

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

% Decided on: 20th July, 2018

+ **CRL.L.P. 455/2018**

Ms. M

..... Petitioner

Represented by: Ms. Upasna Shukla, Advocate.

versus

THE STATE OF NCT OF DELHI

..... Respondent

Represented by: Ms. Meenakshi Dahiya, APP
for the State with W/SI Brahma
Devi, PS South Campus.

CORAM:

HON'BLE MS. JUSTICE MUKTA GUPTA

MUKTA GUPTA, J. (ORAL)

Crl. M.A. No. 28144/2018 (Exemption)

Allowed, subject to all just exceptions.

CRL.L.P. 455/2018

1. As per the requirement of law, name of the prosecutrix is withheld to conceal her identity and she has been referred to as 'Ms. M'.
2. By the present leave to appeal petition, the limited prayer of the petitioner is to quash the notice under Section 344 Cr.P.C. issued against the petitioner vide impugned judgment dated 4th June, 2018.
3. Petitioner, while challenging the notice under Section 344 Cr.P.C., has filed the present leave to appeal petition under Section 378 Cr.P.C. read with Section 482 Cr.P.C. which is not the proper recourse available to the petitioner, however treating the present petition as one under Section 482 Cr.P.C. this Court has proceeded to hear the matter and decide the petition.
4. Brief facts of the prosecution case are that a written complaint was

given by the petitioner to the police wherein she stated that she got divorced from her husband in the year 2007. She got in touch with Ashok Chawla (accused) through jeevansathi.com in the year 2007. Since she was working as a Remiser with Geojit BP Paribas Company since the year 2009, she opened a GMAT account for Ashok Chawla in the aforesaid company. In the year 2009, Ashok Chawla arranged a flat on lease at Patparganj, East Delhi for the petitioner where the petitioner was residing along with her daughter. On 19th March, 2013, petitioner received a notice from the landlord of the aforesaid house regarding vacating the tenanted accommodation. Since the lease deed was in the name of Ashok Chawla, on 20th March, 2013 she went to his house-cum-residence at Anand Niketan to apprise him of the aforesaid notice. She told him about the notice. While they were talking, the servant served water to her and Ashok Chawla in the office. Thereafter, he served tea and muffins. After sometime, the servant served them coffee. After consuming the coffee, she felt giddiness. When she regained consciousness, she found herself on the carpet and her undergarments were missing from her body. She found a tissue paper inside her vagina. She got up and wore her clothes. Thereafter, she went out and made a call on 100 number. PCR officials came and took her to the police station where she had given the aforesaid written complaint (Ex.PW-4/A). Thereafter, she was taken to Safdarjung Hospital for medical examination. Consequently, FIR No. 34/2013 was registered at PS South Campus for the offences punishable under Sections 354/376 IPC. Statement of the petitioner was recorded under Section 164 Cr.P.C. Ashok Chawla was arrested. After completion of investigation, charge sheet was filed. Charge was framed.

5. Prosecutrix was examined as PW-4 in Court. She reiterated the

allegations made in her complaint and statement recorded under Section 164 Cr.P.C.

6. Ashok Chawla in his statement recorded under Section 313 Cr.P.C. stated that he was innocent and had been falsely implicated in the present case. He met the petitioner through a matrimonial site and thereafter, they became very close friends and with the passage of time, they had consensual physical relationship. He used to financially support the petitioner and pay her ₹15,000-20,000/- for her monthly expenses. Though the petitioner wanted to marry him but he did not wish to get married to her as he found that she was not very educated. He stated that on the alleged date of incident, petitioner came to him to inform about the legal notice for vacating the tenanted premises. When he refused to help her, petitioner started fondling him, took him on the carpet and both of them had sexual intercourse. Thereafter, he went into the bathroom, after he came out, prosecutrix went into the bathroom. At about 6:30 P.M., when the petitioner had left, he realized that his wallet was empty and the petitioner had taken away all his money. Ashok Chawla also got registered an FIR No. 347/2013 under 420/468/471/IPC at PS Madhu Vihar against the petitioner for having cheated him and having forged his signatures for obtaining a flat on rent in Patparganj, Delhi.

7. Ashok Chawla summoned DW-2, a court official, to produce records of SC No. 122/2013 wherein the petitioner and her daughter had turned hostile after making allegations that Ashok Chawla committed rape upon the daughter of the petitioner. He also summoned DW-3, one Head Constable from PS Madhu Vihar to prove the complaint dated 21st September, 2012 filed by one Honey Gill against the petitioner.

8. Learned Trial Court vide impugned judgment dated 4th June, 2018 acquitted Ashok Chawla for the offences punishable under Sections 354/376 IPC on the ground that the CCTV footage of the room, where the petitioner alleged that Ashok Chawla committed rape upon her, proved that the petitioner was lying blatantly and had filed a false case. The CCTV footage clearly showed that the petitioner came and sat next to Ashok Chawla. They hugged and kissed each other, whereafter, they started fondling each other and disrobing themselves. Thereafter, the lights were switched off and after about 12 minutes, Ashok Chawla went to the bathroom. In the meantime prosecutrix wore her clothes and picked up a white colored tissue paper and put it inside her bag. Thereafter, Ashok Chawla came out of the bathroom, petitioner went to the bathroom, came out, hugged and kissed Ashok Chawla and left. The DVD clearly reflected that the physical intercourse between Ashok Chawla and the petitioner was consensual. Furthermore, no intoxicating substance was found in the liquid which the petitioner had asserted to have been administered to her in her coffee as per the FSL report Ex.PX3.

9. Learned Trial while acquitting Ashok Chawla vide impugned judgment dated 4th June, 2018, also issued a show cause notice under Section 344 Cr.P.C. calling upon the petitioner to show cause as to why she should not be punished summarily for the offence of giving false evidence.

10. Supreme Court, while dealing with the essential ingredients for invocation of Section 344 Cr.P.C. and its object, in the decision reported as (2008) 8 SCC 34 Mahila Vinod Kumari v. State of M.P., held:

8. In the present case, on the basis of the allegations made by the petitioner, two persons were arrested and had to face trial

and suffered the ignominy of being involved in a serious offence like rape. Their acquittal, may, to a certain extent, have washed away the stigma, but that is not enough. The purpose of enacting Section 344 CrPC corresponding to Section 479-A of the Code of Criminal Procedure, 1898 (hereinafter referred to as “the old Code”) appears to be to further arm the court with a weapon to deal with more flagrant cases and not to take away the weapon already in its possession. The object of the legislature underlying enactment of the provision is that the evil of perjury and fabrication of evidence has to be eradicated and can be better achieved now as it is open to courts to take recourse to Section 340(1) (corresponding to Section 476 of the Old Code) in cases in which they have failed to take action under Section 344 CrPC.

9. This section introduces an additional alternative procedure to punish perjury by the very court before which it is committed in place of old Section 479-A which did not have the desired effect to eradicate the evils of perjury. The salient features of this new provision are:

- (1) Special powers have been conferred on two specified courts, namely, the Court of Session and Magistrate of the First Class, to take cognizance of an offence of perjury committed by a witness in a proceeding before it instead of filing a complaint before a Magistrate and try and punish the offender by following the procedure of summary trials. For summary trial, see Chapter 21.*
- (2) This power is to be exercised after having the matter considered by the court only at the time of delivery of the judgment or final order.*
- (3) The offender shall be given a reasonable opportunity of showing cause before he is punished.*
- (4) The maximum sentence that may be imposed is 3 months' imprisonment or a fine up to Rs 500 or both.*
- (5) The order of the court is appealable (vide Section 351).*

(6) The procedure in this section is an alternative to one under Sections 340-343. The court has been given an option to proceed to punish summarily under this section or to resort to ordinary procedure by way of complaint under Section 340 so that, as for instance, where the court is of the opinion that perjury committed is likely to raise complicated questions or deserves more severe punishment than that permitted under this section or the case is otherwise of such a nature or for some reasons considered to be such that the case should be disposed of under the ordinary procedure which would be more appropriate, the court may choose to do so [vide sub-section (3)].

(7) Further proceedings of any trial initiated under this section shall be stayed and thus, any sentence imposed shall also not be executed until the disposal of an appeal or revision against the judgment or order in the main proceedings in which the witness gave perjured evidence or fabricated false evidence [vide sub-section (4)].

10. For exercising the powers under the section the court at the time of delivery of judgment or final order must at the first instance express an opinion to the effect that the witness before it has either intentionally given false evidence or fabricated such evidence. The second condition is that the court must come to the conclusion that in the interest of justice the witness concerned should be punished summarily by it for the offence which appears to have been committed by the witness. And the third condition is that before commencing the summary trial for punishment the witness must be given reasonable opportunity of showing cause why he should not be so punished. All these conditions are mandatory. (See Narayanswami v. State of Maharashtra [(1971) 2 SCC 182 : 1971 SCC (Cri) 507] .)

11. The object of the provision is to deal with the evil of perjury in a summary way.

12. The evil of perjury has assumed alarming proportions (sic proportions) in cases depending on oral evidence and in order to deal with the menace effectively it is desirable for the courts to use the provision more effectively and frequently than it is presently done.

11. On the facts noted above and the law laid down by the Supreme Court, this Court finds no infirmity in the impugned order of the learned Trial Court.

12. Petition is dismissed.

Crl. M.A. No. 28145/2018 (Stay)

Application is dismissed as infructuous.

**(MUKTA GUPTA)
JUDGE**

**JULY 20, 2018
'vn'**

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