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

Judgment delivered on: 24th November, 2015

+ **Crl M C No.4744/2015**

NITU RANI

..... Petitioner

Represented by: Mr.Abhay Kumar,
Mr.Tenzing Tsering and
Mr.Pankaj Jaiswal, Advs.

versus

STATE (NCT OF DELHI) & ORS

..... Respondents

Represented by: Mr.Amit Chadha, APP for
the State with WSI Asha,
CWC Nanakpura, Delhi.

CORAM:

HON'BLE MR. JUSTICE SURESH KAIT

SURESH KAIT, J. (Oral)

Crl. M.A.No.17082/2015 (for exemption)

Exemptions allowed, subject to all just exceptions.

Accordingly, the application is allowed.

Crl M C No.4744/2015

1. By way of this petition filed under Section 482 of the Code of Criminal Procedure, 1973, petitioner seeks direction for quashing of the impugned orders dated 02.05.2014, 27.08.2014, 11.12.2014, 27.02.2015, 21.05.2015 and 24.08.2015 passed by learned Trial Court in case FIR No.87/2013 registered at Police Station CAW Cell, Delhi, for the offences punishable under Sections 498A/406/34 of the IPC.

2. Learned counsel appearing on behalf of the petitioner submits that

the aforesaid case was registered on the complaint of petitioner herein against respondent Nos.2 to 6 consequent upon her marriage with respondent No.2.

3. As petitioner has impugned as many as six different orders during proceedings of above noted case, hence all six orders are being dealt with date wise.

4. Vide order dated 02.05.2014, learned Metropolitan Magistrate issued summons to respondent nos. 2 to 6/accused and notice to their sureties for appearance. Learned counsel appearing on behalf of petitioner submits that respondent Nos.2 to 6 were not arrested by the investigating authority, thus, not released on bail. Therefore, there was no occasion for issuance of notice to sureties.

5. To this effect, petitioner has not furnished any of the documents that accused were not arrested or released on bail. However, it is made clear that if the contention of the petitioner is correct, then said order is passed mechanically. But the petitioner is not aggrieved in any sense by said order.

6. Vide order dated 27.08.2014, the application for exemption from personal appearance moved on behalf of respondent Nos.4 & 5 was dealt with. Accordingly, they were exempted from personal appearance for that date only.

7. Therefore, I failed to understand what is illegal and perverse in the order dated 27.08.2014 and even learned counsel for petitioner also failed to establish as to how this order is perverse and illegal.

8. Vide order dated 11.12.2014, accused persons moved exemption application through their counsel stating that respondent No.2 was to appear in LLB examination on that date and other two respondents are aged and sick and could not appear on that date. It was noted by learned Trial Court that since the accused persons sought exemptions on last date of hearing also, hence last opportunity was granted to them for appearance on 27.02.2015.

9. Learned counsel appearing on behalf of petitioner submits that there was no medical document for sickness and in such eventuality, learned Trial Court ought to have rejected the said application. However, on the contrary it was not done.

10. It is not disputed that granting of exemption from personal appearance is the discretion of the Court and if the Court deem fit, exemption can be granted to accused persons. Therefore, there is no perversity or illegality in above order as well.

11. Vide order dated 27.02.2015, respondent nos. 2 to 6 / accused persons were admitted on bail on their furnishing of personal bond in the sum of Rs.20,000/- with one surety in the like amount each subject to the conditions that they will not leave the country without prior permission of the learned Trial Court. Bail bonds were furnished and accepted by learned Trial Court subject to verification.

12. Learned counsel for petitioner submits that accused persons did not move any bail application, however, learned Trial Court admitted accused persons on bail on furnishing bail bonds, as noted above.

13. There is no denial to the fact that granting of bail to accused persons is within the discretion of the learned Trial Court. However, before exercising said power, the Court has to record satisfaction under Section 437 Cr.P.C., which is missing from the said order. Thus, order is improper but not illegal. The Trial Judge is expected to be cautious in exercising such power.

14. On 21.05.2015, respondent Nos.4 & 5 filed an application for permanent exemption. Learned Trial Court issued notice to petitioner / complainant to explore the possibility of settlement and accordingly, the said application was listed for arguments on 24.08.2015.

15. Learned counsel for petitioner submits that on 21.05.2015 learned Trial Court failed to pass any order whether the said accused persons were exempted from appearance on that day or not, however, the application was kept for arguments on 24.08.2015.

16. On perusal of order dated 21.05.2015, it is clear that respondent nos. 4 & 5 were absent. Thus, ld. Judge ought to have granted exemption to them, however, the Trial Judge failed to do so. Thus, said order is also improper. Accordingly, ld. Trial Judge is expected to exercise its power with due care and caution in future.

17. Finally, vide order dated 24.08.2015, the respondent nos. 4 & 5 have been granted permanent exemption from appearance after recording reasons.

18. After perusal of the aforementioned orders passed by learned Trial Court, I do not find any illegality or perversity therein.

19. Accordingly, the instant petition is disposed of with no order as to costs.

20. Registry of this Court is directed to send a copy of this order to Ms. Tyagita Singh, MM-01/Mahila Court, Dwarka Court, New Delhi.

Crl.M.A.No.17081/2015 (Stay)

Dismissed as infructuous.

**SURESH KAIT
(JUDGE)**

NOVEMBER 24, 2015

M/jg