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

+ **CRL.REV.P. 115/2017**

VARUN KUMAR

..... Petitioner

Through Mr.Aman Usman, Adv.

versus

STATE & ORS.

..... Respondent

Through Mr.Panna Lal Sharma, APP.

CORAM:

HON'BLE MR. JUSTICE P.S.TEJI

ORDER

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03.02.2017

Crl.M.A. 2026/2017 (Exemption)

Application is allowed subject to just exceptions.

Crl.Rev.P. 115/2017 & Crl.M.A. 2025/2017 (Stay)

Arguments heard.

The present revision petition has been filed under Section 397/401 Cr.P.C. for setting aside the order dated 09.01.2017 passed by the Learned Additional Sessions Judge in the case bearing S.C. No.67/2015, FIR No.62/2014, under Section 417/376/109 IPC, Police Station Saket.

Perusal of record shows that the FIR of the instant case was registered under Section 376/506 IPC. Vide order dated 19.09.2014, charges under Section 417/376 IPC was framed against the accused. Thereafter, an application under Section 216 Cr.P.C. was filed on behalf of the petitioner/accused for alteration of charge framed under

Section 417/376 IPC to under Section 493 IPC. The said application was dismissed vide impugned order dated 09.10.2017 by the Court below. Feeling aggrieved by the same, the present revision petition has been filed by the petitioner.

The grounds taken by the petitioner in support of the revision petition are that the improved allegations levelled by the prosecutrix during her examination in chief attract invocation of Section 493 IPC and not the charge framed under Section 417/376 IPC; charge under Section 417 IPC is not sustainable as the ingredients of Section 415 IPC are already embodied in Section 493 IPC, thus, charge under two distinct sections cannot be framed; charge was framed on account of alleged promise to marry however by way of improvement, the prosecutrix changed her stand that she was perceived to believe that she was married to the accused.

The submissions made by the counsel for the petitioner are that the present case is based upon the testimony of the prosecutrix and her cross-examination is yet to be recorded. Even the statement of the prosecutrix cannot be treated as her complete statement without cross-examination.

Counsel for the petitioner has relied upon a judgment in support of his case in the case of **Anant Prakash Singh v. State of Haryana & Anr. AIR 2016 SC 1197** in which it was observed that the charge so framed by the Magistrate is in accord with the materials produced before him or if subsequent evidence comes on record. It is not to be understood that unless evidence has been let in, charges already framed cannot be altered.

The judgment referred by the petitioner in the case of **Anant Prakash Sinha's** case (supra) is of no assistance to him for the reasons that the petitioner has not referred to any other evidence except the statement of the prosecutrix in which only her examination in chief has been recorded and it is not her complete evidence in the absence of her cross-examination, rather the case of the petitioner is that he is seeking amendment of the charge on the basis of statement of the prosecutrix but the same is incomplete.

This Court is of the considered opinion that the word “statement” include the examination-in-chief as well as the cross-examination and subject to the permission re-examination also. The emphasis is on the fact that the witness had been cross-examined fully and only thereafter the evidence given by a witness in judicial proceeding is relevant for the purpose of proving a particular fact. It must be remembered that where part examination or cross-examination took place such a statement cannot be called evidence in the eyes of law. The procedure as laid down under the Evidence Act is clear and unambiguous. Under the Evidence Act, evidence means the examination-in-chief and cross-examination. That statement alone will form evidence.

Even otherwise, as per the petitioner, the examination in chief of the prosecutrix was recorded on 11.03.2015 and the instant revision petition has been filed apparently to avoid the cross-examination of the prosecutrix. It is not in the interest of justice that evidence of the prosecutrix is to be kept pending.

In view of the above mentioned discussion, this Court does not

find any illegality or infirmity in the order passed by the Court below. There is no merit in the present revision petition. The revision petition is accordingly dismissed. However, the trial Court is directed to expedite the statement of the prosecutrix i.e. cross-examination.

The present revision petition is accordingly disposed of.

Application CrI.M.A. 2025/2017 is also disposed of.

P.S.TEJI, J

FEBRUARY 03, 2017

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