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IN THE HIGH COURT OF DELHI AT NEW DELHI

DECIDED ON : JUNE 02, 2016

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W.P.(CRL.)708/2016

TINA SINGH

..... Petitioner

Through : Ms.Rakhi Dubey, Advocate, with
petitioner present in person.

versus

STATE (NCT OF DELHI & ANR.

..... Respondents

Through : Ms.Richa Kapoor, ASC with
Ms.Ritika Bhalla Kapoor, for the
State.
Mr.Mahavir Sharma, Advocate, for
Respondent No.2

CORAM:

HON'BLE MR. JUSTICE S.P.GARG

S.P.GARG, J. (ORAL)

1. Present Writ Petition under Article 226 of the Constitution of India read with Section 482 Cr.P.C. has been filed by the petitioner/prosecutrix seeking directions to transfer the investigation in Case FIR No.108/2015 under Sections 376(2)(g)/377/323/342/506/120B IPC registered at Police Station Barakhamba to any other agency. Status report is on record.

2. I have heard the learned counsel for the parties and have examined the file. Petitioner's grievance is that no substantial progress has been made in the investigation so far. On the contrary, at the behest of the

accused Arvind Sharma, a counter FIR No.115/15 under Sections 389/506/120-B IPC has been registered against her in the said Police Station. She is being threatened and harassed; there is a risk to her life. FIR has been registered under erroneous sections. Despite change of previous Investigating Officer, no further effective proceedings have been carried out till date.

3. On the complaint dated 09.09.2015, an FIR No.108/2015 came into existence only on 15.09.2015 under the aforesaid offences. Earlier the investigation was carried out by WSI Sharda Maggo. Vide order dated 11.01.2016, the learned Metropolitan Magistrate observing that no effective investigation has been conducted by the Investigating Agency despite repeated directions since 15.09.2015, suspected the competency of the Investigating Officer and about the manner in which the investigation was conducted, directed DCP concerned to ensure that the investigation was carried out by an officer not below the rank of Inspector. In compliance of the said orders, the investigation was assigned to W/Insp.Niraj Tokas on 16.01.2016. Again there is no substantial progress in the investigation. The said Investigating Officer proceeded on 47 days earned leave as reflected in the case diary dated 28.03.2016. It further records that till date victim's torn clothes could not be sent to CFSL. Subsequent case diaries on record do not reflect if any serious efforts were made to join the accused or to apprehend him. The Investigating Officer has not till date recorded the statement of any material witness. As per case diary dated 12.04.2016 even original complaint dated 09.09.2015 was not available on record. Previous Investigating Officer SI Sharda Maggo when enquired about the said complaint dated 09.09.2015 informed to apprise her after searching it. It

appears that the prosecutrix/petitioner was accused throughout for not cooperating with the investigating agency. Status report is completely silent as to what steps have been taken to join the accused. Case diary dated 28.04.2016 reveals that notice under Section 41(1) Cr.P.C. was prepared to join the alleged Arvind Sharma on 2.05.2016 at 10.00 a.m. There is nothing on record to show that this notice was served upon him and what steps were taken when he (Arvind Sharma) did not appear on 2.05.2016. Subsequent case diaries are conspicuously silent on this aspect. Apparently, no sincere efforts have been made by the Investigating Agency to carry out the investigation. No progress has been made in the investigation despite lodging of the FIR dated 15.09.2015. The prosecutrix/victim has approached the concerned authorities time and again. Vide order dated 02.10.2015, the learned Metropolitan Magistrate directed to ensure the petitioner's safety and depute a police officer to accompany her for her security on the court premises.

4. Considering the above facts and circumstances of the case, in the interest of justice, investigation of this Case FIR No.108/2015 under Sections 376(2)(g)/377/323/342/506/120B IPC registered at Police Station Barakhamba is transferred to Crime Branch for expeditious and effective action as per law.

5. The writ petition stands disposed of in the above terms.

(S.P.GARG)
JUDGE

JUNE 02, 2016/sa