

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

% Decided on: January 18, 2017

+ **TR.P.(CRL.) 83/2016 and Crl. M.A. No. 16317/2016 (Stay)**

CHANDNI MADAN @ MEHTA

..... Petitioner

Represented by: Mr. Narinder Safaya and Mr.
Ujjawal Gautam, Advocates.

versus

STATE & ORS.

..... Respondents

Represented by: Mr. Amit Ahlawat, APP for the
State with W/PSI Sunita Yadav,
PS North Rohini.
Mr. Shubham Asri and Mr.
Anmol Sharma, Advocates for
respondent Nos. 2 and 3.

CORAM:

HON'BLE MS. JUSTICE MUKTA GUPTA

MUKTA GUPTA, J. (ORAL)

1. By the present petition, the petitioner seeks transfer of Sessions Case No. 13/2016 in case FIR No.957/2015 under Sections 376/506 IPC and Section 4 of the Protection of Children from Sexual Offences Act, 2012 (in short 'POCSO Act') registered at PS North Rohini to another Court preferably to a lady judicial officer and expeditious disposal of the trial preferably within six months.

2. The grievance of the petitioner is that when the petitioner filed an application before the learned Trial Court under Section 173 (8) Cr.P.C. for further investigation no action thereon was taken. Further when she objected to the recording of answers, which she had not given, the learned Judge used crude and intemperate language. It is further stated that the petitioner does not feel safe even in the Court complex while hearing of the case is going on

as she is surrounded by her in-laws and their relatives to intimidate her.

3. As noted above the above FIR has been registered for offence punishable under Sections 376/506 IPC besides Section 4 of the POCSO Act however, in the application seeking further investigation under Section 173 (8) Cr.P.C. the petitioner stated that Pushpa Madaan, the mother of Sandeep Madaan, was an accused in the matter because during the course of the period spent by the petitioner in her matrimonial home she observed that Pushpa Madaan used to mislead/misguide her son/husband of the petitioner and design ways to harass the complainant/petitioner and her daughter to fulfill their unwarranted, undesirable and unfair demands. Thus the endeavour of the petitioner was that since Pushpa Madaan was instigating her son, she should also be impleaded as an accused.

4. The allegations in the application under Section 173 (8) Cr.P.C. were all within the knowledge of the petitioner and no investigation thereon was required to be done. It is well settled that during the course of trial, if any, further evidence comes against an additional accused, he/she can be summoned under Section 319 Cr.P.C. Thus merely because no order was passed by the learned Additional Sessions Judge on the application under Section 173 (8) Cr.P.C. and he continued with the trial, it cannot be held that the matter needs transfer to another Court. The intimidation allegedly received by the petitioner is from her in-laws and not from the judge except use of intemperate language when she objected to certain wrong recording of answers. However, with respect of this incident no specific date and no specific instance as to how and evidence of which witness was recorded incorrectly has been mentioned either in the application or before this Court in the present petition.

5. Considering the averments in the petition and the fact that now the trial is at the fag end, this Court finds no reason to transfer the case to another Judge.

6. Petition and application are dismissed.

(MUKTA GUPTA)
JUDGE

JANUARY 18, 2017
‘vn’

