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

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Date of Decision: 13.05.2019

% **W.P.(C) 453/2019**

ROHTASH

..... Petitioner

Through: Ms. Amandeep Kaur, Advocate.

versus

UNION OF INDIA AND ORS.

..... Respondents

Through: Mr. P.C. Yadav & Ms. Neha Gupa,
Advocates for respondent No.1.
Ms. Avnish Ahlawat & Ms. Sakshi
Shairwal, Advocates for respondents
No.2 & 3.

CORAM:

HON'BLE MR. JUSTICE VIPIN SANGHI

HON'BLE MS. JUSTICE REKHA PALLI

VIPIN SANGHI, J. (ORAL)

1. Learned counsel for the petitioner states that no forensic report was produced by the prosecution before the Trial Court. In these circumstances, she has advanced her submissions and we have heard learned counsels.

2. The petitioner had approached the Central Administrative Tribunal, Principal Bench, New Delhi (CAT/ Tribunal) by preferring O.A. No.4410/2013, wherein he had assailed rejection of his candidature for the post of Constable (Exe) in Delhi Police on the premise that the petitioner was involved in a criminal case under Section 376 IPC. The Tribunal has

not found favour with the petitioner's Original Application and dismissed the same by the impugned order dated 21.05.2015, and consequently, he has approached this Court.

3. Learned counsel for the petitioner submits that the petitioner had been acquitted by the Court of Sessions Judge, Jind in Sessions Case No.92 of 20.11.2012 vide judgment dated 08.02.2013. The acquittal was premised on the finding that the prosecutrix had not been able to bring on record any incriminating material against the accused/ petitioner. The prosecutrix had not supported the prosecution version at the trial. She had exonerated the petitioner by stating that she did not know him and that he had not committed rape on her. She was declared hostile by the prosecution. During cross-examination by the prosecution, she denied having made her statement Ex. PA before the police. However, she admitted her signatures on the said statement and stated that her signatures had been obtained in blank. She, however, denied that she had stated to the police that at around 02:30 a.m. in the morning of 23.09.2012, she was sleeping with her mother and grand-mother on the first floor of the house on separate cots and that her mother was in deep slumber due to illness as she was injected with a heavy dose of medicine by the doctor. She also denied that some persons pressed her mouth resulting into her awakening and she identified the accused as the person gagging her mouth, or that the accused had lifted her from the cot and took her in the adjacent room and while giving her threat of dire consequences in case she would cry, he committed rape upon her. She also denied that her grand-mother had awaken in the meantime and had started to call for the prosecutrix and she came to the spot where the incident took

place and also tried to catch the accused. She denied that he pushed the grand-mother away in which the grand-mother suffered injuries and thereafter her mother woke up and the entire incident was narrated to her. She denied her earlier statement. Even the grand-mother of the prosecutrix (PW-2) turned hostile and did not support the prosecution version. Father of the prosecutrix (PW-3) also turned hostile and did not support the version of the prosecution.

4. Learned counsel submits that in these circumstances, since the petitioner was acquitted in the aforesaid case, no ground to cancel his candidature was made out.

5. When the State undertakes the process of recruitment, particularly to a sensitive post in the Police Department, the State is entitled to screen the applicants to ensure that the person with completely unblemished record are inducted into the force, whose primary duty is to protect the citizens against breach of law, order and crime. The State would be well within its rights to leave out candidates, about whom there could be doubt – based on cogent materials. The present case is to be examined in the aforesaid light.

6. No doubt, the petitioner has been acquitted by the Trial Court in view of the aforesaid circumstances. At the same time, there was a medical examination report of the prosecutrix prepared contemporaneously which shows that she had been subjected to violence, and also her hymen was found torn. She also made her statement incriminating the accused/petitioner under Section 164 Cr.P.C. The petitioner has not given any explanation as to why the prosecutrix and the other prosecution witnesses

namely her grand-mother, mother and father implicated him in the first instance. Interestingly, the statement of the prosecutrix in Court – to the effect that she did not know the accused does not explain how the petitioner/accused was named as the perpetrator of the crime, if he was a complete stranger to the prosecutrix.

7. It is seen that in cases of rape, the prosecutrix and other family members often do not support the charge at a subsequent stage, particularly when the victim is a young unmarried girl, so as to save the reputation of the prosecutrix and the family, and so as not mar the prospects of getting the prosecutrix married and settled in life.

8. In the aforesaid circumstances, while it is fact that the petitioner stands acquitted, in our view, the respondents were completely justified in cancelling of the candidature of the petitioner since there is still a serious doubt remaining with regard to his involvement in the case. There are thousands of other applicants vying for the post and the State is not obliged to entertain an application by a person about whom there is a lurking doubt about his criminal past. We do not find any infirmity in the impugned order.

9. Dismissed.

VIPIN SANGHI, J

REKHA PALLI, J

MAY 13, 2019

B.S. Rohella