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

DECIDED ON : 24th MAY, 2017

+ **CRL.M.C. 4889/2015 & CRL.M.A.No.17496/2015**

SURJIT SINGH

..... Petitioner

Through : Ms.Aishwarya Rao, Advocate.
versus

STATE (NCT OF DELHI)

..... Respondent

Through : Ms.Meenakshi Dahiya, 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 preferred by the petitioner for quashing of FIR No.613/2014 registered under Section 376 IPC at PS Kotwali. Status report is on record.

2. I have heard the learned counsel for the parties and have examined the file. Learned counsel for the petitioner urged that the allegations levelled by the prosecutrix in the instant case against the present petitioner are false. The petitioner is aged around 65 years and has served the Indian Army for around 20 years. Thereafter, he worked as a teacher since January, 1989 and retired in September, 2009. The FIR lodged by the prosecutrix is at the behest of Mr.Manoj Vashisht (since deceased), CMD of M/s. RCS Parivar Finance Ltd. against whom the petitioner had led a crusade to recover the invested money. Learned counsel further urged that

upon investigation, it was found that the petitioner had never stayed at Tara Hotel, Cycle Market, Chandni Chowk, on 29.07.2013 when allegedly the prosecutrix was sexually assaulted. A closure report was filed by the investigating agency under Section 173 Cr.P.C. The delay in lodging the FIR has not been explained. Learned APP urged that at this stage, victim's statement cannot be disbelieved. Reliance has been placed by the petitioner on '*Prashant Bharti vs. State of NCT of Delhi*', 2013 II AD (SC) 89.

3. The prosecutrix 'X' (assumed name) in her comprehensive written complaint dated 22.07.2014 to the Commissioner of Police gave detailed account as to how and in what manner, she came into contact with the petitioner concerning her investment with M/s. RCS Parivar Finance Ltd. She further revealed that prior to the incident she was in constant touch with the petitioner and had met him on several occasions along with her husband. The petitioner had assured them to get recover her invested money in M/s. RCS Parivar Finance Ltd. She further alleged that on 29.07.2013 at around 03.00 p.m., she was called at Tara Hotel, Cycle Market, Chandni Chowk where after administering some stupefying substance, the petitioner committed rape upon her. She did not lodge the report with the police due to threats extended by the petitioner. After fortnight, she went to the Police Station Kamla Market to lodge the report but it was not recorded. Subsequently, the Trial Court in the proceedings under Section 156(3) Cr.P.C. asked her to approach higher police authorities to redress her grievance.

4. This complaint dated 22.07.2014 formed basis of the registration of the FIR No.613/2014 on 07.08.2014. 'X' recorded her 164 Cr.P.C. statement on 15.08.2014. In her 164 Cr.P.C. statement again she

reiterated her version and implicated the petitioner for committing rape upon her.

5. From the perusal of the statements of the prosecution witnesses recorded during investigation, it reveals that serious allegations of commission of rape have been levelled against the petitioner by name. It has further come on record that the petitioner used to visit Tara Hotel, Cycle Market, Chandni Chowk and his presence on many dates has been recorded therein. Only on 29.07.2013, as per the investigation, the petitioner did not visit the said hotel to stay. This factor alone persuaded the investigating agency to file a closure report. It is relevant to note that the petitioner has not disclosed as to where else, he was present on 29.07.2013 at 03.00 p.m.

6. Statement of the prosecutrix without giving her an opportunity to explain cannot be brushed aside / ignored at this stage. The petitioner did not deny his acquaintance with the prosecutrix in connection with recovery of her invested amount. Nothing has come on record to show if the present complaint is at the behest of CMD of M/s. RCS Parivar Finance Ltd. or is motivated. Merely because in the hotel record, entry regarding petitioner's stay was not found on 29.07.2013, it cannot be inferred at this stage that no such incident as alleged had taken place. It is a fact to be established during trial. Truthfulness or falsity of the allegations essentially pertain to the realm of evidence and cannot be gone through at this stage. At the stage of taking cognizance and issuance of summons, the Trial Court is supposed to proceed on prima facie materials on record. Sufficiency and credibility of the evidence has to be determined during the course of trial. Prosecutrix must be given an opportunity to explain the delay in lodging the report. It is relevant to note that by an order dated 05.11.2015 (Annexure 'P-3'),

cognizance under Section 376 IPC has already been taken and the petitioner has been summoned to face trial.

7. Taking into consideration the factors referred above, no sufficient ground exists to quash the FIR in question and the petition is dismissed.

8. The petitioner, however, will be at liberty to raise all these pleas / issues at the time of consideration of charge before the Trial Court.

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

10. Trial Court record (if any) be sent back forthwith with the copy of the order.

(S.P.GARG)
JUDGE

MAY 24, 2017 / tr