion were seized and it was found that it was done privately by Dr. Ranjana Gupta, while the prosecutrix was carrying a 19 week old foetus. A charge-sheet was filed against Deepak after arrest and Dr. Ranjana Gupta without arrest. Further, though as per the body of the charge-sheet, it was mentioned that Saroj, Mukesh and Ashu the parents and brother of Deepak were being charge-sheeted, however in the opening sheets though their names were mentioned in Column No.11, it was mentioned that these three persons were not charge-sheeted. On the first charge-sheet being filed, the Learned CMM took cognizance of the offences only against accused Deepak and the case was committed to the Learned Additional Sessions Judge vide order dated 30th June, 2011.

3. On 11th July, 2011 the Learned Additional Sessions Judge sought a clarification from the Learned CMM as to why only one person was

committed though the name of the other four accused were also mentioned in the column No. 11. On 11th July, 2011 Learned Additional Sessions Judge observed that the perusal of the charge-sheet shows that the same was filed not only against Deepak but also against his parents Saroj and Mukesh, his brother Ashu and Dr. Ranjana, however, the Learned CMM has taken cognizance and summoned accused Deepak only. There is no mention of any reason for non-summoning or discharge of the abovementioned four accused in his order. Learned CMM vide his order dated 26th July, 2011 on the supplementary charge-sheet for correction took cognizance against Saroj, Mukesh, Ashu and Dr. Ranjana Gupta for offences under Sections 376/342/312/506/34 IPC. The Learned Chief Metropolitan Magistrate stated that since this was an inadvertent error and orders were now passed against these accused on the basis of supplementary/correction charge-sheet, he has corrected the mistake and since this was only a procedural lapse this could have been corrected by him, and committed the supplementary charge-sheet also to the Learned Additional Sessions Judge. In view of this supplementary charge sheet and the committal order thereon by the learned CMM, the learned Additional Sessions Judge sent a second reference dated 2nd August, 2011, pointing out the impropriety of learned CMM in accepting the supplementary charge sheet and taking cognizance thereon when the matter was sub-judice before this Court.

4. According to Learned Additional Sessions Judge the error committed by the Learned CMM could have been corrected only by this Court in exercise of its inherent power under Section 482 Cr.P.C. and the Learned CMM could not have summoned the four accused as there was no procedure prescribed for accepting a correction charge sheet and do indirectly what

could not have been done directly.

5. In the present case Saroj, Mukesh, Ashu and Dr. Ranjana were charge-sheeted. However Saroj, Mukesh and Ashu were inadvertently mentioned as not charge-sheeted though kept in column No.11. Since a supplementary/ correction charge-sheet was filed and the Learned Chief Metropolitan Magistrate has taken cognizance thereon and has committed these four also before the Learned Additional Sessions Judge, as per the Learned CMM, the error stands rectified.

6. Since this Court was dealing with the matter on a reference and the rights of Saroj, Mukesh, Ashu and Dr. Ranjana were likely to be affected, this Court issued notice to them as well. Learned counsel for Mukesh, Saroj and Ashu i.e. the father, mother and brother of Deepak the main accused, states that there is no allegation or evidence against these three persons, and thus the order of summoning now passed by the Learned CMM by calling the so called correction charge-sheet is erroneous in law. Merely because the Learned Additional Sessions Judge sent reference to this Court, the Learned CMM in a haste called for a supplementary/ correction charge-sheet and summoned them as accused persons. The only allegation as per prosecutrix against Mukesh, Saroj and Ashu is that when she regained consciousness, these three persons were also standing there. In the entire charge-sheet, there is no other allegation against these three persons. There is no evidence in the charge sheet, which even prima facie suggests that Mukesh, Saroj and Ashu have committed any offence. The reference of the Learned Additional Sessions Judge and the order of Learned CMM on correction charge-sheet filed and cognizance taken thereon is bad in law.

7. Learned counsel for Dr. Ranjana Gupta also states that the order dated

4th May, 2011 taking cognizance only against Deepak was a legal order and the Learned Additional Sessions Judge while sending the reference and the Learned CMM taking the correction charge-sheet on record and summoning Dr. Ranjana Gupta have acted in haste and passed illegal orders. According to the learned counsel, accused Deepak along with the prosecutrix came to the clinic and no MTP was conducted by Dr. Ranjana Gupta. When they came, they represented themselves to be husband and wife and informed of the condition of the prosecutrix. Admittedly, the prosecutrix had taken certain pills after she came to know of pregnancy, thus resulting in partial abortion. When Dr. Ranjana Gupta examined her, there were incomplete parts of foetus in her womb. Since partial abortion had already taken place, thus the D&C of 'M' was essential for saving her life. This fact is evident from the discharge summary, which is part of the charge-sheet and Dr. Ranjana Gupta only performed her duty.

8. I have heard learned counsel for the parties at length. As stated above in the initial charge-sheet only Deepak and Dr. Ranjana Gupta were sent for trial. Further though the names of Saroj, Mukesh and Ashu were mentioned in column No.11, however they were not sent for trial. The Learned CMM took cognizance only against Deepak and recorded no reasons why he was disagreeing with the charge-sheet and not summoning Dr. Ranjana Gupta. A perusal of the statement of prosecutrix on the basis of which FIR was registered shows that the allegations are only against Deepak. As against Saroj, Mukesh and Ashu it is only stated that on the next day i.e. 6th March, 2011 at about 7.30 AM when she regained consciousness, she felt weakness and saw that at that time Deepak's parents and brother were present. There is no allegation whatsoever that the parents and brother of Deepak were

either party to getting the abortion performed or committed any other overt act. No inference of any conspiracy can be drawn from their presence on the next day. It is, thus, evident that the reference of the Learned Additional Sessions Judge seeking summoning of Saroj, Mukesh and Ashu from this Court and the order of Learned CMM summoning them is wholly illegal and unwarranted. Both the Learned Additional Sessions Judge and the Learned CMM in haste have forgotten to look at the merits of the matter. Summoning an accused is a serious matter. It cannot be done lightly. The order of the Learned CMM dated 23rd July, 2011 issuing summons to Saroj, Mukesh and Ashu is set aside.

9. As regards Dr. Ranjana Gupta, there is no allegation in the rukka. In the supplementary statement of the prosecutrix recorded on 27th March, 2011 it is stated that accused Deepak threatened her and took her to Yogmaya hospital at Mehrauli for abortion. When she reached at the hospital, before injecting her she was asked whether she was prepared for the abortion on which she stated “yes” by nodding her head. Thereafter, she signed the consent form in English. She further stated that in December on coming to know of the pregnancy, Deepak got her some medicines which she ate where after she had bleeding. Thereafter, she thought that due to weakness she was not having menstrual cycle. After 19 weeks, she was perturbed and told Deepak, who took her to Mehrauli where they got an ultrasound done and thereafter they went to Yogmaya hospital to get the abortion done as Deepak had promised that he would marry her only if she got the abortion done. She further stated that she got the abortion done because of the fear of the society and the family. From the statement of the prosecutrix and the documents on record, it is apparent that Deepak and prosecutrix represented as husband and

wife. The discharge summary of Yogmaya hospital records D & C done under I/V, sedation and placental lesions and clots taken out. The consent form was duly signed by both 'M' and Deepak. It may be noted that the certificate of the doctor who conducted the ultrasound shows that the same was conducted on 27th February, 2010 though notes 19 weeks gestation, however it also notes against column 'date' on which MTP was carried out as one month.

10. It may be noted that though in the main charge-sheet, Dr. Ranjana Gupta was sent up for trial, however the Learned CMM did not summon her and recorded no reasons for the same. On a reference being made by the Learned Additional Sessions Judge, the Learned CMM called for a correctional charge-sheet and on the basis thereof summoned Dr. Ranjana Gupta ostensibly after going through the consent form, discharge slip, ultrasonography report and the supplementary statement of the prosecutrix which clearly admits that she had taken medicines brought by Deepak from a chemist after which she had bleeding. The statement of 'M' or the case sheets do not lead to the inference that Dr. Ranjana Gupta was a part of conspiracy to commit the offence punishable under Section 312 IPC by taking decision of D & C. The prosecutrix has clearly stated that her consent was taken before abortion and she also signed the form in English.

11. Thus, the order of reference of the Learned Additional Sessions Judge asking this Court to correct the order of Learned CMM to summon Dr. Ranjana Gupta also suffers from lack of application of mind. Further, the orders of the Learned CMM in the first instance not summoning Dr. Ranjana Gupta on a charge-sheet filed against her, stating no reasons therein and subsequently summoning her on 25th July, 2011 are also bad in law. The

order dated 25th July, 2011 summoning Dr. Ranjana Gupta is also set aside.

12. Reference is answered accordingly. Trial Court Record be sent back.

(MUKTA GUPTA)
JUDGE

APRIL 10, 2012
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