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

+ **CRL.M.C. 868/2017**

MS RITU

..... Petitioner

Represented by: Petitioner in person

versus

BALWAN SINGH & ORS

..... Respondents

Represented by:

CORAM:

HON'BLE MS. JUSTICE MUKTA GUPTA

ORDER

% **20.03.2017**

Crl.M.A. No. 4524/2017

1. Exemption allowed, subject to all just exceptions.

Crl.M.A. No. 4523/2017 (for restoration)

2. For the reasons stated in the application, Crl.M.C.No. 868/2017 & Crl.M.A.Nos.3675-3676/2017 are restored to its original position.

Application is disposed of.

Crl.M.C. No. 868/2017 & Crl.M.C.Nos.3675-3676/2017

3. By the present petition, the petitioner challenges the order dated 27.04.2016 whereby the prayer of the petitioner directing the collection of the blood samples of Balwan Singh and Sneha and sending the same for DNA analysis, was dismissed. The second prayer made before this Court is to re-open her deposition.

4. The impugned order passed by learned Metropolitan Magistrate

reads as under:-

“An application has been filed by the complainant stating that accused Shen, Kalawati and Rejender have not furnished their surety bonds. On perusal of the file, it is seen that all the three accused persons were directed to file their surety bonds in the sum of ₹10,000/- which have not been furnished. They are directed to produce their proper sureties on the next date.

Another application has been filed by the complainant for ordering the accused Balwan and Sneha to provide their blood etc. samples for analysis for DNA. It is submitted by the complainant that the same is essential to establish their sexual relationship.

The offence in the present matter is primarily is under Section 494 IPC and the complainant is only to prove that the accused/husband married another person during her lifetime. In the opinion of the court, to establish sexual relationship for the purpose of section 494 IPC is not relevant.

Complainant has further prayed that accused Ajeet Singh may be directed to submit records of exemptions availed in the Ld. Sessions court in Crl. Appeal No.113/2014. This court is unable to provide the said relief to the complainant and she is at liberty to file such application in the Ld. Sessions Court.

It is further prayed in the application that order dated 23.03.2016 may be rectified as the complainant had appeared in court. Since no adverse order was passed on that date and presence of the complainant has been marked at 11.00 am, there is no modify the order. The application of the complainant is hereby dismissed.

Complainant is directed to lead her evidence in pre charge.

Witness is directed to stand in the witness box to depose on Oath whatever she has to say in evidence. She has refused to depose on Oath and she has stated that she wishes to challenge the order of this court. Since witness has refused

to comply with direction of this court, her evidence in pre charge is hereby closed as many opportunities have been given to her to lead her evidence.”

5. Complaint case No.239/2/2010 has been filed by the petitioner against Balwan Singh for offence punishable under Section 494 IPC. To establish that during the subsistence of marriage between the petitioner and Balwan Singh, Balwan re-married with Sneh, no evidence can be elicited by sending blood samples of Balwan and Sneh for DNA analysis. Further as noted in the impugned order, the Trial Court directed the petitioner to stand in the witness box and depose on oath which she refused. Hence, the pre charge evidence was rightly closed by the Trial Court. There being no error in the impugned order, petition and applications are dismissed.

MUKTA GUPTA, J.

MARCH 20, 2017
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