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

RESERVED ON : MARCH 17, 2016

DECIDED ON : JULY 8, 2016

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CRL.M.C.3559/2013 & CRL.M.A.12983/2013

MS.SEEMA SEHGAL

..... Petitioner

Through : Ms.Rekha Rustagi, Advocate.

versus

DR.PAWAN GOYAL & ANR.

..... Respondents

Through : Ms.Meenakshi Dahiya, APP.
Mr.Rajesh Yadav with Ms.Ruchira
Arora and Mr.Dhananjay Mehlawat,
Advocates for R-1 and 2.

CORAM:

HON'BLE MR. JUSTICE S.P.GARG

S.P.GARG, J.

1. File taken up today as 7th July, 2016 fixed for pronouncement was declared holiday on account of 'Id ul-Fitr'.
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 08.05.2013 of learned Additional Sessions Judge in Crl.Rev.No.76/13 (RBT) whereby order dated 12.09.2011 of learned Metropolitan Magistrate summoning the respondent Nos.1 and 2 for commission of offence only

under Section 323 IPC was upheld. The petition is contested by the respondents.

3. I have heard the learned counsel for the parties and have examined the file. Admitted position is that the petitioner was working as PRO and Operation Assistant with respondent No.1 since December, 1999. She left her job from Goyal Eye Institute in August, 2006 and joined another institute. She filed the complaint case under Sections 324, 325, 376, 506 (2) and 511 IPC against respondent Nos.1 and 2 on 17.02.2007. Her application under Section 156 (3) was dismissed by an order dated 10.07.2007 observing that only a case under Section 323 IPC was made out which was a non-cognizable offence. The petitioner challenged the said order in Revision. However, she opted to withdraw the said revision petition on 28.02.2008.

4. In order to support her contentions, she examined herself as CW-1 besides producing CW-2 Rajesh Kumar, Record Clerk from Sushrut Trauma Centre, LNJP Hospital, CW-3 Desh Raj, Record Clerk from DDU Hospital, and CW-4 Dr.Usha Lal from Lal Nursing and Maternity Home. After hearing the learned counsel for the petitioner and on perusal of the pre-summoning evidence, the learned Metropolitan Magistrate by an order dated 12.09.2011 summoned the respondent Nos.1 and 2 only for commission of offence punishable under Section 323 IPC. This order was challenged in revision which resulted in dismissal vide order dated 08.05.2013. Aggrieved by the orders, the instant petition has been preferred.

5. Learned counsel for the petitioner urged that the courts below did not appreciate the evidence in its true and proper perspective. Petitioner's prayer for further 'investigation' was declined without cogent

reasons. Ingredients of Section 376(D) are attracted. 'X' was sexually exploited on various occasions by respondent No.1. Her consent (if any) to have physical relations was of no consequence as respondent No.1 was in dominating position. The complainant had produced on record cogent medical evidence to show that she had become pregnant and the pregnancy was terminated on 15.12.2000 at Dr.Lal's hospital at Gurgaon in the name of 'Tina'. The respondent No.1 had established physical relations with the prosecutrix at his clinic, residence and hotels in Delhi and Pune without her consent. The respondent had also given beatings to her several times. On 2.1.2003, respondent No.1 had cut her wrists with a blade on her protest to sexual harassment and she got treatment at Sushrut Taruma Centre on 03.01.2003. In the first week of October, 2004, she was beaten by respondent Nos.1 and 2. she was taken to Sir Ganga Ram Hospital and thereafter was treated at Goyal Eye Institute. Counsel further urged that, prima facie, there was sufficient material to proceed against respondent No.1 for the commission of offence under Section 376(D). The Trial Court was not justified to evaluate the evidence minutely at the stage of summoning. She relied upon *Sukhwinder Kaur vs.Kulwinder Singh & Ors.* 2004 (1) CC Cases (HC)42; *Dr.S.S.Khanna vs.Chief Secretary, Patna* AIR 1983 SC 595; *Azija Begum vs.State of Maharashtra* 2012 (1) CC Cases (SC) 167; *Gurdeep Kaur vs. Balbir Singh & Ors.*2005 (2) CC Cases (HC) 95; *Pratibha Rani vs.Suraj Kumar & Anr.* AIR 1985 SC 628 and *Vijay Mahajan vs.State of Haryana* 2004 (1) CC Cases (HC) 272.

6. Learned counsel for respondent Nos.1 and 2 urged that there is no illegality or irregularity in the impugned orders. Delay of six years in instituting the complaint has not been explained. Ingredients of Section 376

(D) are not applicable in any form. No cogent evidence has emerged on record to infer if the prosecutrix became pregnant and the pregnancy was terminated. Reliance has been placed on *Uday vs.State of Karnataka* 2003 (4) SCC 46; *State vs.Saurabh Vashisht* 2013 (3) JCC 2007; *Kuldeep Tyagi vs.State NCT of Delhi* 2013 (2) JCC 840; *Kailash Verma vs.Punjab State Civil Supplies Corporation* 2005 (2) SCC 571; *Rakesh Chand Maheswari vs.Asad Raza Zaidi* 2013 (3) AD (Delhi) 195; *Central Economic Intelligence Bureau vs.State of Delhi* 2010 (119) DRJ 658; *Inderjeet Kaur Kalsi vs.NCT of Delhi & Anr.*2013 (205) DLT 410.

7. The complaint was lodged on 17.02.2007. In the complaint case, the prosecutrix informed that she had joined Goyal Eye Institute being run by respondent No.1 in December, 1999 as PRO and Operation Assistant. In February 2000, for the first time, she accompanied respondent No.1 for operation at Dr. Kelkar Eye Institute at Pune. There she was served 'something' in the cold drink/food as a result of which she became semi-conscious. She was taken to the hotel room where respondent No.1 committed rape upon her. When she attempted to raise alarm, respondent No.1 shut her mouth and told that he was feeling guilty and would talk to her grandfather after reaching Delhi and would marry her. On reaching Delhi, he asked her to wait for two years for marriage. He also threatened her not to disclose the incident to anyone. He threatened to ruin her by showing her photographs publically. She further alleged that respondent No.1 continued to have physical relations with her. On her refusal to accede to his demands, he would show her photographs to defame her. In November, 2000, when she became pregnant, respondent No.1 got her pregnancy terminated at Dr.Lal's Hospital at Gurgaon in a fictitious name Tina on 15.12.2000. On

the asking of respondent No.1, she had handed over ₹2,20,000/- and jewellery to arrange accommodation. She further alleged that respondent No.1 used to take her forcibly to hotels in Delhi and Pune and establish physical relations with her at his residence and clinic also. She gave various dates on which she was given beatings by respondent Nos.1 and 2. In August, 2006, she left the job and joined another institution. On 11.10.2006, she went to respondent No.1's hospital to collect her documents/certificates, where she was inflicted grievous injuries. On 28.10.2006, her car parked outside her house was damaged. On 30.10.2006 her purse containing a telephone diary and other articles was stolen from her place of work. She had lodged a complaint with the police but no action was taken. Her reminders dated 19.10.2006, 31.10.2006 and 23.11.2006 went unheated. Finally, the complaint was lodged.

8. After her application under Section 156(3) Cr.P.C. was dismissed by a detailed order dated 10.07.2007, the petitioner challenged the said order in revision. However, for the reasons best known to her, she opted to withdraw the said petition and it was not taken to logical end. Subsequent to that, the petitioner led her pre-summoning evidence.

9. The first incidence of physical relationship took place way back in February 2000 at Pune. Nothing has come on record that the prosecutrix had raised any alarm at the time of occurrence or soon thereafter. She remained in the company of respondent No.1 at Pune and returned to Delhi as per their schedule. She did not try to contact her grand-father or any relative to complain about the alleged incident at Pune. Even after coming to Delhi, she did not lodge any complaint. She continued to have physical relationship with respondent No.1 even at his residence, clinic and hotels at

Delhi and outside Delhi. At no stage, she complained about the conduct and behavior of the respondent No.1 to her family members or any authority. She even continued her employment with respondent No.1. She maintained complete silence for more than six years. The plea that respondent No.1 promised to marry her seems to be without any foundation. It has come on record that respondent No.1 was already married to respondent No.2. Under these circumstances, it was not possible for respondent No.1 to solemnize marriage with the petitioner, aged around 30 years. She was well aware of the consequences of her alleged physical relationship with respondent No.1. Delay in lodging the FIR has not been explained. It is not believable that the prosecutrix would keep silence for about six years and not insist to get the promise of marriage fulfilled. Nothing has come on record to show if any negotiation for marriage ever took place through the intervention of her grandfather or other relatives. The prosecutrix did not get herself medically examined at any stage to confirm commission of rape. She did not inform about her alleged pregnancy or its termination to her grandfather or any other family member. Document Ex.CW1/13 does not reflect that it was the petitioner who got her pregnancy terminated on 15.12.2000 at the said clinic. It is unexplainable as to why the petitioner opted to get the pregnancy terminated under the assumed name 'Tina'. The prosecutrix did not explain as to why she opted to get the pregnancy terminated.

10. Inconsistent version has been given by the prosecutrix in her evidence which is not corroborated by any other independent evidence. At one hand, she accuses the respondent No.1 to have established physical relations at various places repeatedly on the alleged promise to marry; and, on the other hand she charges him of giving beatings on several occasions

on her refusal to have physical relations. Still, she accuses him of criminally intimidating her or to publish her objectionable photos. She has even leveled allegations of damage to her car and theft of her purse against respondent No.1 without any cogent material. It is unbelievable that despite all the alleged physical and mental abuse, prosecutrix would give substantial amount of ₹2,20,000/- and her jewellery to respondent No.1 to arrange accommodation and would not suspect his ill-intention.

11. Nothing has come on record that the prosecutrix was not free to lodge the complaint for long six years against respondent No.1 for alleged physical relations with her. She was not kept under wrongful confinement at any time. She had left her job from the clinic. There was no occasion for the prosecutrix to visit the said clinic on the pretext to collect the original certificates, the details of which have not come on record.

12. Record reveals that after examining the witnesses, the prosecutrix on her own had closed her pre-summoning evidence. Thereafter, upon appreciation of the contentions of the petitioner, the impugned order was passed. The Trial Court did not find any justification for 'further' investigation. Nothing has come on record to show as to what evidence the petitioner intended to lead and what kind of further investigation was required. The statement of the prosecutrix to have physical relations forcibly with the respondent No.1 on the alleged promise to marry does not inspire confidence in the light of conflicting versions narrated by her. Her testimony cannot be taken on its face value to proceed against respondent No.1 for commission of offence under Section 376 (D).

13. The courts below have dealt with all the relevant aspects minutely. Concurrent findings of the courts below need no intervention.

14. In the light of the above discussion, the petition lacks merits and is dismissed. All pending application(s) also stand disposed of. Trial Court record be sent back forthwith along with the copy of the order.

15. Observations made in the order shall have no impact on the merits of the case.

(S.P.GARG)
JUDGE

JULY 08, 2016/sa

