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

% **Decided on: 4th October, 2018**

W.P.(CRL) 2505/2018

SANDEEP KATYAL Petitioner

Represented by: Mr. Manish Gandhi, Advocate.

versus

STATE Respondent

Represented by: Mr. Ashish Aggarwal, Additional
Standing Counsel for State and Mr.
Piyush Singhal, Advocate with W/SI
Rishali Yadav, PS Tilak Nagar.
Mr. Hemant Verma and Ms. Pooja
Chauhan, Advocates for respondent
No.2 with respondent No.2 in person.

CORAM:

HON'BLE MS. JUSTICE MUKTA GUPTA

MUKTA GUPTA, J. (ORAL)

Crl. M.A. Nos. 32636/2018 (Delay)

For the reasons stated in the application, delay of 10 days in filing the
reply affidavit is condoned.

Application is disposed of.

W.P.(CRL) 2505/2018 and Crl. M.A. No.30604/2018 (stay)

1. By this petition, petitioner seeks quashing of FIR No. 265/2018 under Sections 376/380/34 IPC registered at PS Tilak Nagar, Delhi on the complaint of respondent No.2.
2. Grievance of the petitioner in the present petition is that on the similar

complaint with identical facts complainant earlier filed a complaint before the DCP, West District on which FIR No.33/2018 was registered at PS Tilak Nagar under Section 8 of the Protection of Children from Sexual Offences Act (in short 'POCSO') and Section 354 IPC. Thus a FIR on the said allegations having already been registered, learned Metropolitan Magistrate could not have directed registration of the second FIR and at best could have directed the Investigating Officer to investigate the offences alleged by respondent No.2 during the course of investigation in the first FIR.

3. Indisputably, in view of the decisions of the Hon'ble Supreme Court reported as 2001 (6) SCC 181 T.T. Antony vs. State of Kerala & Ors. and (2004) 13 SCC 292 Upkar Singh Vs. Ved Prakash & Ors. no second FIR for the same allegations could have been registered. However, it would be appropriate to detail the circumstances in which second FIR got registered.

4. Respondent No.2 made a complaint to DCP, West alleging harassment by the petitioner besides levelling allegations of rape and fake divorce decree on 24th October, 2017 wherein after an inquiry FIR No. 33/2018 was registered only on 24th January, 2018. In view of the inaction of the police in not registering the FIR from 24th October, 2017 respondent No.2 filed a complaint case before the learned Metropolitan Magistrate being CC No.7715/2017 alleging the same facts. On the said complaint status report was sought from the SHO concerned. In the status report, it was stated that FIR No.33/2018 had already been registered on the complaint of the respondent No.2. After perusing FIR No.33/2018 registered under Section 354 IPC and Section 8 POCSO Act, learned Metropolitan Magistrate observed that there were allegations of preparing false divorce decree and of rape, which offences were not invoked in

FIR No.33/2018 and thus vide order dated 25th June, 2018 the Court directed the State to register fresh FIR which was registered vide FIR No.265/2018 under Section 376/380/34 IPC on 1st July, 2018 in compliance of the order of the learned Metropolitan Magistrate.

5. As noted above, for the same set of allegations two FIRs could not have been registered. The learned Metropolitan Magistrate while passing the directions to register fresh FIR vide order dated 25th June, 2018 on the ground that the offences of forgery and rape were not mentioned in the FIR and thus not being investigated into committed an error as the course of action available to the Metropolitan Magistrate was to direct the State to also investigate the offences under Sections 376/380/34 IPC or any other offence made out in the earlier FIR, i.e. FIR No.33/2018.

6. In view of the discussion aforesaid FIR No.265/2018 registered at PS Tilak Nagar on the complaint of respondent No.2 is hereby quashed. All offences alleged in the complaint resulting in FIR No.33/2018 PS Special Cell or any other offence that is revealed during investigation will be investigated therein.

7. Petition and application are disposed of.

8. Order dasti.

(MUKTA GUPTA)
JUDGE

OCTOBER 04, 2018
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