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

DECIDED ON : 22nd DECEMBER, 2015

+ **CRL.M.C. 5089/2015**

STATE (GOVT. OF NCT OF DELHI) Petitioner

Through : Ms.Aashaa Tiwari, APP.

versus

NOOR JAHAN Respondent

Through : None

**CORAM:
HON'BLE MR. JUSTICE S.P.GARG**

S.P.Garg, J. (Oral)

1. Present petition under Section 482 Cr.P.C. has been preferred by the State to challenge the legality and correctness of an order dated 02.09.2015 of learned Addl. Sessions Judge directing the investigation to be conducted by a competent officer not below the rank of Addl. Commission of Police having experience in such cases.

2. I have heard the learned Addl. Public Prosecutor for the State and have examined the file. Case FIR No.666/2015 under Sections

372/376/109/34 IPC and Sections 3/4/5 of Immoral Traffic (Prevention) Act was registered at PS New Usmanpur on the complaint of the victim 'X' (assumed name) against her father, mother, sister and brother-in-law for forcing her into prostitution. Her statement under Section 164 Cr.P.C. has been recorded. During investigation, Noor Jahan and Sana moved Bail Application No. 7582 to seek pre-arrest bail. Declining the bail vide order dated 02.09.2015, the learned Addl. Sessions Judge directed the investigation to be conducted by a competent officer not below the rank of Addl. Commissioner of Police.

3. The matter is still under investigation. The matter came up before the Addl. Sessions Judge due to filing of application for pre-arrest bail. Apparently, while dealing with anticipatory bail application, the learned Addl. Sessions Judge had no jurisdiction to order conducting of investigation by an officer not below the rank of Addl. Commissioner of Police. The charge-sheet is yet to be filed before the concerned Court. The prosecutrix / complainant is not aggrieved by the investigation being conducted in the instant case.

4. In the case of '*Hemant Dhasmana vs. Central Bureau of Investigation*' (2001) 7 SCC 536, under Section 173(8), a direction was given by the learned Metropolitan Magistrate while ordering further

investigation to get the matter investigated by an officer of DIG rank of CBI. The Hon'ble Supreme Court did not agree and was of the view that the Magistrate could not have directed that a particular police officer or even an officer of a particular rank should conduct such further investigation. It is not within the province of the Magistrate while exercising the power under Section 173(8) to specify a particular officer to conduct such investigation, not even to suggest the rank of the officer who should conduct such investigation.

5. In the result, the petition is allowed and the impugned order to the extent that the further investigation shall be conducted by an officer not below the rank of Addl. Commissioner of Police having experience of investigation of such cases is set aside.

6. The petition stands disposed of in the above terms.

(S.P.GARG)
JUDGE

DECEMBER 22, 2015 / tr