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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ **W.P.(CRL) 1789/2019 and CrI.M.A. Nos. 12836/2019 & 39653-39654/2019**

TUBA ANJUM & ORS Petitioners
Through: Mr Navjot Kumar and Mr Shoaib Haider, Advocates.

versus

THE STATE THROUGH STANDING
COUNSEL(CRIMINAL) GOVT OF NCT
OF DELHI Respondent
Through: Mr Rahul Mehra, Standing Counsel
with Mr Chaitanya Gosain, Mr
Amanpreet Singh and Mr Divyank
Tyagi, Advocates.
SI Seema, PS Jamia Nagar.
Mr Sudhir Kumar, Advocate for R-2
along with R-2 in person.

CORAM:
HON'BLE MR. JUSTICE VIBHU BAKHRU

ORDER
% **13.01.2020**

1. The petitioner has filed the present petition, *inter alia*, praying that the FIR bearing no. 674/2017 under Sections 376/328/509/323/506/34 of the IPC, registered with PS Jamia Nagar and all proceedings emanating therefrom, be quashed.
2. The petitioner contends that the allegations made by the complainant in the aforesaid FIR are, *ex facie*, implausible.
3. On 18.11.2019, this Court had observed that in the peculiar facts of this case, it would be apposite to defer the consideration of the present petition till the Trial Court has examined the matter as to whether charges

are required to be framed. This was considered since a chargesheet had already been filed and this Court was of the view that the complainant was seeking to give a religious colour to alleged incident. This was material, because the petitioner had filed another FIR and a religious colour (albeit of a different religion) was sought to be given to the matter by the complainant.

4. The matter was again listed on 07.01.2020 and on that date, the complainant was present in Court and had submitted that she was not willing to pursue the FIR in question and the allegations made therein are false. She further stated that this was out of her own free will and not on account of any coercion or undue influence. The said statement was recorded. However, given the past history of the complaints filed by the complainant, this Court also considered it necessary that an affidavit unequivocally affirming the same also be filed. Thereafter, the complainant had filed affidavits, on two occasions, clearly stating that she did not wish to pursue the said FIR. However, the affidavits did not state that the allegations made in the said FIR were incorrect as contended by her in court.

5. The learned counsel appearing for the complainant has today handed over a copy of the affidavit captioned "Affidavit of Compliance". Although the title of the affidavit is not apposite; however, it is material to note that the complainant has affirmed that the allegations made by her in the said FIR are not correct and she does not wish to pursue the same. She is present in Court and re-affirms that the said statement is correct.

6. In view of the above, it is clear that the offences, including the offence under Section 376 of the IPC, cannot be alleged to have been

committed by the petitioner. Considering the above, this Court considers it apposite to allow the present petition and quash the FIR in question and all proceedings emanating therefrom.

7. Mr Mehra, learned Standing Counsel points out that a FIR with respect to offence under Section 376 of the IPC cannot be quashed on the basis of consensus between the parties. There is little doubt as to this proposition. However, in the present case, the very allegation of offence has been withdrawn as being incorrect. Thus, the question of the petitioner being charged for such offence does not arise.

8. It is also necessary to clarify that the FIR in question is not being quashed merely on the basis of any consensus between the parties but on the basis of the unambiguous statement made by the complaint that the allegations made in the FIR are not correct.

9. The petition is allowed in the aforesaid terms. The pending applications are also disposed of.

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

VIBHU BAKHRU, J

JANUARY 13, 2020
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