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

DECIDED ON : 18th JULY, 2016

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CRL.REV.P.199/2016

STATE (GNCT OF DELHI)

..... Petitioner

Through : Mr.Amit Gupta, APP with SI Ranbir
Singh, PS New Ashok Nagar.

versus

NITIN

..... Respondent

Through : None.

CORAM:

HON'BLE MR. JUSTICE S.P.GARG

S.P.GARG, J. (Oral)

1. Present revision petition has been preferred by the State to challenge the legality and correctness of an order dated 09.11.2015 of learned Addl. Sessions Judge by which the respondent – Nitin was discharged in case FIR No.956/2014 registered under Sections 376/363/506 IPC and Section 4 POCSO Act, 2012 at PS New Ashok Nagar.

2. I have heard the learned Addl. Public Prosecutor and have examined the Trial Court record. Admittedly, on 22.08.2014, the prosecutrix 'X' (changed name), aged around fifteen years, lodged a written complaint in which she implicated one Atul for committing rape upon her. Allegedly, he had made a telephone call at 12.00 a.m. on the mobile phone of her father on the night intervening 21/22.08.2014 which was attended by

her. The caller identified himself as Atul, her neighbour; asked her to come out of the house. She went out of the house with the mobile which was snatched by Atul. She was pushed inside a van and took towards Kalyanpuri. There, Atul committed rape upon her. She was also beaten with a stick; she was intoxicated. After rape, she was dropped at around 08.00 a.m. near her school at Kalyanpuri. She called her brother on her father's mobile phone who took her to home. In her 164 Cr.P.C. statement recorded on 23.08.2014, she again implicated Atul for committing rape upon her. It is alleged that on 24.08.2014 a supplementary statement under Section 161 Cr.P.C. was made by the prosecutrix in which she changed her version and informed that one Nitin had called her outside the house and subsequently had committed rape upon her. On 25.08.2014, X's sister visited the police station and handed over a letter that rape was committed by Nitin and not by Atul. Nitin was subsequently arrested and charge-sheet was filed against him.

3. Apparently during investigation, no corroborating material emerged to connect the respondent with the crime. Initially, the prosecutrix had implicated Atul to be the perpetrator of the crime. In her 164 Cr.P.C. statement before the learned Metropolitan Magistrate, she had reiterated her version and ascribed a specific role to him. Subsequently, the prosecutrix came up with a new version that it was not Atul but Nitin, the respondent, who was the author of the crime and due to fear she had given the name of one Atul. The Court below declined to record 164 Cr.P.C. statement again of the prosecutrix. The impugned order records that "the material on record is a humble-jumble which is even highly lacking in prima facie material so as to frame charges as against Nitin shown / arrayed as accused by replacing

Atul against whom the FIR had been lodged and against whom the victim had deposed under Section 164 Cr.P.C. The Investigating Officer has performed his duty in the mechanical way and there is nothing at all in the entire final report under Section 173 Cr.P.C. as to how and why the accused was all of a sudden replaced by another person that too merely on the saying or at the behest of sister of the victim.”

4. I find no illegality or material irregularity in the impugned order. Due to conflicting statements of the prosecutrix and in the absence of other corroborating evidence, the respondent – Nitin could not have been charged for commission of offence under Section 376 IPC.

5. The petition lacks merits and is dismissed.

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

(S.P.GARG)
JUDGE

JULY 18, 2016 / tr