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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ **CRL.REV.P.142/2017**

Order reserved on : 7th November, 2017
Order pronounced on : 17th November, 2017

THE STATE OF NCT OF DELHIPetitioner
Through: Mr. Akshai Malik, APP for the State with
W/SI Anita P.S.-Uttam Nagar, New
Delhi.

Versus

ROSHAN LAL @ROSHAN & ORS.Respondent
Through: Mr. Ajay Sinha, Adv. for R-1.
Mr. Inderpal Khalchu, Adv. for R-2.

CORAM:
HON'BLE MS. JUSTICE SANGITA DHINGRA SEHGAL

1. The present Criminal Revision Petition has been filed under Section 397/401 of the Code of Criminal Procedure, 1973 (hereinafter referred 'Cr.P.C.'), assailing the order dated 03.11.2016 passed by the Additional Sessions Judge (SFTC), Dwarka Courts, New Delhi in FIR No. 384/2016, whereby respondents Roshan Lal @ Roshan and Rajesh @ Kabeer were acquitted of the offence punishable under Sections 376D/506 of the Indian Penal Code, 1860 (hereinafter referred as 'IPC') registered at Police Station-Uttam Nagar, New Delhi.
2. Brief facts of the case are that in June, 2015 prosecutrix X (real name withheld in order to conceal her identity) had gone to a

banquet hall at Palwal, Faridabad for an event management program. There was an exchange of hot words with coordinator Raunak whereupon he asked her to sit in a vehicle in which two boys under the influence of alcohol were already present. She along with one girl namely Anju sat in the vehicle. Anju got down at Chhatarpur Metro Station. After Anju left, one of the boys namely Sandy committed rape upon her while the other boy started playing loud music. She was thrown out of the vehicle near Dwarka Mor and was also threatened of dire consequences. The prosecutrix was thereafter mentally disturbed and thus never mentioned the incident to anyone and only when the father of the prosecutrix pressurized her for marriage, she narrated the incident of rape.

3. Vide impugned order dated 03.11.2016, the Additional Sessions Judge (SFTC), directed to discharge the respondents under Section 376D/506 IPC.
4. Assailing the impugned order, Mr. Akshai Malik, learned APP for the State contended that the Trial Court erred in discharging the respondents at a premature stage as at the stage of framing of the charge, the Court is to consider only prima facie aspect of the case and not to evaluate the evidence and to pass judgement of discharge or contravention of the case; that the Trial Court while passing the order, failed to appreciate the fact that in her statement recorded under Section 161 Cr.P.C. also she has corroborated the same facts; that the Trial Court, while passing the order dated 03.11.2016, failed to appreciate the fact that in all her statements

she had stated that Anju was with her and had got down at the Chhatarpur Metro Station after which the incident had taken place thus non-examination of Anju is not fatal to the case; that the prosecutrix has in all her statements stated the reason for delay in lodging the F.I.R.; that the Trial Court while passing the order has wrongly considered the fact that the prosecutrix had admitted before the court that she had sent messages to the respondent on his mobile number.

5. Per Contra, Mr. Ajay Sinha, learned counsel for the respondent contended that impugned order does not suffer from any jurisdictional infirmity or with material irregularity so as to warrant any interference by this Court.
6. I have given my considered thought to the submissions raised by counsel for parties and perused material available on record.
7. Record reveals that, as per the prosecutrix, her rape was committed in June, 2015 and she did not report it until the day she was asked to get married. On that day she tried to commit suicide by consuming phenyl, as she was mentally disturbed. The FIR in the present case has been lodged at a very belated stage i.e. on 10.04.2016 after about 10 months of the alleged incident which took place in June, 2015. The delay in lodging the report raises a considerable doubt regarding the veracity of the evidence of the prosecution and points towards the infirmity in the evidence and renders it unsafe to base any conviction. Delay in lodging of the FIR quite often results in embellishment which is a creature of afterthought. It is therefore that the delay in lodging the FIR be

satisfactorily explained. The purpose and object of insisting upon prompt lodging of the FIR to the police in respect of commission of an offence is to obtain early information regarding the circumstances in which the crime was committed, the names of actual culprits and the part played by them as well the names of eye witnesses present at the scene of occurrence.

8. Reference may be made to the judgement of the Apex Court in ***Jagannivasan Vs. State of Kerala*** reported in ***1995 Supp(3) SCC 204***, where the Supreme Court acquitted the person from the charges under Section 376 when victim did not inform the commission of offence to her parents immediately after the incident and went to the dancing performance although delay in filing of the FIR was only six days.
9. Further reference has also been made to ***Rajesh Patel Vs. State of Jharkhand*** reported in ***(2013)3 SCC 791*** wherein also delay of 11 days was considered fatal and termed as inordinate delay in lodging the FIR while acquitting the convict for the offence under Section 376 of the IPC.
10. Further, the independent prosecution witness Mukesh Chauhan has not supported the claim of the prosecutrix that the respondents were drunk on the night of the incident. Moreover, the prosecutrix remained in touch with the respondents even after the incident and on 17.09.2016 she herself admitted to this at the time of hearing the bail application of accused Rajesh.
11. There is a gross delay in filing the complaint and, therefore, in absence of proper explanation regarding such delay, no cognizance

can be taken by the Court and, hence, the base of the investigation itself is improper, irregular and illegal.

12. In view of the above, I am of the considered opinion that the reasons recorded by the learned Trial Court in the impugned order, do not suffer from any illegality whatsoever and accordingly, the present Criminal Revision Petition shall stand dismissed.
13. Ordered accordingly.

SANGITA DHINGRA SEHGAL, J.

NOVEMBER 17, 2017

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