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

+ CRL.REV.P. 645/2016

ARNAB GANGULY

THROUGH PAROKAR ARIJIT DAS

..... Petitioner

Through : Mr. Sermon Rawat, Adv.

versus

STATE

..... Respondent

Through :Ms. Neelam Sharma, APP with SI
Kamlesh, P.S. Sagarpur

CORAM:

HON'BLE MR. JUSTICE A.K. PATHAK

ORDER

% **04.10.2016**

By this petition under Section 397 of the Cr.P.C., petitioner has assailed the order dated 26th July, 2016, passed by the learned Additional Sessions Judge, Delhi, whereby charges under Sections 354-D/328/376/506 IPC have been framed against the petitioner. Trial court has considered the material collected during the investigation including the statements of prosecutrix, as contained in the FIR and under Section 164 of the Cr.P.C. and has concluded that a, prima facie, case is made out for having committed the offences under the aforesaid provisions.

It is trite law that at the time of framing of charges only a, prima facie, view has to be taken. Statements of the witnesses recorded under Section

161 of the Cr.P.C. have to be taken on face value, for forming a, prima facie, view. In the FIR, prosecutrix has stated that petitioner was working in the same office. Her office was under process of shifting from Gurgaon to Janakpuri. In the first week of December, she along with petitioner was going to HR Consultancy. On the way petitioner asked her to come to his house since he wanted to pick up the voucher book from there. She went to his house where he offered water to her. Thereafter, she became unconscious after drinking the same and then bad thing happened. Petitioner also said he had made a video. Thereafter, petitioner started blackmailing her and threatened that he will kill her husband and daughter. In the FIR, she has categorically stated that “The day all this thing (sex) happened, everyday was a torture to me. He used to say if you don’t obey my order, I will call your husband, I will inform your in-laws and mother. He threatened saying my husband will be killed and daughter will be kidnapped.”

Learned counsel for the petitioner has contended that no suspicion much less grave suspicion arises for the petitioner having committed offence under Section 376 IPC from a reading of statement under Section 164 of the Cr.P.C. of the prosecutrix wherein she has stated that after drinking water,

she started feeling drowsy and after 15-20 minutes she realized that her pajama's knot was open but her suit was fine. Petitioner told her that he had made video. It is submitted that prosecutrix has not stated that she was raped by the petitioner. According to him, ingredients of offence under Section 376 IPC are not attracted and at best, ingredients of offence under Section 354 IPC would be attracted from the statement of prosecutrix under Section 164 Cr.P.C.

I do not find much force in this contention. In the FIR, prosecutrix has categorically stated about the sex having been committed. It may further be noted that petitioner had argued before the trial court that physical relations between the two were consensual. Whether it was a consensual sex or not is subject matter of trial. The variance in the two statements of the prosecutrix, that is, FIR and under Section 164 Cr.P.C. are also subject matter of trial. However, from the statements, which have to be taken as correct, at this preliminary stage, I am of the view that a prima facie, case is made out for framing of charge under Section 376 IPC.

Petition is dismissed.

A.K. PATHAK, J.

OCTOBER 04, 2016

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