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

+ **CRL.REV.P. 623/2019**

NEETU AGGARWAL

..... Petitioner

Through: Mr C. Mohan Rao with Mr Lokesh
Kumar Sharma, Advocates.

versus

GOVT. OF NCT OF DELHI & ANR

..... Respondents

Through: Ms Meenakshi Chauhan, APP for
State with SI Rachna, PS Subzi
Mandi.
Mr B. Badrinath with Mr Karan
Dharma, Advocates for R-2.

CORAM:

HON'BLE MR. JUSTICE VIBHU BAKHRU

ORDER

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30.01.2020

1. The petitioner has filed the present petition seeking revision of the order dated 25.02.2019 passed by the learned MM, Tis Hazari Courts, whereby the learned MM accepted the closure report dated 26.04.2018 filed by respondent no.1 and observed that the allegations of molestation and rape made by the petitioner against respondent no.2, regarding the alleged incidents on 30.11.2014 and 28.10.2014, were not substantiated and were probably made to exert pressure on respondent no.2 to take advantage in the other property disputes.
2. The facts leading to the present case are briefly stated hereafter. Respondent no.2 is a religious figure and it is stated that he has a large

following. The petitioner states that the mother of the petitioner was one of the disciples of respondent no.2. The petitioner used to attend the *satsangs* conducted by respondent no.2 since the age of six years and developed a strong devotion towards him. The petitioner states that she was married to one Mr Amit Gupta on 10.12.2008 and within a year of her marriage suffered serious medical complications. Her husband did not take any interest in the matter and she was left to fend for herself. Since she was facing difficult circumstances in her life, her faith in respondent no.2 increased manifold. She alleges that respondent no.2 made efforts to make her a *sevika* (a follower who dedicates her life to respondent no.2) but she was reluctant to become one.

3. The petitioner states that with the blessings of respondent no.2, she married Rajesh Aggarwal. Sh. Rajesh Aggarwal and his family were staunch supporters of respondent no.2. Before her marriage to Rajesh Aggarwal, she did not have any interactions with respondent no.2. However, post her marriage, her interactions with respondent no.2 increased.

4. The petitioner is a school teacher. She alleges that on 28.10.2014, after she returned from school, she was ordered to serve food in the room of respondent no. 2 at about 7 pm. She alleges that respondent no.2 bolted the door and raped her. She states that due to the prevailing stigma in society against rape victims and the powerful status of respondent no.2, she did not take any action against him at that point of time. The petitioner also alleges that on 30.11.2014, respondent no.2 had molested the petitioner and had threatened to ruin her face and destroy her husband, if she did not sleep

with him.

5. She states that when her husband understood the character of respondent no.2, he tried to take action against the same and in retaliation, he was ostracized by other disciples of respondent no.2 and was attacked. He filed a complaint dated 23.02.2015 with reference to the incident where he was beaten up.

6. The petitioner alleges that when the said matter was referred to mediation, the daughters of her husband, under the influence of respondent no.2, attended mediation proceedings and supported the attackers of their father (Rajesh Aggarwal).

7. The petitioner states that the mother of her husband also filed a complaint dated 03.06.2015 against the husband of the petitioner (Sh. Rajesh Aggarwal), alleging that he had made 'politically motivated allegations'. The mother and daughters of Sh. Rajesh Aggarwal also filed a maintenance petition under Section 125 of the CrPC, with a view to harass the petitioner and her husband. On 18.11.2016, the elder daughter of Rajesh Aggarwal filed a complaint with the tax authorities stating that Rajesh Aggarwal had falsely evaded crores of rupee in tax.

8. The petitioner alleges that on 16.04.2017, the followers of respondent no. 2 molested the petitioner and the police had refused to accept the complaint of the petitioner. Simultaneously, the followers of respondent no. 2 approached the police authorities and filed a false complaint against the petitioner's husband and in light of the same, FIR No. 73/2016 was registered, under Sections 354/323/34/392 of the IPC, against the

petitioner's husband and his staff. The petitioner states that it was only thereafter that FIR No. 76/2017, under Sections 354/380/34 of the IPC was registered against the followers of respondent no. 2 for molesting the petitioner.

9. The petitioner states that after the registration of the aforesaid FIR with reference to the molestation at the hands of the henchmen of respondent no. 2, she finally recounted the ordeal of molestation that she faced at the hands of respondent no.2

10. She states that her husband encouraged her to file a complaint and she finally had the courage to file a complaint on 08.05.2017 with PS Roop Nagar, alleging charges of molestation on 30.11.2014. The said complaint dated 08.05.2017 did not contain any allegations regarding the incident of the rape dated 28.10.2014 by respondent no.2.

11. The petitioner states that in response to her complaint dated 08.05.2017, one of the daughters of Rajesh Aggarwal filed a complaint with the police authorities against her own father, alleging that she and her sister were raped in 2009.

12. The petitioner states that the complaint alleging molestation against respondent no. 2 was filed by the petitioner on 08.05.2017, but FIR No. 256/2017, under Sections 376/354A/506 of the IPC was registered with PS Subzi Mandi on 02.10.2017. On 13.10.2017, her statement under Section 164 of the CrPC was recorded, wherein she narrated the entire incident. The petitioner stated that the IO did not conduct any investigation and did not make any effort to contact the petitioner. Thereafter, a closure report

dated was filed on 26.04.2018.

13. The petitioner states that from the closure report filed by respondent no. 1, she also came to know that the supporters of respondent no.2 had filed fifty complaints against the petitioner and her husband on 20.03.2015 and on 23.04.2015. A complaint was also filed by about fifty supporters of respondent no.2 on 18.04.2016.

14. The learned MM, on perusing the material collected by the investigation agency and the closure report dated 26.04.2018, noted that the incidents dated 30.11.2014 and 28.10.2014 were brought to the notice of the police authorities in 2017, i.e. after a gap of three to four years and the said delay had not been explained. The learned MM also took note of the fact that an FIR (bearing FIR No. 76/2017) had been filed wherein the complainant had levelled allegations of assault and molestation against the henchmen of respondent no.2, but she had not made any mention of the incidents dated 30.11.2014 and 28.10.2014. The complainant had not provided any explanation in the protest petition as to what had prevented the complainant from reporting the alleged incidents to the police.

15. The learned MM noted that in FIR No. 256/2017, the complainant had initially levelled allegations of molestation. But during her statement under Section 164 of the CrPC, she had improved her allegations and went on to allege that respondent no.2 had committed rape on 28.10.2014. The learned MM also noted that the complainant had also never asked for medical examination.

16. The Trial Court also noted the alibi of respondent no.2 on the day of

the alleged incident, that is, 28.10.2014. The Trial Court noted that during the investigation, the investigation agency had examined many witnesses who were present with respondent no.2 on that date and none of them had supported the version of the complainant. As per the version given by the witnesses, on 28.10.2014, respondent no.2 had left for the house of Sh. Praveen Aggarwal at 07:30 pm and had a meeting at the said house that lasted till 09:30 pm. He had stayed at the house of Praveen Aggarwal during the night of 28.10.2014. In light of the same, the claim of rape of the complainant on 28.10.2014 was not sustainable.

17. The Court took note of the e-ticket brought on record by the IO showing that on 30.11.2014, respondent no.2 was not present in Delhi as he was travelling from Mumbai to Kolkata. The learned counsel for the complainant had raised the objection that the same could not be relied upon since the ticket was in the name of 'Maharaj Dass Ji' and not in the name of 'Mahant Sunder Dass'. The Court rejected on the ground that 'Mahant Sunder Dass' was also known by the name of 'Maharaj Dass' and the investigating agency had collected sufficient material to substantiate the said fact.

18. The Court also noted that on 11.10.2017, the complainant had filed a counter-affidavit before the Supreme Court of India in SLP No. 7281/2017 and 7282/2017, but she did not make any mention of the incident of rape dated 28.10.2014. The Court took into account a video recording and a transcript containing a verbal altercation between Rajesh Aggarwal and his mother in the presence of respondent no. 2 on 28.10.2014 at about 05:30 pm, regarding a property dispute. The said recording was also filed before

the POCSO Court. The Trial Court held that it appeared unreliable that respondent no. 2 was present when the quarrel was taking place at 5:30 pm, and thereafter, on the same day at about 7:30 pm, he had the opportunity to commit rape upon the petitioner.

19. The Trial Court observed that it was brought on record that the complainant and her husband were illegally occupying the property of the sect of respondent no. 2 and there were a number of disputes pending between the parties. Taking note of the property disputes and other circumstances, the Trial Court arrived at a conclusion that the incidents dated 28.10.2014 and 30.11.2014 were not substantiated and the closure report was accepted by the Trial Court. However, an opportunity was given to the complainant to pursue her complaint and to substantiate her allegations by leading her own evidence.

20. The petitioner contends that the Trial Court had erred in accepting the closure report since the Trial Court had failed to take into account that the petitioner was not contacted by the investigating agency during investigation. Further, the investigating agency had accepted representations on the behalf of third parties, who were also the supporters of respondent no. 2, in order to arrive at a conclusion. The said third persons were supporters of respondent no. 2 and hence, their representations were biased and not reliable. Further, the representations made on behalf of third parties could not constitute as “investigation” conducted by the investigation agency. The investigation agency had also accepted the plane ticket as a valid alibi and had not made any effort to ascertain if respondent no. 2 had any identification to travel on a flight

ticket in the name of 'Maharaj Dassji'.

21. The petitioner also contends that the Trial Court erred in holding that a delay of filing an FIR for three-four years was a ground to doubt the allegations made by the petitioner. The petitioner contends that she had not disclosed the matter to any other persons because she did not feel comfortable and was finally able to disclose the truth in her statement recorded under Section 164 of the CrPC, because she felt comfortable in the presence of a female Magistrate while narrating the incident. She also contends that she had explained the delay in her protest petition by stating the facts which led to filing of present petition. The powerful status of respondent no. 2 and her peculiar relationship with him and her family had prevented her from filing a complaint against him. Further, the fact that the daughters of the petitioner's husband had filed rape complaints against the petitioner's husband (their father), was a reflection of the power exercised by respondent no. 2.

22. The petitioner contends that the findings of the learned MM, that the petitioner's mother-in-law and her husband had a fight in the presence of respondent no. 2 and hence respondent no. 2 could not have the opportunity to rape her thereafter, was based on surmises and conjectures. Further, the learned MM had erred in considering that the existence of property disputes was a ground to falsify rape charges since the existing property dispute was a simple one. On the grounds as stated above, the petitioner prays for the order dated 25.02.2019, whereby the closure report dated 26.04.2018 was accepted by the learned MM, be set aside.

23. It is apparent from the record that apart from the statements made by the petitioner, there is no other material that supports the allegations made by the petitioner. The investigations made by the police have not yielded any such material or evidence.

24. The petitioner alleges that she was raped on 28.10.2014. However, she had not made any allegation to the aforesaid effect prior to recording of her statement under Section 164 of the Cr.P.C. She had filed an FIR stating that she had filed a complaint on 08.05.2017 alleging that whenever the accused used to call her to his room, he would wear only a thin towel without any underwear and intentionally show his private parts to her. She alleged that on 30.11.2014, the respondent had asked her to sleep with him. He had also placed his hand on her chest. In addition, she alleged that he had also threatened her that he would spoil her face. An FIR was registered pursuant to the said complaint. It is material to note that even though the said complaint mentioned the incident which had allegedly occurred on 30.11.2014 as well as respondent no.2's past conduct, there was no allegation that respondent no. 2 had raped the petitioner on 28.10.2014.

25. The only explanation provided by the petitioner is that given her circumstances and the immense power that respondent no. 2 wielded, she did not feel comfortable disclosing the said incident of 28.10.2014.

26. Plainly, this explanation is unpersuasive. This is so because the petitioner had made a complaint against respondent no. 2 regarding an incident that occurred on 30.11.2014 and there was no reason for her to conceal an incident which had allegedly occurred about a month earlier on

28.10.2014. It is also important to note that the petitioner had, about three weeks prior to filing a complaint against respondent no.2, made a complaint of being molested by her followers.

27. According to the petitioner, she and her husband had been targeted because her husband had published pamphlets disclosing the true character of respondent no. 2. However, such pamphlets had been distributed by the petitioner's husband in November, 2014.

28. The facts, as obtaining in the present case, clearly indicate that there were ongoing disputes in which respondent no. 2 was involved. In the given circumstances, the delay in filing an FIR would raise serious doubts as to the allegations made. In the present case, the petitioner had not even made an allegation of being raped in the FIR but had chosen to make the said allegations only which recording her statement under Section 164 of the Cr.P.C.

29. The inquiries made by the police had indicated that respondent no. 2 could explain his whereabouts on the dates of the alleged incidents. Respondent no.2 had also produced an air ticket to establish that he was travelling from Mumbai to Kolkata and was not even present in Delhi on the given day (that is, on 30.11.2014).

30. The said flight ticket was in the name of Maharaj Dass Ji and the investigation had revealed that respondent no. 2 was known by the name Maharaj Dass. Apart from the above, the Trial Court had also taken note that other facts, which raises doubts as to the allegations made by the petitioner.

31. Given the facts and circumstances, this Court finds no infirmity with the decision of the learned Trial Court. Clearly, the State cannot be directed to prosecute respondent no. 2 when the investigations have not revealed any material to substantiate the allegations and the statement of the petitioner has not been found credible.

32. The petition is unmerited and is, accordingly, dismissed.

VIBHU BAKHRU, J

JANUARY 30, 2020
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