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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ CRL. REV. P. 926/2017, CRL. M.A. 20412/2017 (Exemption)
MANDEEP KUMAR @ PINKA

..... Petitioner

Through: Mr. Samia Malik, Advocate.

versus

STATE (NCT OF DELHI) & ANR.

..... Respondents

Through: Mr. Ravi Nayak, APP for the State
with SI Suman, P.S. Paharganj.

CORAM:

HON'BLE MR. JUSTICE NAJMI WAZIRI

ORDER

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12.12.2017

This revision petition under section 397 of Code of Criminal Procedure, 1973 (Cr.P.C.) seeking quashing of the charges framed against the appellant under section 376(2)(n)/323 IPC, 1860. The prosecutrix “VSB” (actual name and address of prosecutrix withheld to protect her identity), a lady of German nationality complained that she was enticed to travel to India on 22.11.2016 by the accused. She was subjected to repeated counts of rape by him at a hotel in Paharganj, Delhi; at his sister’s house at district Gurdaspur, Punjab; and also at his mother’s house in his village. He also slapped her repeatedly and physically assaulted her with a wooden stick, causing injuries to her body. Accordingly, the aforesaid charges were framed.

The appellant argues that there was no eye-witness to the charges. He pleads innocence apropos any coercive physical relationship. It is argued that his carnal relations with the prosecutrix were consensual; that the

prosecutrix and the accused had married of their free will, and hence there could be no occasion of rape on his wife; that prosecutrix is a qualified dentist, she came to India of her own volition. She came into the relationship with the accused, evidently she understood and voluntarily came into the amorous liaison with the accused, especially since she is a mother of two children, 17 years and 18 years old, and understood the consequences of her actions.

The Court would note that the prosecutrix complained about the rape committed on her as well as the physical and mental violence to her in the form of beatings, assault and trauma suffered by her has been recorded in the FIR. She has stated the same to the police under section 161 Cr. PC as well as in a detailed statement under section 164 Cr. PC before the Metropolitan Magistrate concerned. Her medical examination report by the Lady Hardinge Medical College records her narration of woes. Looking at the nature of injuries and her physical and mental condition, she was prescribed certain medication. The Trial Court found that *prima facie*, a case was made out on the basis of framing of charges.

According to section 228 Cr.P.C., the Court is only required to consider the material placed on record and apply its judicial mind to satisfy itself of the possibility of the commission of the alleged offence. It is only at the stage of trial that the probative and evidentiary value of the material on record is to be looked into. Thereafter, only a trial will determine conviction or the acquittal of the accused.

The relevant provision reads as under:

228. Framing of charge.

(1) If, after such consideration and hearing as

aforesaid, the Judge is of opinion that there is ground for presuming that the accused has committed an offence which-

(a) is not exclusively triable by the Court of Session, he may, frame a charge against the accused and, by order, transfer the case for trial to the Chief Judicial Magistrate, and thereupon the Chief Judicial Magistrate shall try the offence in accordance with the procedure for the trial of warrant- cases instituted on a police report;

(b) is exclusively triable by the Court, he shall frame in writing a charge against the accused.

(2) Where the Judge frames any charge under clause (b) of sub- section (1), the charge shall be read and explained to the accused and the accused shall be asked whether he pleads guilty of the offence charged or claims to be tried.

This Court is of the view that the material considered by the Metropolitan Magistrate is sufficient for the said purpose of framing of charge, especially in view of the statement of the complainant/prosecutrix before the Magistrate, the MLC report as well as the aforesaid provision. At the stage of framing of charges, it is only to be seen whether sufficient material is available to warrant a trial.

This Court is of the view that impugned order cannot be faulted. There is no reason to interfere with it. The petition is without merit and is accordingly dismissed.

NAJMI WAZIRI, J

DECEMBER 12, 2017/RW