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

DECIDED ON : 19th APRIL, 2018

+ **TR.P.(CRL.) 14/2018, CRL.M.A.Nos.4518/18 & 4520/18**

'X' (Assumed name) Petitioner

Through : Ms.Naomi Chandra, Advocate.

versus

STATE OF NCT DELHI Respondent

Through : Ms.Radhika Kolluru, APP.

CORAM:

HON'BLE MR. JUSTICE S.P.GARG

S.P.GARG, J. (Oral)

1. The petitioner has filed the present petition for transfer of the Sessions Case No.320/2017 registered vide FIR No.291/2016 under Sections 376D/509/506/34 IPC at Police Station Palam, presently pending trial before the Court of learned ASJ at Dwarka Court.

2. I have heard the learned counsel for the petitioner and have examined the file. Petitioner's apprehension is that her evidence is not being recorded correctly by the learned Presiding Officer; she does not have confidence in the fairness of the proceedings.

3. This Court finds no substance in the allegations. Petitioner's apprehension for not getting fair trial is imaginary. Record reveals that application moved by one of the co-accused

Sandeep under Section 227 Cr.P.C. for discharge was dismissed by an order dated 10.07.2017 by the learned Presiding Officer. On 18.07.2017, charge was framed against all the accused persons and short date to record the statement of the prosecutrix was given as 01.08.2017. On that day, after X's part-examination, it was deferred on her request as she was not feeling well. On 10.08.2017, her husband appeared and sought adjournment as 'X' was out of station. The matter was listed for 06.09.2017. On that day, she was partly cross-examined and her further cross-examination was deferred as she was not feeling well. On 25.09.2017, the prosecutrix was not present and it was informed that she had filed an application for transfer before the learned District & Sessions Judge. During the pendency of the transfer petition, the matter was adjourned on several dates. Finally, after the dismissal of the transfer petition, the prosecutrix was again asked to appear through her counsel Mr.N.P.Singh, Advocate. It was recorded on 11.01.2018 that the complainant had filed an application for cancellation of bail. Complainant's counsel informed that despite his attempts, he was not able to contact the prosecutrix. On 25.01.2018, she did not appear and bailable warrants were issued to secure her presence. Similar was the position on 09.02.2018 though her counsel Mr.N.P.Singh, Advocate from legal aid was present. On 26.02.2018, prosecutrix's husband moved an application for exemption as 'X' was not feeling well. On 12.03.2018, she did not appear despite repeated calls. Finally, complainant's counsel informed that she had left the Court without informing him. On 13.03.2018 on moving the application, the victim's warrants were

recalled. On 19.03.2018 on her request, the date of hearing was changed to 06.04.2018.

4. Perusal of the record reveals that despite various opportunities granted, prosecutrix has not presented herself for examination. The Trial Court has given short dates to record her statement. It is unclear as to why the prosecutrix who is 45 years of age and is accompanied by her husband and is assisted by the counsel Mr.N.P.Singh, Advocate, is avoiding to record her statement. Record further reveals that on that day when her statement was recorded before the Trial Court, support person from DCW i.e. Ms.Vandana Chauhan was also present.

5. This Court finds no cogent reasons to transfer the petition merely because the prosecutrix has unfounded apprehension of not getting fair trial. The learned District and Sessions Judge has taken note of all these facts; the dismissal of the transfer petition by the learned District & Sessions Judge is based upon fair appreciation and no intervention is called for.

6. The transfer petition being unmerited is dismissed. It is, however, expected that victim's statement shall be recorded in camera.

7. Pending applications also stand disposed of.

8. Trial Court record be sent back immediately with the copy of the order.

(S.P.GARG)
JUDGE

APRIL 19, 2018 / tr