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

+ W.P.(CRL) 726/2020

SANJEEV KUMAR

..... Petitioner

Through: Mr Vikas Arora, Advocate.

versus

STATE & ANR

..... Respondents

Through: Ms Nandita Rao, ASC (Crl.) for State
with W/SI Sunita, PS H. Vihar.

CORAM:

HON'BLE MR. JUSTICE VIBHU BAKHRU

ORDER

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16.03.2020

CRL.M.A. 5524/2020

1. Allowed, subject to all just exceptions.

W.P.(CRL) 726/2020 & CRL.MA. 5525/2020

2. The petitioner has filed the present petition, *inter alia*, challenging the order dated 01.10.2019 passed by the learned ASJ, to the extent that certain remarks have been made against the petitioner and the police officials. The petitioner prays that the said remarks be expunged and the directions issued by the court to initiate action against the petitioner and other police officers, be set aside.

3. A complaint was made by one Ms 'J' (name withheld). She stated that she had been raped by one Pankaj. Although it was claimed that the physical relationships established by them were consensual, nonetheless, J

claimed that the same amounts to rape as her consent was vitiated as having been induced by false promise of marriage.

4. 'J' stated that her husband had left her and she was acquainted with the accused. She stated that the accused had also on prior occasions teased her. She stated that on one particular day, the accused forcibly made her sit on his motorcycle and took her to a hotel where he established physical relationship with her. She stated that he had done so on several occasions on the promise of marriage. She also claimed that the accused had threatened to kill her and her brother.

5. Her statement was also recorded under Section 164 of the CrPC, where she stated that on 02.07.2016, the accused had taken her to a hotel and he had given her water. Thereafter, she lost her senses (*apne hosh hawash mein nahi thi*) and she subsequently found that her clothes had been removed. Thereafter, she claims that the accused had shown her some papers and informed her that he had raped her. He stated that if she told anybody or informed anyone about it, he would kill her brother. She further stated that, thereafter, he had established physical relationship with her (raped her) on several occasions.

6. It is at once apparent that there were material inconsistencies/significant improvements between her statement under Section 164 of the CrPC and the FIR. Nonetheless, the chargesheet was filed.

7. The trial court found that the chargesheet/report filed under Section 173 of the CrPC was vague and did not give any result of the investigation. Apart from the fact that no investigation seems to have been undertaken, the chargesheet also referred to a civil case filed by the prosecutrix (Ms J)

against the accused and his family members, where she had alleged that she had been forcibly removed from his house.

8. Considering that the chargesheet was vague, the Court also summoned the concerned DCP and senior police officials be present in court on 30.03.2019. The said matter was considered on 30.03.2019 and on that date a statement was made on behalf of the Investigating Officer/police officials that a supplementary chargesheet would be filed in due course. They requested the court to give them sufficient time in this regard. Accordingly, the matter was then deferred.

9. Subsequently, a supplementary chargesheet was filed, *inter alia*, stating that the charges against the accused are not sustainable as the prosecutrix was married to the accused.

10. It is in this context, the Court noted that all relevant facts were well within the knowledge of the IO/SHO. First of all, the FIR itself indicated that the prosecutrix was married and, therefore, the allegations that she was induced to establish physical relationship on a false promise of marriage would not be sustainable. Apart from that fact, it was also on record that the prosecutrix had filed a case against the accused and his family members alleging that she had been forcibly removed from his house. On one hand, the prosecutrix claimed that she was married to the accused and on the other hand, had lodged a FIR claiming that she was raped. In view of the above, coupled with the fact that there were material inconsistencies in her statement under Section 164 of the CrPC, the trial court found that the investigation conducted was very shabby.

11. It is obvious that the concerned police officials had not investigated

the complaint properly. It also appears that the report submitted was not impartial. In this view, the trial court had directed that disciplinary proceedings be initiated against the officials.

12. This Court does not find the impugned order to be arbitrary or unreasonable and thus finds no reason to interfere with the same.

13. It is expected that the authorities shall conduct the disciplinary inquiry/proceedings in an impartial manner. Whilst the concerned authorities will consider the observations made by the Court, it is clarified that the same are not binding and the concerned authorities shall decide the matter independently and uninfluenced by the observations made by the Courts.

14. The learned counsel appearing for the petitioner states that the ASJ has also called for a periodic action taken report, which may not be sustainable. The proceedings initiated against the petitioner are disciplinary proceedings and that is an internal matter of the department. It is accordingly clarified that, the action taken report sought by the Court is to ensure that the orders passed by the Court, are complied with and not to monitor the disciplinary proceedings.

15. The petition is dismissed with the aforesaid observations. The pending application is also disposed of.

16. Order *dasti* under signatures of the Court Master.

VIBHU BAKHRU, J

MARCH 16, 2020
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