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IN THE HIGH COURT OF DELHI AT NEW DELHI

DECIDED ON : 6th NOVEMBER, 2015

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CRL.M.C. 1956/2013

NUTAN

..... Petitioner

Through : Mr.D.P.Mann, Advocate with
Dr.O.P.Maurya, Advocate.

Versus

STATE GOVT OF NCT OF DELHI & ORS

..... Respondents

Through : Mr.Amit Ahlawat, APP.
Ms.Rakhi Dubey, Advocate for R2.

CORAM:

HON'BLE MR. JUSTICE S.P.GARG

S.P.Garg, J. (Oral)

1. The instant petition under Section 482 Cr.P.C. has been filed by the petitioner to challenge the legality and correctness of a judgment dated 16.02.2012 of learned Addl. Sessions Judge in Crl. Revision No.44/2012 whereby order dated 09.12.2011 of learned Metropolitan Magistrate dismissing application under Section 156 (3) Cr.P.C. was upheld. The petition is contested by the respondent No.2.

2. I have heard the learned counsel for the parties and have examined the record. Complaint case along with application under Section 156 (3) Cr.P.C. was filed by the petitioner before the learned Metropolitan Magistrate against respondents No.2 to 14. It was averred that the marriage of the petitioner was solemnized with respondent No.2 on 23.09.2009. Subsequently, it came to her notice that respondent No.2 was already married to one Lalita Gautam and the said marriage was solemnized on 16.02.2002. This fact was concealed by the respondent No.2 and he did not bring it to the notice of the petitioner and her family members before marriage. The respondent No.2 played fraud upon her and established physical relations knowingly that his marriage with the petitioner was a nullity. The petitioner's consent for physical relations was obtained by fraud. The respondents No.3 to 14 abetted the said crime as they were fully aware about the marital status of respondent No.2.

3. Vide order dated 09.12.2011, learned Metropolitan Magistrate declined to order registration of First Information Report under Section 156 (3) Cr.P.C. and opted to take cognizance. The case was adjourned for pre-summoning evidence for 10.01.2012.

4. The petitioner challenged the order dated 09.12.2011 in Crl. Revision No. 44/2012 which resulted in dismissal by an order dated

06.02.2012. Being aggrieved by the said orders, the instant petition under Section 482 Cr.P.C. has been filed. I have heard the learned counsel for the parties and have examined the record.

5. The petitioner as a matter of right cannot insist for registration of FIR under Section 156 (3) Cr.P.C. Her complaint case is already pending before the learned Metropolitan Magistrate who has taken cognizance. Case has been fixed for recording statements of the petitioner and her witnesses in pre-summoning evidence. The Courts below did not commit illegality or irregularity in declining to proceed under Section 156 (3) Cr.P.C. On receipt of a criminal complaint under Section 200 Cr.P.C. it is the discretion of the learned Metropolitan Magistrate either to get the matter investigated under Section 156 (3) Cr.P.C. or to take cognizance in the exercise of its power under Section 190 Cr.P.C. In the instant case, the Trial Court has taken cognizance and has opted to proceed to enquire into the averments in complaint in accordance with the procedure laid down under Sections 200/202 Cr.P.C. The Courts below have rightly observed that all the material to proceed against the petitioner is based upon documents and is within the power and possession of the petitioner. Powers under Section 156 (3) ought to be exercised primarily in those cases where the allegations are quite serious or evidence is beyond the

reach of the complainant or custodial interrogation appears to be necessary for recovery of certain articles, etc.

6. I find no illegality and impropriety in the impugned orders to intervene. The petition is dismissed. The Trial Court shall proceed with the complaint case as per law after recording pre-summoning evidence of the petitioner.

7. Trial Court record be sent back forthwith with the copy of the order.

(S.P.GARG)
JUDGE

NOVEMBER 06, 2015 / *tr*