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

DECIDED ON : JULY 11, 2016

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CRL.M.C.1370/2016

VIJAY KUMAR BEDI

..... Petitioner

Through : Mr.S.S.Ahluwalia with Mr.Jitender
Mehta, Advocates.

versus

STATE

..... Respondent

Through : Mr.Amit Gupta, APP.

CORAM:

HON'BLE MR. JUSTICE S.P.GARG

S.P.GARG, J. (ORAL)

1. As per Notification No.1078/G-4/Genl./DHC dated 06.07.2016, case is taken up for orders today.
2. Present petition under Section 482 Cr.P.C. has been preferred by the petitioner to challenge the legality and correctness of an order dated 18.02.2016 by which application under Section 311 Cr.P.C. filed to recall PW-1 prosecutrix-X (assumed name) and PW-2 (Vipin Panth), her husband was dismissed.
3. I have heard the learned counsel for the parties and have examined the file. The petitioner is facing proceedings under Section 376 IPC in Case FIR No.731/2015 registered at Police Station Nazafagarh. The

prosecutrix has leveled allegations of commission of rape upon her. PW-1 (X) and PW-2 (Bipin Pant) were examined at length on 25.01.2016. Both were cross-examined minutely on every aspect. It is informed that the prosecution has already completed its evidence.

4. The petitioner intends to recall PW 1 to confront her with a document (at page-51), original of which was not available with him at the time of her examination. I have gone through the contents of the said document. It does not indicate on which specific date this 'note' was written; for whom it was written; and in what context it was executed. It is also not clear as to when this letter/note was delivered and if so by what specific mode. The prosecutrix in her cross-examination has admitted her acquaintance with the petitioner. She even admitted that she had gone with him to Lucknow and he had brought her to Delhi from there on 01.04.2015. Apparently, this letter per se is of no relevance to disprove the allegations of rape.

5. The petitioner intends to confront PW-2 (Bipin Pant) with certain papers regarding divorce petition filed by him against her wife PW-2 (X). In the cross-examination of PW-2 specific questions were put about the divorce petition filed by him against his wife on 4.5.2015. He even gave the names of the counsel representing him in the said petition. Moreover, the petitioner can produce the certified copies of these public documents in defence.

6. The petitioner further intends to confront PW-1 regarding call details of the mobile to show his location on 19.02.2015 at a particular place. Record reveals that the petitioner has taken a specific defence that on 19.02.2015, he had visited the office of Commissioner of Customs, New

Custom House, General, New Delhi and had supplied paper and CD combo shredder machine vide Challan No.103 and 104. He further alleged that on that day, he had also visited the office of Commissioner of Customs. Air Cargo Export, New Custom House, New Delhi and had received the original order from the Administrative Officer (Admin)-Ms.Smiti Bhatnagar. It is for the accused to prove the plea of 'alibi'.

7. Since PWs 1 and 2 have already been cross-examined at length way back on 25.01.2016, they being resident of Jaipur (Rajasthan) cannot be recalled for the reasons mentioned in the application. It appears that the petitioner intends to delay the trial by re-calling these witnesses.

8. I find no merit in the petition. The petition is dismissed. Copy of the order be sent to the court concerned.

(S.P.GARG)
JUDGE

JULY 11, 2016
sa