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IN THE HIGH COURT OF DELHI AT NEW DELHI

DECIDED ON : 26th MAY, 2017

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CRL.M.C. 1989/2017

DR PAWAN KUMAR

..... Petitioner

Through : Mr.S.S.Kulshrestha, Sr.Advocate with
Mr.Ajeet Pandey, Advocate.

versus

THE STATE, GOVT OF NCT OF DELHI

..... Respondent

Through : Ms.Anita Abhraham, APP.

CORAM:

HON'BLE MR. JUSTICE S.P.GARG

S.P.GARG, J. (Oral)

1. Present petition under Section 482 Cr.P.C. has been filed by the petitioner to challenge the legality and correctness of an order dated 06.04.2017 of learned Addl. Sessions Judge by which the application under Section 173(8) Cr.P.C. filed by him was dismissed.

2. I have heard the learned Senior Counsel for the petitioner and have examined the file. Undisputedly, the petitioner is facing criminal proceedings in case FIR No.431/2016 registered under Sections 354A/354B/354/376(2)(E) IPC and Sections 6/10 POCSO Act PS Moti Nagar. Upon completion of investigation, a charge-sheet has already been filed against him in the Court. It is informed that the charge has since been

framed and the case is listed for recording statements of the prosecution witnesses.

3. By moving the application under Section 173(8) Cr.P.C. on 21.03.2017 the petitioner desired to get further investigation conducted in the case claiming that the police did not explore complete and fair investigation. It was informed that statement of the doctor who shared the chamber with him at the time of alleged incident was not recorded; the statements of the patients sitting outside the OPD, nursing staff and other attendants were also not recorded during investigation. In her 164 Cr.P.C. statement, the prosecutrix had claimed to have remained admitted in emergency ward for 2 – 3 weeks. No such record was collected by the Investigating Officer. It was further claimed that the prosecutrix had manipulated her date of birth in the school record. Reliance was placed on '*Nirmal Singh Kahlon vs. State of Punjab and Ors.*', 2009 (1) SCC 441.

4. I find no illegality or material irregularity in the impugned order declining further investigation sought by the petitioner under Section 173 (8) Cr.P.C. It is for the prosecution agency to collect materials / evidence during investigation to establish its case against the perpetrator of the crime. The investigation is to be conducted to the satisfaction of the investigating agency and not on the directions or asking of the alleged author of the crime. The prosecution is required to establish its case beyond reasonable doubt by leading cogent and credible evidence during trial. If it fails to do, the benefit goes to the accused. In the instant case, the prosecution has already completed the investigation and charge for commission of aforesaid offences has been framed against the petitioner. Merely because certain lapses in investigation have been pointed out by the

petitioner, no further investigation can be conducted on his mere asking. The petitioner has not named the doctor who was allegedly sharing the chamber with him at the time of crime. He has also not revealed names of the nursing staff or the patients present outside the OPD. There was no occasion for the investigating agency to record their statements. Moreover, all these individuals can be examined by the petitioner in his defence, if he so desires.

5. Nothing is on record to ascertain, at this stage, if the victim's age was manipulated in the school record. The prosecution is expected to prove the date of birth of the prosecutrix during trial and if there is any alleged manipulation in the school record, petitioner will be at liberty to put relevant questions to the relevant witness in the cross-examination.

6. The petition is without any substance and merits dismissal in limine.

(S.P.GARG)
JUDGE

MAY 26, 2017 / tr