

\$~7

*

IN THE HIGH COURT OF DELHI AT NEW DELHI

+

CRL.M.C. 1757/2018 & CRL.M.A. 6312-6313/2018

ESHA GUPTA

..... Petitioner

Through: None.

versus

STATE & ANR

..... Respondent

Through: Mr. Sanjeev Sabharwal, APP for State
with SI Rakesh Kumar.
None for R-2.

CORAM:

HON'BLE MS. JUSTICE ANU MALHOTRA

ORDER

%

23.05.2018

No one has appeared on behalf of the respondent no. 2, inasmuch as vide order dated 10.04.2018 so far no notice was issued to the respondent no. 2.

Vide order dated 10.04.2018, the matter had been re-notified for the day and till date no coercive action was directed to be taken against the petitioner subject to the petitioner not leaving the country.

Vide the present petition, the petitioner had assailed the order dated 02.02.2018 of the learned Trial Court in CC No. 543119 of 2016 titled as “**SRJK Forex Pvt. Ltd. Vs. SKG Consultants & Anr.**” and also the proceedings under Section 82 & 83 of the Cr.P.C., 1973 whereby the petitioner was declared a proclaimed offender and had submitted *inter alia* vide clause 2(p) of the petition to the effect:-

*“That unfortunately, the grand mother in law of the petitioner expired on 01.02.2018 and the petitioner had to rush to the native village of her husband and thus, could not appear before the Ld. Trial Court on 02.02.2018. That though, the said fact was brought to the knowledge of the Ld. Trial Court, Ld. Trial court was pleased to dismiss the application of the petitioner for cancellation of the process under Section 82 Cr.P.C. and after recording the statement of the process server, declared the petitioner as “**Proclaimed Offender**” and consigned the file of the trial court to the record room. The true copy of the death certificate of the grand mother in law of the petitioner is annexed herewith as **Annexure-5**”,*

thus submitting to the effect vide ground 3(1) that the learned Trial Court had failed to appreciate that the reasons for non-appearance of the petitioner were beyond her control and refused to exempt her appearance on 02.02.2018 and that the learned Trial Court had taken a very technical approach despite the demise of the grand mother-in-law of the petitioner on 01.02.2018 as a consequence of which she was at the native village of her husband and could not appear before the learned Trial Court on 02.02.2018. Along with the petition was also placed at page 49 of the petition, a death certificate bearing no. 4825486 purportedly issued by the Municipal Corporation of Delhi qua the demise of Smt. Sheela Gupta

on the date 02.02.2018.

Vide order dated 10.04.2018 whilst issuing notice of the petition to the State, it was considered essential that the status report was submitted by the State in relation to the stated demise of Smt. Sheela Gupta for the date 02.02.2018.

It has been submitted on behalf of the State that the said status report was submitted on 22.05.2018 and the copy of the same has been placed on the record by the State now which indicates that a verification of the document, i.e., the stated death certificate had been conducted by the State and as per the report of the Sub-Registrar, the record of the said certificate does not exist in the Municipal Record, Civil Lines Zone, North Delhi and that apart from the same another verification was conducted from the petitioner's brother-in-law who is Mr. Hemant Gupta son of late Sh. Vijay Kumar Gupta, r/o D-17, Green Park Extension, Delhi who also stated that Smt. Sheela Gupta (about whom the petitioner had stated in her petition as being her grand mother-in-law) had expired on the date 04.09.1998. The said status report submitted by the State also states to the effect that the brother of Mr. Hemant Gupta, Mr. Satinder Kumar Gupta and Smt. Esha Gupta have been absconding from 20.07.2017 and their whereabouts are not known.

Apparently in view of the report has been submitted by the State which negates the factum of the said alleged demise of the petitioner's grand mother-in-law on 01.02.2018 which prevented her appearance before the learned Trial Court on the date 02.02.2018, the

impugned order dated 02.02.2018 of the learned Trial Court in CC no. 543119 of 2016 calls for no interference.

Thus, the petition is dismissed.

However, in view of the submission of the document at page 49 of the petition and averments made in the petition, the SHO, PS Kotwali is directed to proceed in accordance with law qua submission of the document bearing no. 4825486 during the course of these judicial proceedings which as per the status report submitted by the State is fake.

ANU MALHOTRA, J

MAY 23, 2018/NC