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

DECIDED ON : JANUARY 18, 2017

+ **CRL.M.C. 2910/2016 & CrI.M.A.12488/2016**

DILIP KUMAR GUPTA Petitioner
Through : Mr.Dayan Krishnan, Sr.Advocate,
with Ms.V.Shukla, Advocates.

Versus

STATE (NCT OF DELHI) & ANR. Respondents
Through : Ms.Meenakshi Dahiya, APP.
SI Seema, PS Mahendra Park.

CORAM:
HON'BLE MR. JUSTICE S.P.GARG

S.P.GARG, J. (ORAL)

1. Present petition under Section 482 Cr.P.C. has been preferred by the petitioner for quashing of FIR No.0758/2015 under Section 376 IPC registered at Police Station Mahendra Park, Charge Sheet dated 7.3.2016 and all the legal proceedings emanating from the said FIR and charge-sheet. Status report is on record.
2. I have heard the learned Senior counsel for the petitioner and learned APP for the State and have examined the file.
3. Learned Senior counsel for the petitioner urged that a false and vexatious case vide FIR No.758/2015 dated 1.9.2015 was lodged against the petitioner under Section 376 IPC on the statement of 'X' (assumed

name)/respondent No.2. Soon after the registration of the FIR, 'X' was medically examined at 9.00 p.m. on 1.9.2015 and in the MLC, no external injury was found on her body including private parts. On 25.09.2015, the prosecutrix sent a letter to SHO, Mahendra Park Police Station denying the allegations leveled by her in her earlier complaint. She moved an application before the learned Metropolitan Magistrate on 28.09.2015 to record her 164 Cr.P.C. statement. In her 161 Cr.P.C. statement recorded before the police, she reiterated that a false FIR was lodged by her to settle the dispute about her salary with the petitioner. Similar is the statement of one Mukesh, X's brother under Section 161 Cr.P.C. Learned Senior counsel urged that since the prosecutrix has retracted her earlier statement, there is no likelihood of conviction and continuance of the criminal proceedings against the petitioner would be an abuse of process.

4. Learned APP urged that there are specific allegations against the petitioner in the charge-sheet and FIR in question cannot be quashed.

5. It is a matter of record that soon after the occurrence on 1.9.2015 at the petitioner's office at around 6.30 p.m., information at 100 was conveyed to the police at 20:21:15 hours without delay. The petitioner was specifically named in the information conveyed to the Police Control Room for committing rape upon the prosecutrix. In her statement to the police, the prosecutrix implicated the petitioner for sexual assault on the pretext to provide her job in his office. This version was reiterated by her in 164 Cr.P.C. statement recorded on 2.9.2015 before the learned Metropolitan Magistrate. 'X' was medically examined soon after the occurrence and in the MLC, her hymen was found torn.

6. Admitted position is that after registration of the FIR, the petitioner filed an application under Section 438 Cr.P.C. to seek anticipatory bail which was dismissed by a detailed order dated 8.9.2015 by the learned Additional Sessions Judge. The petitioner filed Bail Application 1950/15 before this Court seeking anticipatory bail which resulted in its dismissal on 13.10.2015. It is relevant to note that the complainant had appeared along with her counsel that day.

7. Despite rejection of anticipatory bail by this Court, the Investigating Agency did not deem it fit to arrest the petitioner. During investigation, a supplementary statement of the prosecutrix was recorded on 26.10.2015 under Section 161 Cr.P.C. It further reveals that 'X' had filed an application dated 25.09.2015 to the concerned SHO (Annexure P-4) denying the allegations leveled by her in her previous complaint. An application was also moved before the learned Metropolitan Magistrate (Annexure P-5) to record her 164 Cr.P.C. statement. It is informed that the learned Metropolitan Magistrate declined to record her 164 Cr.P.C. statement. It is also not in dispute that after completion of investigation, a charge-sheet has been filed against the petitioner for commission of offence under Section 376 IPC without arrest in the court of learned A.C.M.M. The petitioner did not put appearance despite issuance of summons in the said proceedings. Another anticipatory bail application No.28/2016 was filed before the learned Additional Sessions Judge which was dismissed by order dated 29.04.2016 (Annexure-P/10). Again the petitioner did not appear before the learned Additional Chief Metropolitan Magistrate. An application for exemption was moved on 8.6.2016 which was dismissed. It is informed that process under Section 82 Cr.P.C. has been completed and statement of the

process server is being recorded to declare the petitioner 'Proclaimed Offender'.

8. It is pertinent to note that another anticipatory bail application No.1368/2016 was moved by the petitioner before this Court to seek bail under Section 438 Cr.P.C. This bail application was withdrawn vide order dated 14.07.2016 (Annexure P-13). The petitioner challenged the said order in SLP which was dismissed on 2.8.2016 (Annexure P-16). The present petition for quashing of FIR has been filed on 11.8.2016. Despite rejection of anticipatory bail application and issuance of coercive process by the learned A.C.M.M., the petitioner did not put appearance in the proceedings initiated against him by filing a charge-sheet under Section 376 IPC. Apparently, the petitioner is absconding and has scant regard for the judicial process issued against him. The petitioner intends to avail another chance to avoid appearance before the courts below by filing the instant petition for quashing of the FIR/Charge-sheet.

9. It is not in dispute that in the original complaint forming basis of the instant FIR, the prosecutrix/complainant has specifically named the petitioner to be the perpetrator of the crime. She has attributed specific and definite role to the petitioner to have committed rape upon her on the pretext to provide job in his office. In her 164 Cr.P.C. statement, she reiterated her version before the learned Metropolitan Magistrate. When the petitioner was declined anticipatory bail by the court below and by this Court, seemingly attempts were made by him to prevail upon the prosecutrix to resile from her previous statement. In the order dated 13.10.2015 in Bail Appl.1950/2015, this Court observed that in the police file an application filed by the prosecutrix on 09.09.2015 was on record whereby she had informed of

threats being extended to her to settle the dispute. The learned counsel for the petitioner had informed that the prosecutrix had given an application before the concerned police station informing that the complaint was lodged by her due to some misunderstanding at the instance of one female member of an NGO. In the said order, it was observed that it was unclear as to under what circumstances, the prosecutrix opted to change her statement. It was further recorded that the prosecutrix was seemingly pressurized/influenced to change her version. In the changed version, the prosecutrix had claimed to have been employed with the petitioner. This fact was specifically denied by the petitioner claiming that he had no familiarity with the prosecutrix any time.

10. It is astonishing as to what lead the Investigating Agency to record her supplementary statement under Section 161 Cr.P.C. on 26.10.2015 exonerating the petitioner. Statement of her brother Mukesh was also recorded under Section 161 Cr.P.C. on 26.10.2015. It is pertinent to note that Mukesh is not her real brother. The investigating agency has not explained as to why at belated stage his statement under Section 161 Cr.P.C. was recorded. Apparently, the police intended to assist and favour the petitioner.

11. The supplementary statement recorded under Section 161 Cr.P.C. and the application moved before the SHO concerned cannot be taken into consideration to throw away the earlier complaint of 'X' and statement under Section 164 Cr.P.C. The Investigating Agency itself did not believe the version given by the prosecutrix in 161 Cr.P.C. statement and despite its recording preferred to file charge-sheet against the petitioner under Section 376 IPC.

12. There are specific and clear allegations against the petitioner in the statement of the complainant on the basis of which the FIR in question was lodged. She reiterated her version in her 164 Cr.P.C. statement before learned Magistrate. It is to be ascertained during trial as to how and in what circumstances, the prosecutrix denied her earlier version or whether it was due to some threats or pressure. It cannot be inferred at this stage that the somersault by the prosecutrix is a genuine one. There is every chance of her being influenced by the petitioner for a settlement/compromise. It would not be safe to consider the subsequent changed version to quash the FIR/Charge-sheet particularly when all attempts of the petitioner to seek anticipatory bail proved futile.

13. Learned Senior counsel urged that under Section 41 Cr.P.C. the Investigating Agency has discretionary power to arrest. Merely because the petitioner was not arrested during investigation, it did not permit the learned ACMM to question the Investigating Agency as to why the petitioner was not arrested. Reliance was placed on *M.C.Abraham and Anr.Vs.State of Maharashtra and Others* (2003) SCC 649. I find no merit in this submission. In the said citation, directions to arrest were given during investigation. In the instant case, the learned ACMM had only sought explanation from the concerned agency after the filing of the charge-sheet as to what prompted it not to arrest the petitioner despite dismissal of his anticipatory bail applications upto the Apex Court. I find no illegality or irregularity in the order seeking explanation from the concerned police officers for that.

14. Since there are specific allegations against the petitioner in the charge-sheet filed against him, I find no sufficient and valid ground to quash

the FIR/charge-sheet and other proceedings emanating from it. The arguments/contentions raised are subject matter of judicial scrutiny during trial. Settled position is that the power under Section 482 Cr.P.C. to quash the criminal proceedings must be exercised sparingly with circumspection. It should not be exercised to stifle a legitimate prosecution.

15. The petition lacks in merits and is dismissed. All pending application(s) also stand disposed of.

16. Observations in the order shall have no impact on merits of the case.

(S.P.GARG)
JUDGE

JANUARY 18, 2017

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