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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ CRL.M.C. 389/2018 & CRL.M.A. 1493/2018
SARITA DEVI & ANR Petitioner
Through Mr. Satya Narayan, Adv.

versus

THE STATE GOVT OF NCT OF DELHI & ANR..... Respondent
Through Mr. Kamal Kr. Ghei, APP for State
with SI Manvendra PS Karawal
Nagar.
None for R2.

CORAM:
HON'BLE MS. JUSTICE ANU MALHOTRA

ORDER
% **18.04.2018**

As per the proceedings dated 21.03.2018, the respondent no. 2 has been served and chose not to put in appearance nor was she present on 13.08.2018 nor is the respondent no. 2 present today nor has the response of the respondent no. 2 to the petition been filed till the date. No further opportunity is thus granted to the respondent no. 2 to file reply to the averments made in the petition.

Vide the present petition, the petitioners seek setting aside of the order dated 24.08.2017 of the Court of the learned ASJ-02, North East, Karkardooma Courts, Delhi in relation to the FIR No. 1064/14 PS Karawal Nagar for the case titled as *State Vs. Sarita Devi and Others* under Sections 451/354/506/34 of the Indian Penal Code, 1860 and Section 3 of the SC/ST
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Act, 1989 submitting to the effect that the Trial Court has disallowed the questions which were put to the prime witness PW2 / the respondent no. 2 herein during the cross-examination and denial of the opportunity to the petitioners to put queries as sought to be put by the petitioners to the respondent no. 2 during the course of the cross-examination has resulted into miscarriage of justice and PW2 / the respondent no. 2 is the complainant and the main witness of the FIR in question for bringing forth the defence of the petitioners, the denial of putting queries would cause irreparable loss and prejudice to the valuable right of the petitioners.

Submissions have been made both on behalf of the petitioners and on behalf of the State by the learned counsel for the petitioners and learned APP for the State.

Placed on record is the copy of the proceedings dated 24.08.2017 in relation to cross-examination of PW2 Neelam i.e. the respondent no. 2 arrayed to the present petition wherein there are queries :-

Q. I put it to you that on 19.10.2014 you, your husband, your father in law, dewar and dewarani had assaulted Smt. Sarita Devi and caused sharp injury to her and she was taken by police at Guru Tegh Bahadur hospital where she was examined vide emergency registration number GTBE-233716 and Emergence Card was prepared. What you have to say?

Court observation: Question disallowed being irrelevant and vague to be put to this witness as she no way can be

supposed to know the minute details of the examination of the alleged injures as well as the MLC thereof.

It is correct that in the FIR against us we have been provided with the copies of the requisite documents. It is incorrect to suggest that the complaint lodged on the next day of the FIR dated 19.10.2014; was falsely lodged by us. Thereafter we moved an application in the court.

Q. I put it to you that the Id. CMM had sought status report from the SHO PS Karawal Nagar about your application?

Court Observation : Question disallowed being irrelevant.

Q. I put it to you that the ACP Khajuri Khas had filed status report dated 12.11.2014 in the court of Id. CMM Karkardooma Court. What have you to say?

Court Observation : Question disallowed being irrelevant.

Q. The ACP Khajri Khas in his status report dated 12.11.2014 had submitted that as per statements of the witnesses and inquiry conducted into the matter, no such incident took place. Moreover, the place is not in full public view. People have not come forward to give statement in the favour of the complainant Neelam w/o Pradeep. Even she could not produce any witness in her support. As such, allegations made in the complaint could not be substantiated and complaint was filed. However, the order of the court will be complied. What you have to say?

Court Observation : Question disallowed being irrelevant. The question does not at all pertained to and required to be answered by the witness under examination.

Q. I put to you that despite above stated report by the ACP Khajuri Khas without order of the Id. CMM, the SHO PS Karawal Nagar on

23.11.2014 registered present FIR no. 1064 under Section 451/354/506/34 IPC and 3 SC & ST Act. What you have to say?

Court Observation : Question disallowed being irrelevant. The Id. Defence counsel is asked to put relevant questions only.

Q. I put to you that to exert pressure on both the accused persons you have registered the present false FIR against both the accused persons as in FIR no. 946 dated 19.10.2014 you, your husband, your father in law, dewar and dewarani were to be arrested by the police. What you have to say?

Ans. It is wrong.

Q. Is it correct that in your complaint Ex.PW2/A in para no. 5 you have not mentioned time of alleged incident on 07.09.2014?

Court Observation : it is a matter of record, hence question disallowed.

Q. I put to you that in your complaint Ex. PW2/A you

nowhere have stated that “the quarrel started as I was cleaning in front of my house. I pour water on the four stairs in front of my house. I pour water on the four stairs in front of my house to clean the same. On that day also I had poured water for cleaning the stairs”. What you have to say?

that have been put to the respondent no. 2 to which there are some response and certain queries have been disallowed vide the Court observation of the learned ASJ-02, North East, Karkardooma Courts, Delhi observing to the effect *inter alia* that there are minute details of examination of the injured MLC and some of the queries related to the matter of record and thus the questions were disallowed.

On a consideration of the submissions made on behalf of the either side and a perusal of the proceedings dated 24.08.2017, it is apparent that qua the query **“Q. I put it to you that on 19.10.2014 you, your husband, your father in law, dewar and dewarani had assaulted Smt. Sarita Devi and caused sharp injury to her and she was taken by police at Guru Tegh Bahadur hospital where she was examined vide emergency registration number GTBE-233716 and Emergence Card was prepared. What you have to say?**

Court observation: Question disallowed being irrelevant and vague to be put to this witness as she no way can be supposed to know the minute details of the examination of the alleged injures as well as the MLC thereof.

It is correct that in the FIR against us we have been provided with the copies of the requisite documents. It is incorrect to suggest that the complaint lodged on the next day of the FIR dated 19.10.2014; was falsely lodged by us. Thereafter we moved an application in the court.”

to the extent that the query is confined from to the effect : -

“Q. I put it to you that on 19.10.2014 you, your husband, your father in law, dewar and dewarani had assaulted Smt. Sarita Devi and caused sharp injury to her and she was taken by police at Guru Tegh Bahadur hospital where she was examined vide emergency registration?”

and the query in relation to the testimony dated 24.08.2017 **“Q. Is it correct that in your compliant Ex.PW2/A in para no. 5 you have not mentioned time of alleged incident on 07.09.2014?”**

it is apparent that the said queries are essentially to be put by the petitioners to bring forth their innocence and necessarily have to be allowed to be put in cross-examination to the respondent no. 2 i.e. the complainant of the FIR No. 1064/14 PS Karawal Nagar and are thus directed to be allowed by the Trial Court on the next date of hearing stated to be fixed for 19.04.2018.

The prayers made vide the present petition are thus allowed to this extent. The petition is disposed of.

Copy of this order be sent to the Trial Court. Copy of the order be given *Dasti* under the signatures of the Court Master.

ANU MALHOTRA, J

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