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

+ **CRL.REV.P. 229/2016**

SANDEEP MAHAPATRA

..... Petitioner

Represented by: Mr. P.N. Mishra, Sr. Advocate
with Mr. Suchit Mohanty,
Advocate.

versus

STATE OF NCT OF DELHI

..... Respondent

Represented by: Mr. Ashok K. Garg, APP for
the State with Inspector Yogesh
Malhotra, SI Kuldeep Singh,
and SI Prem Pal, PS Khajoori
Khas.

CORAM:

HON'BLE MS. JUSTICE MUKTA GUPTA

ORDER

28.07.2016

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1. By this petition the petitioner challenges the order dated 1st February, 2016 whereby charge for offence punishable under Section 376 IPC has been directed to be framed against the petitioner. The learned Trial Court noted the allegations against the petitioner in the charge sheet are as under:

“(i) The prosecutrix was working in a private airlines as an aircraft maintenance engineer. The accused met the prosecutrix at the airport as he was working with another private airlines. Friendship developed between them and the accused started showing his affection for the prosecutrix. The accused proposed marriage to the prosecutrix. Father and mother of the accused made a phone call to the parents of the prosecutrix in June, 2010. Sisters of the accused visited the house of the prosecutrix and spoke to the parents of the prosecutrix regarding their marriage. Ultimately their marriage was finalised.

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(ii) Prosecutrix further alleged that on 19.06.2011, the accused came to her house in the evening and stayed at her house. After dinner she went to sleep in her bedroom and the guest room was given to the accused. At about 1:00 AM, the accused knocked the door of the prosecutrix and came inside her room. He started speaking vulgar language. Prosecutrix tried to stop him but he continued with a plea that they are going to marry soon. Thereafter the accused raped the prosecutrix. The prosecutrix did not inform about the incident to her family as she thought that the accused was going to marry her.

(iii) The prosecutrix further alleged that thereafter on another occasion, accused tried to repeat the same act but the prosecutrix did not allow him to do so. Subsequently, behaviour of the accused changed and on 09.11.2011, the accused and his family members refused to solemnise the marriage. The accused also stated that he is no longer interested in marrying her and he had already enjoyed her."

2. Learned counsel for the petitioner submits that in the first complaint made by the prosecutrix on 3rd July, 2011 recorded vide DD No.33B, the prosecutrix did not level any allegations and stated that now the petitioner has changed his stand and was not marrying and contacting her due to the pressure of his parents, sisters and brother-in-law. He further submits that after the filing of the first complaint, the present FIR was lodged on 17th February, 2012 after a period of nearly eight months.

3. I have perused the first complaint by the prosecutrix filed in the present petition, though it does not form part of the charge sheet as per learned counsel for the petitioner. Even in the first complaint the prosecutrix has alleged that the petitioner took her to various places like

Dehradun, Agra, Jaipur and Ahmedabad several times for the purpose of holiday. He promised to marry her and on that assurance established physical relations with her. He came to her house several times to propose her to marry and assured her. He also assured her parents that he wanted to marry her. Even the father of the petitioner stated that he would let the petitioner marry the girl whom he likes. Engagement was performed between the parties. However, on 29th June, 2011 when she spoke to the mother of the petitioner she refused to recognise her and told her that she will not get anything from the marriage with the petitioner. Thereafter the petitioner refused to talk to her and refused to marry. In the FIR the prosecutrix reiterated her allegations and gave the specific dates on which the petitioner established relationships. She stated that on 19th June, 2011 he came to the house in late evening and while they were sleeping in their respective rooms he came in her room at midnight, overpowered her physically and raped her. The complainant sought action against the petitioner that he befooled her by performing engagement ceremony which acted as a tool for him to sexually exploit her and he accused her.

4. Considering the allegations made in the FIR that relationship was established on the assurance of marriage and later the petitioner refused to marry in view of the decision of the Supreme Court reported as 2005 (1) SCC 88 Dalip Singh vs. State of Bihar at this stage it cannot be held that no charge under Section 376 IPC can be made out against the petitioner.

5. Thus I find no reason to set aside the impugned order to the extent it directs framing charge for offence punishable under Section 376 IPC.

6. Vide impugned order dated 1st February, 2016 the learned Trial Court
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also dismissed the application of the petitioner wherein he sought directions to the Investigating Officer to further investigate the matter and bring on record necessary evidence including DD No.33B dated 3rd July, 2011. It is well settled that the Investigating Agency is required to fairly investigate the matter and place all documents that are relevant for the purpose of fair trial before the learned Trial Court. DD No.33B was lodged before PS Khazoori Khas where FIR No.57/2012 under Section 376 IPC was registered on the subsequent complaint of the petitioner. In this regard the petitioner would be at liberty to take remedies in accordance with law before the learned Trial Court by either taking a certified copy of DD No.33B and/or confronting the relevant witnesses including the prosecutrix with the said document and/or examining defence witnesses in this regard.

7. The petition is dismissed with the observations as above.

MUKTA GUPTA, J.

JULY 28, 2016

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