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

+ **W.P.(CRL) 2696/2017**

VINEETA PRASAD S I

..... Petitioner

Represented by: Mr.Apurb Lal and Ms.Meenu Pandey,
Advocates

versus

GOVT OF NCT OF DELHI

..... Respondent

Represented by: Mr.Ashish Aggarwal, ASC for the
State with Mr.Piyush Singhal,
Advocate for the State

CORAM:

HON'BLE MS. JUSTICE MUKTA GUPTA

ORDER

09.01.2019

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1. Despite service, none appears on behalf of respondent No.2. Prayer in the present petition by petitioner is expunging of the remarks against the petitioner and also quashing the order of payment of cost of ₹2,000/- which has been recovered from her salary vide order dated 12th May, 2017 in FIR No.107/2017 PS Subhash Place under Sections 363/342/370/376D IPC, Section 75 of the JJ Act and Section 4 of the Protection of Children from Sexual Offences Act (in short 'POCSO Act').

2. The order dated 12th May, 2017 passed by the learned ASJ, wherein remarks have been made against the petitioner in para 2, reads as under:-

“This is an application filed on behalf of the IO seeking cancellation of bail of accused Babloo Mandal which was granted by this Court on 27.04.2017 on the ground that the prosecutrix has levelled the allegations of commission of

penetrative sexual assault against him. Prior to passing bail order on 27.04.2017, four opportunities on four different dates were given to the IO to specify the role of accused Babloo Mandal. IO could not assign any specific role to him. Even in the report filed in the Court, it was stated that the only role which has been assigned to him in the matter is that he has accompanied the prosecutrix to the house of Rita.

After grant of the bail, she has written another 161 Cr.P.C. statement of the prosecutrix hereby not only naming only Babloo Mandal but alleging sexual assault against him. This appears to be a smart endeavour and astuteness on the part of the IO. This conduct of the IO requires to be highlighted to DP North West with directions to take the action against her.

I do not find any ground to cancel the bail of accused Babloo Mandal. The application is dismissed with cost of ₹2,000/- to be recovered from the salary of this IO and deposited in the Court. The copy of this order be sent to DCP North West as well as to the DDO of this IO.

Compliance report be filed in Court on or before 29.05.17.”

3. According to the petitioner, FIR in question was lodged on 15th March, 2017 where SI Vidya Rawat produced the complainant for recording of her statement before the learned Duty Metropolitan Magistrate on 16th March, 2017 when the same was recorded who thereafter arrested the accused persons including Babloo Mandal-respondent No.2 herein.
4. On 31st March, 2017 the case was marked to the petitioner who got conducted the ossification test of the prosecutrix on the same day. On 1st April, 2017 Mohd.Sajjad was granted bail. On 3rd April, 2017 the petitioner sought permission for conducting the test identification parade of Babloo

Mandal who refused to join the same and the proceedings were concluded.

5. Babloo Mandal filed his bail application on 22nd April, 2017 to which a reply was filed on 24th April, 2017. On 27th April, 2017 Babloo Mandal was granted bail. On 30th April, 2017 statement of complainant was recorded under Section 161 Cr.P.C. wherein she disclosed the name of Babloo Mandal and thus the application for cancellation of bail of Babloo Mandal was filed.

6. It is the case of the petitioner that in the FIR in question itself, the complainant stated that 2-3 boys raped her at Rita's house whose name and address she was not aware and Rita was not allowing her to go outside the house and used to lock her inside the house. In the night of 14th March, 2017 when everybody was sleeping, she escaped from the house of Rita and in day light when she found a person, she explained everything who called up number 100. She clarified that she could identify the boys who had raped her.

7. Further Babloo Mandal was arrested by ASI Vidya Rawat and his disclosure statement was recorded on the same date. Though no test identification parade was got conducted by the earlier IO, the petitioner on taking over as Investigating Officer on 31st March, 2017 filed an application for getting conducted the test identification of Babloo Mandal on 3rd April, 2017 wherein he declined to undergo the proceedings. Further Babloo Mandal was arrested after the arrest of Mohd.Sajjad, Shaida Khatoon, Durga and Pinku Chowdhary who made disclosure statements about the involvement of Babloo Mandal.

8. From the proceedings as noted above, it is apparent that Babloo Mandal was arrested by the earlier Investigating Officer when prima facie

on the basis of disclosure statement, his involvement was found and whether the supplementary statement of the prosecutrix recorded under Section 161 Cr.P.C. is required to be relied upon or not will be an issue to be looked into at the stage of trial and at this stage without the prosecutrix being examined, the material before Court concerned was insufficient to pass the observations as noted in para 2 of the order dated 12th May, 2017.

9. Consequently, the said observations are expunged and the cost of ₹2,000/- as imposed is set aside. State is directed to reimburse the petitioner with the cost already recovered from the salary of the petitioner.

10. Needless to note that the observations of the learned Additional Sessions Judge are being struck off because they are based on no appreciation of evidence and it would be for the learned Trial Court on receiving the evidence to form a proper opinion thereon.

11. Petition is disposed of.

12. Order dasti.

MUKTA GUPTA, J.

JANUARY 09, 2019

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