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

+ CRL.M.C. 1446/2018 and Crl. M.A. 5260/2018 and 5261/2018

DEEPAK KUMAR Petitioner

Through: Mr. K. Sunil and Ms. Anuradha
Kaushik, Advocates

versus

STATE Respondent

Through: Mr. Arun Kumar Sharma, APP for the
State with SI Amit Kumar, PS Karawal Nagar

CORAM:

HON'BLE MR. JUSTICE R.K.GAUBA

ORDER

% **04.07.2018**

The applicant is facing trial in the criminal case registered on the basis of a report under Section 173 of the Code of Criminal Procedure, 1973 submitted on conclusion of investigation into first information report (no.621/2014) of police station Karawal Nagar. The charge for offences, *inter alia*, under Section 376 IPC and Section 6 of Protection of Children from Sexual Offence Act, 2012. The case is at the stage of statement of accused, the prosecution having already adduced evidence. It appears during the course of trial, the prosecutrix, who was also the first informant, was examined as prosecution witness no.2 (PW-2). Her mother was also examined (as PW-7) to substantiate the allegations in the case. Concededly, the petitioner had availed of the opportunity to cross-examine both the said witnesses i.e. PW-2 and PW-7.

It appears that the same prosecutrix (PW-2) is also the first informant in another criminal case vide FIR no.482/2016 of police station Swaroop Nagar, which was registered on 04.12.2016 wherein allegations constituting offence punishable under Section 376 IPC appear to have been made by her against a person described as her step-father. It further appears from the copy of the FIR of the said second case that the prosecutrix while lodging her complaint had described herself as a married woman aged 22 years. There is indeed a discrepancy which requires to be explained in as much as in the FIR from which the present case arises (registered on 19.07.2014) the same person appears to have given her date of birth as 02.12.2000, then a student of 7th standard.

The learned predecessor bench had called for report from the police. SHO PS Karawal Nagar has submitted a status report which is accompanied by a certificate from the Principal of a government school where the prosecutrix is stated to have been enrolled as a student in the academic session 2013-2014, her date of birth having been recorded as 15.05.2002.

Against the above backdrop, the petitioner had moved an application under Section 311 Cr. PC for recall of PW-2 and PW-7 for further cross-examination. The Special Judge presiding over the trial by order dated 17.01.2018 has declined the said opportunity, *inter alia*, observing that the opportunity earlier given had been fully availed and recall would add to the trauma for the prosecutrix.

In the considered view of this court the reasons set out in the impugned order to decline the opportunity sought by the petitioner are neither sound nor reflect a fair approach. The object and purpose of a criminal trial is to reach out to the truth. If substantial material has come to light, subsequent to the opportunity given earlier for cross-examination by the petitioner, indicating inherently two contradictory stands having been taken by the prosecutrix or by her mother, a good case for additional opportunity for further cross-examination is made out, particularly when clarity about the age of the prosecutrix would be something the trial Judge should himself be anxious about.

Thus, the impugned order is set aside. The prayer under Section 311 Cr. PC for recall of PW-2 and PW-7 is granted. The trial judge will issue the necessary processes and facilitate the witnesses i.e. PW-2 and PW-7 to be tendered for further cross-examination by the petitioner on a date suitable to the court.

The petition and the applications filed therewith are disposed of with these observations.

R.K.GAUBA, J

JULY 04, 2018

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