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

+ **W.P.(CRL) 1062/2015**

RAKESH KUMAR JAIN

..... Petitioner

Through: **Mr.Raj Kumar Sherawat, Advocate.**

versus

STATE OF GOVT OF NCT & ORS

..... Respondents

Through: **Mr.Rajesh Mahajan, ASC.**

SI R.S.Pandit, P.S.Preet Vihar.

CORAM:

HON'BLE MR. JUSTICE ASHUTOSH KUMAR

ORDER

% **09.07.2015**

Crl.M.A.7606/2015

Exemption allowed, subject to all just exceptions.

Application is allowed, accordingly.

W.P.(CRL) 1062/2015 & Crl.M.A.7605/2015

The daughter of the petitioner was subjected to physical misdemeanour for which a case under Section 376 and other sections of the IPC was instituted. The respondents herein were accused in that case, who after a full fledged trial stood convicted. The appeal against such conviction also failed and the respondents have served out the sentences imposed upon them.

During the pendency of the appeal referred to above, the respondents doled out threats to the petitioner and other members of his family. A case was lodged by the petitioner against the respondents vide FIR No.488/2004

for offences under Sections 387/507/509 and 34 of the IPC. The aforesaid case has been investigated and chargesheet has been submitted. After the submission of the chargesheet, charges also have been framed vide order dated 28.1.2014.

While the aforesaid case was being investigated, the petitioner gave a CD of the voice of the accused persons to the investigating agency with a prayer that it be used for investigation and after obtaining the voice sample of the accused persons, it be made a part of the material on which the prosecution would build the case. It has been submitted on behalf of the petitioner that for a very long time, the police did not act in the matter and only later in point of time an attempt was made to obtain the voice sample of the accused persons. The accused persons, i.e. the respondents, were not agreeable for giving their voice sample and litigated the matter till the Supreme Court. The voice sample was ultimately collected by the police. The aforesaid sample and the CD provided by the petitioner were sent to CFSL for verification of the voice. However, the CFSL gave a report that because of the CD being distorted, no conclusive opinion could be given.

Learned counsel for the petitioner submits that he had filed an application before the Magistrate's Court for directing the police to further investigate in the matter and he was willing to provide the original copy of the CD so that necessary verifications could be made by the CFSL. No order was passed on such an application.

The respondents challenged the order framing charges before the Special Judge (PC Act), CBI, East, Delhi vide Criminal Revision No.52/2014 where also the petitioner raised this issue. It was prayed by the petitioner that the Court below be directed to exercise its powers under

Section 173(8) of the Code of Criminal Procedure for directing the investigating agency to obtain the original CD from the petitioner to be sent to CFSL.

The learned Revisional Court vide order dated 18.4.2015 (Annexure P-13) did not accede to such a prayer and held that since the Court was only looking into the propriety of the order framing of the charges, no directions could be issued by the Revisional Court. The present application under Articles 227, 228 of the Constitution of India read with Section 482 seeks a direction to the learned Magistrate where the case is pending to order for a further investigation in the matter with respect to the reception and analysis of the original CD which is in possession of the petitioner.

This Court is not inclined to give any such direction. However, considering the fact that a petition is already pending before the Court in seisin of the matter, the Court below would dispose of such application in accordance with law.

The application is disposed of accordingly.

ASHUTOSH KUMAR, J

JULY 09, 2015

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