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

+ W.P.(CRL) 1949/2017

DR.JOY TIRKEY

..... Petitioner

Through: Mr.Vikas Arora, Advocate with
petitioner in person.

versus

DEEP CHAND & ANR.

..... Respondents

Through: Ms.Kamna Vohra, ASC for the
State/R-2 with SI Karamvir, PS
Narela

CORAM:

HON'BLE MS. JUSTICE PRATIBHA RANI

ORDER

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21.07.2017

CrI.M.A. No.10851/2017

1. Exemption allowed subject to all just exceptions.
2. Application is disposed of.

W.P.(CRL) 1949/2017 & CrI.M.A.No.11518/2017

1. The petitioner is serving as DCP, Recruitment Cell, Delhi Police at Delhi. Feeling aggrieved by the order dated 20th April, 2017, the petitioner has invoked the writ jurisdiction of this Court with the following prayers:-

(a) Expunge the remarks made against the petitioner in order dated 20.04.2017 passed by Sh.Dilbag Singh Punia, Sessions Judge (North), Rohini, Delhi in FIR No.227/2001, P.S. Narela u/s 354 IPC.

(b) Set aside the directions issued to the Commissioner of Police to get an inquiry conducted against the petitioner and also to submit monthly report thereof to the Court.

(c) Quash Misc. CrI.No.20/2017 titled as Inquiry of IO, Inspector Narender pending in the Court of Sh.Dilbag Singh Punia, Sessions Judge, Rohini Court, Delhi and subsequent proceedings/inquiry initiated pursuant to order dated 20.4.2017.

2. Mr.Vikas Arora, Advocate for the petitioner has submitted that case FIR No.227/2001 was registered at PS Narela on the basis of statement made by Km. 'P' (name withheld to conceal her identity) against accused Deep Chand and the offence disclosed from the said statement was under Section 354 IPC.

3. The petitioner herein was posted as ACP at that time. The chargesheet was filed for commission of the offence punishable under 354 IPC. During trial, the learned MM, Mahila Court, Rohini was of the view that on the basis of deposition of the victim, the offence triable by the Court of Sessions is disclosed. Hence the case was sent to the Court of Session. The learned Sessions Judge (North District), vide impugned order, withdrew the case from the Court of learned MM and assigned the same to the Court of learned ASJ, North District for disposal with direction to the accused to appear before the Court of learned ASJ on 20th April, 2017 at 2.00 pm.

4. The petitioner is not aggrieved by the order to the extent that the chargesheet in case FIR No.227/2001 was sent to the Court of Sessions for trial. The petitioner is aggrieved by the later part of the order dated 20th April, 2017 whereby the learned Sessions Judge (North) made observation about the manner in which investigation was conducted and the sample

taken at the time of medical examination of the child victim (PW-1 & PW-2) were not sent for examination to FSL. The learned Sessions Judge (North) has made observation to the effect that medical evidence has been intentionally withheld by the Investigation Officer and the then SHO and ACP did not bother to supervise the investigation properly. The IO had not carried out the investigation properly and there is some hanky-panky.

5. It was also observed that offence under Section 376/511 IPC was minimised to an offence under Section 354 IPC and that it is a very serious dereliction of duty requiring disciplinary action against the Investigating Officer, the then SHO, PS Narela and the then ACP. The Commissioner of Police was directed to conduct an inquiry in the matter and fix the responsibility as well seek action taken report within three months from the date of the order. The Ahlmad of the Court was directed to prepare a separate file so that the learned Sessions Judge (North) could ensure that the inquiry is conducted expeditiously and the Court is informed about the progress/status of inquiry on monthly basis.

6. Petitioner Mr. Joy Tirkey, DCP has been heard in person. He has submitted that he is due for promotion. He was posted as ACP on the relevant date and without giving him any opportunity of being heard, observations have been made by learned Sessions Judge (North) holding him guilty for lack of supervision on his part and that, such observations have been made against all principles of natural justice and the settled legal position in this regard.

7. The apprehension of the petitioner Mr. Joy Tirkey, DCP is that since the then SHO has already retired, he being of the rank of DCP, if at all the matter needed any inquiry, it has to be done separately uninfluenced by any

observation made by the learned Sessions Judge (North) in the order dated 20th April, 2017.

8. During the course of hearing of the writ petition, Crl.M.A. No.11518/2017 has been filed by the petitioner praying for issuance of directions to the Police Department/Inquiry Officer to conduct the inquiry uninfluenced from the observations made by the learned Sessions Judge (North) in the order dated 20th April, 2017 and the inquiry against the petitioner be conducted separately from the then IO and the then SHO.

9. I agree with learned counsel for the petitioner as well the petitioner that the learned Sessions Judge (North) could not have made observation that there was some hanky-panky in the investigation as well lack of exercise of supervision by the then SHO and ACP requiring disciplinary action against the concerned officers. The criminal case is still pending trial before another Addl. Sessions Judge, North District.

10. It is matter of record that the above observations have been made by the learned Sessions Judge without giving an opportunity to the concerned officers and infact have the effect of returning a finding of guilt and asking the department to submit the Action Taken Report, which is not permissible under the law. (*Ref. W.P.(Crl.N0.3034/2015 titled as Deputy Commissioner of Police vs. Badlu Paswan & Ors. decided on 19th February, 2016, W.P.(Crl.) No.139/2015 titled as State vs. Yogender Singh decided on 18th December, 2015, W.P.(Crl.) No.207/2015 titled as Rakesh Chand vs. State of NCT of Delhi decided on 18th December, 2015*)

11. By filing Crl.M.A. No.11518/2017, the petitioner is restricting his prayer in the writ petition to the extent that the inquiry may be conducted against him separately and uninfluenced by any observation made by the

learned Sessions Judge (North).

12. CrI.M.A. No.11518/2017 is allowed.

13. Writ petition stands disposed.

14. As prayed, copy of the order be given dasti to the petitioner.

CrI.M.A No.10852/2017 (Stay)

Dismissed as infructuous.

PRATIBHA RANI, J.

JULY 21, 2017

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