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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ CRL.REV.P. 221/2017
VIKAS MAHAJAN Petitioner

Through: Mr. Shailender Babbar &
Mr. Joginder Sukhija, Advs.

versus

STATE & ANR Respondent

Through: Mr. Amit Chadha, APP for State with
Insp. Anil Malik, PS Greater Kailash.
Mr. Ajay Kohli, Ms. Bhumika
Kapoor, Mr. Sumit Bindal, Advs. for
R-2 with R-2 in person.

CORAM:

HON'BLE MR. JUSTICE R.K.GAUBA

ORDER

% **12.04.2017**

The petitioner stands summoned as an accused in criminal case arising out of First Information Report (FIR) No. 544/2014 under Sections 376/313/494 of Indian Penal Code 1860 (IPC) of police station, Greater Kailash which, upon committal by the court of cognizance is presently pending on the file of Court of Additional Sessions Judge, Fast Track Court, Saket Court, New Delhi it having been registered as Sessions Case No. 2107/2016 (old No. 92/2015). After hearing the prosecution and the petitioner, the learned Trial Judge by a detailed order passed on 20th December, 2016, found, *prima facie* case made out for the petitioner to be put to trial on the charge for offences under Sections 417, 376 and 313 IPC. The formal charges were framed on 09.01.2017. By the criminal revision petition at hand, preferred under Section 397 of the Code of Criminal Procedure, 1973 (Cr.P.C.), the petitioner seeks to assail the said order directing charges to be framed and the formal charges which were framed in its wake.

When the petition was taken up for the first time on 27.03.2017, the petitioner gave up the challenge on merits of the charges and restricted the revision petition to question the exercise of jurisdiction in the case by the trial court submitting no part of the offence or transaction has taken place within Delhi and, therefore, the trial Court sitting in Delhi would have no territorial jurisdiction. It was for this limited scrutiny that notice was issued by order dated 27th March, 2017.

The revision petition is resisted by the State and also by the second respondent through her counsel, she being complainant (or the first informant) of the case.

The impugned order of the learned Sessions Court takes note at length of the background facts, particularly the allegations made in the written complaint leading to the FIR being registered, as indeed the statement made by the prosecutrix (the second respondent) during the course of investigation before the Magistrate under Section 164 Cr.P.C. For such purposes, the said order may conveniently be referred to. Suffice it to note that the allegations in the case, broadly put, are that the petitioner and the second respondent (the complainant) were co-workers in a private company having its office in Okhla, New Delhi, the latter actually being in superior position in hierarchy *vis-a-vis* the petitioner, they having come in first contact sometime around 2005. The petitioner statedly was married even at that point of time and had two children out of the said wedlock. It is alleged that he would often express to the complainant strained matrimonial relations with his wife and his intention to put an end to it. It is also alleged that he would express his affection and attraction towards the complainant, she being single (divorcee) in her statement under Section 164 Cr.P.C. She would state she had initially turned down such advances because the petitioner was a married person

having two children. It is her allegation that in October, 2010, the petitioner proposed marriage to her also informing that he had taken divorce from his wife, both having started living separately, the issue of custody of the children only persisting. As per the allegations in the FIR, reiterated in the statement under Section 164 Cr.P.C., in October, 2010 the petitioner visited the house of the complainant in Ghaziabad (UP) and induced her to engage with him in sexual relationship. This statedly was followed by a formal marriage ceremony performed on 12.12.2010 in a temple in the area of Preet Vihar, New Delhi in the presence of the parents of the petitioner. It is alleged that on account of physical relationship between the parties, the complainant became pregnant but the said pregnancy was forcibly terminated by certain acts of commission indulged in by the petitioner. The complainant further alleged that in July, 2014, she learnt that the information given by the petitioner about divorce taken from his wife was incorrect and false, the said marriage having actually ended on 5th April, 2014 on the basis of petition for divorce by mutual consent submitted in December, 2013.

The petitioner has challenged the territorial jurisdiction of the Court in Delhi primarily on the ground that the offences of cheating (Section 417 IPC), rape (Section 376 IPC) and causing misconduct without the woman's consent (Section 313 IPC), as are shown committed by the evidence presented, occurred in Ghaziabad (UP) and, therefore, the complaint, or the criminal case, has been wrongly entertained by the authorities in Delhi. This submission has been considered by the learned trial Judge in detail and rejected, and rightly so, for sound reasons.

All that needs to be referred in this context is the provision contained in Section 178 Cr.P.C. which is in the nature of clause qualifying what is indicated in Section 177 Cr.P.C. to be the general rule. While it is correct

that every offence shall ordinarily be inquired into and tried by a Court within whose local jurisdiction it is committed, clause (d) of Section 178 Cr.P.C. permits the inquiry or trial by a Court having jurisdiction over any of the local areas where any of the several acts constituting the offence is committed.

In the case at hand, the facts and circumstances have to be seen in their entirety. What began as the first contact in Delhi 2005 appears to have developed into close relationship where the petitioner started confiding in the complainant the information about the strained matrimonial life that he was facing at home, simultaneously making advances towards the complainant seeking to allure her into a relationship more than that of a colleague or friend. While it may be true that the allegations in the FIR reveal that the proposal for marriage, leading to the engagement in sexual relations, occurred in Ghaziabad (UP) from sometime in October, 2010, it cannot be ignored that the formal ceremony in the nature of marriage of the parties took place in Delhi in December, 2010.

The physical relationship between the parties may have been consensual but it is the case for the prosecution that the consent of the complainant was vitiated since it was actuated by false representation made by the petitioner about the status of his first marriage, his assertion at that stage being that the same had been dissolved by a decree of divorce. Since the formal ceremony in the nature of marriage performed on 12.12.2010 in Preet Vihar area of Delhi would be one of the crucial facts in the series of acts committed by the petitioner, the exercise of jurisdiction by the trial court is covered and protected by afore-referred provision contained in Section 178 Cr.P.C.

In above view, the petition is devoid of merits and is dismissed.

R.K.GAUBA, J

APRIL 12, 2017/nk