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

+ **CRL.M.C. 1327/2020 & CRL.M.A.5067-68/2020**

LALIT

..... Petitioner

Through: Mr. Nusrat Hossain & Mr. Manish
Kumar Singh, Advocates.

versus

STATE & ANR.

..... Respondents

Through: Ms. Meenakshi Dahiya, APP for
State.

R-2 is not present on advance notice.

CORAM:

HON'BLE MS. JUSTICE ANU MALHOTRA

ORDER

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06.03.2020

CRL.M.A.5068/2020 (Ex.)

Exemption allowed subject to all just exceptions.

CRL.M.C. 1327/2020

Vide the present petition, the petitioner seeks the quashing of the FIR No.402/2018, PS Nangloi under Sections 328/376/323/506/34 of the Indian Penal Code, 1860 submitting to the effect *inter alia* that there are vacillating statements that have been made by the respondent no.2.

It has also been submitted on behalf of the petitioner placing reliance on the verdict of the Hon'ble Supreme Court in ***“Prashant Bharti Vs. State of NCT of Delhi” 2013 (2) ACR 1461*** with specific reliance on the observations in paragraph 23 of the said verdict, which reads to the effect:-

“23. Based on the factors canvassed in the foregoing paragraphs, we would delineate the following steps to determine the veracity of a prayer for quashing, raised by an accused by invoking the power vested in the High Court

under Section 482 of the Code of Criminal Procedure:

(i) Step one, whether the material relied upon by the accused is sound, reasonable, and indubitable, i.e., the material is of sterling and impeccable quality?

(ii) Step two, whether the material relied upon by the accused, would rule out the assertions contained in the charges levelled against the accused, i.e., the material is sufficient to reject and overrule the factual assertions contained in the complaint, i.e., the material is such, as would persuade a reasonable person to dismiss and condemn the factual basis of the accusations as false.

(iii) Step three, whether the material relied upon by the accused, has not been refuted by the prosecution/complainant; and/or the material is such, that it cannot be justifiably refuted by the prosecution/complainant?

(iv) Step four, whether proceeding with the trial would result in an abuse of process of the court, and would not serve the ends of justice?

If the answer to all the steps is in the affirmative, judicial conscience of the High Court should persuade it to quash such criminal-proceedings, in exercise of power vested in it under Section 482 of the Code of Criminal Procedure. Such exercise of power, besides doing justice to the accused, would save precious court time, which would otherwise be wasted in holding such a trial (as well as, proceedings arising therefrom) specially when, it is clear that the same would not conclude in the conviction of the accused.”,

to submit that if in the event of the petitioner being able to produce sound, reasonable and indubitable material of impeccable quality to show that the petitioner is not in any manner involved, it would be an abuse of the process of the Court to proceed with the proceedings in

the FIR against him.

Without adverting to the merits or demerits of the proceedings that are pending before the learned Trial Court, it is essential to observe that placed on record along with the petition itself is the copy of the statement under Section 164 of the Cr.P.C., 1973 of the prosecutrix grossly incriminating the petitioner. Undoubtedly, placed on record also is an order dated 02.11.2018 of the learned ASJ, FTC, West in Bail Appl. No.4626/2018 & 4627/2018 vide which the applicant herein has been allowed to be released on bail in view of his having stated to have not been found visible in a CCTV footage entering into the place where the prosecutrix is alleged to have made the allegations in relation to the alleged commission of the offence.

It is essential to observe as already adverted to hereinabove the statement under Section 164 of the Cr.P.C., 1973 of the prosecutrix placed on the record is categorical in relation to the allegations of the alleged commission of rape by the petitioner against her.

It is informed on behalf of the State that the charges are yet to be framed. There is presently no ground for grant of quashing of the FIR.

The petition is thus, declined.

ANU MALHOTRA, J

MARCH 06, 2020
'neha chopra'