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* IN THE HIGH COURT OF DELHI AT NEW DELHI

+ CRL.M.C. 4960/2015

DEVENDER KUMAR @ MUNNA SINGH

..... Petitioner

Through: Mr B.N. Jha, Adv.

Versus

STATE OF GOVT OF NCT DELHI

..... Respondent

Through: Ms Neelam Sharma, Additional Public
Prosecutor for the State alongwith Sub
Inspector Kala Joshi Police Station Govind
Puri, New Delhi

CORAM:

HON'BLE MS. JUSTICE SUNITA GUPTA

ORDER

% 12.01.2016

This is a petition under Section 482 Cr.P.C filed by the petitioner seeking quashing of FIR bearing No. 17/2014 dated 04.01.2014 under Section 368 IPC & 16 Pocso Act registered at Police Station Govind Puri, New Delhi.

FIR under Section 363 IPC in the instant case was registered on the statement of Shashi Kumar, brother of prosecutrix on the basis of a statement made by him on 04.01.2014 stating therein that his sister aged about 13 years studying in 7th Standard in Tugalkabad Village has been kidnapped by Rajeev Kumar on 24.12.2013. During the course of investigation, the prosecutrix was recovered and thereafter Sections 366A, 368 & 376/506 IPC and 4/6/16 Pocso Act were added.

Learned counsel for the petitioner submits that Section 368 IPC and 16 Pocso Act were added against the petitioner. The statement of prosecutrix under Section 161 Cr.P.C was recorded by the police at the instance of her father wherein she stated that the accused Rajeev Kumar took her to Dhanbad (Jharkhand) at the residence of the present petitioner who is the brother-in-law of accused Rajeev Kumar after solemnization of marriage at Kalka Jee Mandir and both of them stayed there for about 4 to 5 days and

they were employed with a Seth at Dhanbad (Jharkhand) at the instance of petitioner. However, in her statement recorded under Section 164 Cr.P.C, she did not state anything against the petitioner. On 14.08.2014, the petitioner was arrested at Dhanbad (Jharkhand) by the police of Police Station Govind Puri but since transit remand was not given by the Learned ADJ-I Dhanbad as such, he could not be brought to Delhi. The petitioner was given a notice under Section 160 Cr.P.C to appear before the police but he failed to do so. Consequently, non-bailable warrants were issued against him which could not be executed. Thereafter, he was declared proclaimed offender. The supplementary charge-sheet was filed by the police. It is submitted that the petitioner was unaware about the marriage of the prosecutrix with Rajeev Kumar. Rajeev Kumar came to the residence of the petitioner at Dhanbad and informed that the prosecutrix was the younger sister of his Bhabhi and he had to leave her at her native village and that he had brought the prosecutrix with the consent of her parents. As such, both the accused and the prosecutrix stayed there for one or two days and thereafter left him. It is submitted that only on the basis of the Statement under Section 161 Cr.P.C, the petitioner cannot be convicted for the offences as alleged against him and as such, the FIR qua the petitioner is liable to be quashed.

Per contra, learned Public Prosecutor for the State submits that at this stage, there is no ground for quashing of the FIR as in her statement recorded under Section 161 Cr.P.C, the prosecutrix has clearly stated that she was taken by the accused Rajeev Kumar to the house of his brother-in-law that is the present petitioner at Dhanbad (Jharkhand) where they stayed for about 3 to 4 days and thereafter, he got them employed with a Seth with a view to hide them from police. The case is at its initial stage. The prosecutrix is yet to be examined and as such, there are no grounds for quashing of FIR.

Rebutting the submissions of the learned Public Prosecutor for the State, counsel for the petitioner states that examination-in-chief of prosecutrix has been recorded and she is yet to be cross-examined.

A perusal of the statement of prosecutrix recorded under Section 161 Cr.P.C by the police during the course of investigation reveals allegations against the petitioner that the co-accused Rajeev Kumar took her to the house of the petitioner at Dhanbad

(Jharkhand) where they stayed for 3 to 4 days. Thereafter, in order to hide them from police, the petitioner got them employed with a Seth. At this stage, when the case is at his threshold and prosecutrix is yet to be cross-examined, this Court is not to scrutinize and to evaluate the statements of the prosecutrix recorded under Sections 161 & 164 Cr.P.C.

Moreover, the plea taken by the petitioner that he was not aware of the factum of solemnization of marriage of co-accused Rajeev with prosecutrix or that co-accused had only informed him that prosecutrix is younger sister of his Bhabhi or he had to leave her to her native village and that he had brought her with the consent of her parents may, at best, be the defence of the petitioner which is required to be established during the course of trial. But at this stage when the trial is still in progress there are no grounds for quashing of the FIR.

The petition is accordingly dismissed.

SUNITA GUPTA, J

JANUARY 12, 2016
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