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

+ **CRL.M.C. 5236/2019**

MOHD. AMJAD ALI

..... Petitioner

Through: Mr. Atul Bandhu & Mr. Abhishek
Varma, Advocates.

versus

STATE & ANR.

..... Respondents

Through: Mr. Sanjeev Sabharwal, APP for
State.
R-2 in person.

CORAM:

HON'BLE MS. JUSTICE ANU MALHOTRA

ORDER

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03.02.2020

The respondent no.2 is present in person who has produced her original proof of identity, photocopy of which is on the record at page 36 of the petition.

Vide the present petition, the petitioner seeks the setting aside of the order dated 16.07.2019 of the Trial Court of the learned ASJ, Tis Hazari Courts, Delhi for recalling PW-2, the prosecutrix for cross-examination whereby the prayer made by the petitioner was declined.

The petition is premised on the aspect that W.P.(CrI.)1556/2018 which had been dismissed as withdrawn vide order dated 18.05.2018 of this Court and reliance is sought to be placed on behalf of the petitioner on the affidavit of the respondent no.2 dated 09.05.2018 [placed on the records of the present petition as Annexure-D (colly)] to the said writ petition and to averments made in paragraphs 2, 3 & 4 thereof, which read to the effect:-

“2. That the accompanying petition filed, under article 226 of the Constitution of India R/w Sec.482 Cr.P.C. for quashing of the FIR No. 636/17 u/s 354, 354D, 504, 376, 342, 344 and 506 IPC with P.S. NDRS, has been drafted in consultation with me and under my instruction and the contents are based on legal advice believed to be true and the same has been read over to me in vernacular and the same is not being repeated herein for the sake of brevity and the same may be read as an integral part of the affidavit and are true and correct to my knowledge and belief.

3. That I am the complainant in FIR No. 636/17 u/s 354, 354D, 504,376, 342, 344 and 506 IPC with P.S. NDRS.

4. That the matter has been amicably settled with the petitioner without any undue force, coercion with my free will and consent. I have reached to a consensus with the petitioner and wish to withdraw the said FIR. I have no objection if the present FIR and proceedings emanating from it are quashed as now I have no grievance against the petitioner.”

The respondent no.2 who is present seeks that her cross examination before the Trial Court be concluded and submits that she has no opposition to being cross examined further.

Vide the impugned order dated 16.07.2019, it has been observed to the effect that the testimony of the prosecutrix who had been examined, had been concluded on 12.04.2018 and that the application had been filed on 19.11.2018 with much delay. The petitioner through the present petition and through the submissions made on 16.07.2019 has submitted to the effect that the additional facts came to the knowledge of the petitioner only during the course of the proceedings in the W.P.(Crl.)1556/2018 which was dismissed

as withdrawn on 18.05.2018.

In reply to a specific Court query to the learned counsel for the petitioners, reliance has been placed on the affidavit of the respondent no.2 in the said proceedings which has been adverted to hereinabove in W.P.(Crl.)1556/2018, submitting that the additional cross-examination has become necessary, in as much as the contention sought to be raised on behalf of the petitioner is to the effect that the petitioner seeks to bring forth the aspect of consensual relations between the petitioner and the respondent no.2 and thus taking into account the non opposition of the respondent no.2 to being cross examined further, in the circumstances, it is considered appropriate to grant the prayer made by the petitioner seeking to cross examine the respondent no.2 further in relation to FIR No.636/2017, PS NDRS by the grant of one single opportunity to the petitioner to cross examine the respondent no.2 on the date to be fixed by the learned Trial Court for the same. The order dated 16.07.2019 of the learned Trial Court in the proceedings qua the FIR No.636/2017, PS NDRS is modified accordingly.

The petitioner and the respondent no.2 are thus, directed to appear before the learned Trial Court on the date 25.03.2020.

The petition is disposed of accordingly.

ANU MALHOTRA, J

FEBRUARY 03, 2020

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