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

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Reserved on: 08.08.2023
Pronounced on: 04.09.2023

+ **CRL.M.C. 528/2023 & CRL.M.A. 2088/2023**

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..... Petitioner

Through: Mr. Kunal Kalra, Mr. Ankit
 Bhutani & Mr. Daman Yadav,
 Advocates

versus

THE STATE OF NCT OF DELHI & ANR Respondents

Through: Mr. Naresh Kumar Chahar,
 APP for State with Inspector
 Manmeet Singh, PS Khyala,
 Inspector Ashok Kr. & SI
 Harsh Kumar, PS Nabi Karim

CORAM:**HON'BLE MS. JUSTICE SWARANA KANTA SHARMA****JUDGMENT****Index to the Judgment**

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SWARANA KANTA SHARMA, J.

1. By way of present petition under Section 482 of the Code of Criminal Procedure, 1973 ('Cr.P.C'), the petitioner seeks quashing/setting aside of order dated 30.11.2022, passed by learned Additional Sessions Judge (FTSC) (RC), Central, Tis Hazari Courts, Delhi ('Trial Court') in FIR No. 0382/2019 for the offence punishable under Section 376 of the Indian Penal Code, 1860 ('IPC') registered at Police Station Nabi Karim, Delhi.

FACTUAL BACKGROUND

2. Briefly stated, the facts of the present case are that the present FIR was registered on 13.11.2019 on the basis of complaint filed by the petitioner wherein she had alleged that accused Rishabh Jain had established physical relations with her several times at various places on the false pretext of marriage. As per the statement of petitioner, the accused had approached her for friendship in March 2015, after which, they used to meet with each other and accused had proposed her for marriage. Thereafter, accused had demanded a sum of Rs. 25 lakh from the mother of the petitioner as dowry to marry her which she had agreed to pay after selling her shop, but the shop was later demolished by MCD. The accused had met the petitioner various times after this, and had established physical relations with her on the false pretext of marriage, but had married some other girl without informing the petitioner. Thereafter, when the petitioner had confronted the accused, she was threatened by the uncle of accused. On these allegations, the present FIR was registered. During the



course of investigation, medical examination of the petitioner was conducted. The accused was arrested on 13.11.2019. Later, the accused had been enlarged on bail by learned Trial Court *vide* order dated 30.11.2019. The charge sheet in the present case was filed after investigation on 15.01.2020, and charges were framed by the learned Trial Court *vide* order dated 04.02.2020 under Sections 376(2)(n)/420 of IPC against accused/respondent no. 2 Rishabh Jain and under Section 506 of IPC against accused Purushottam Jain.

3. Thereafter, the petitioner/complainant had moved an application under Section 173(8) of Cr.P.C. on 26.02.2020 for further investigation in the case, which was dismissed *vide* order dated 30.11.2022 by the learned Trial Court. The concluding portion of the order has been reproduced as under:

“...Therefore, in view of the foregoing discussions and in light of the judgment of Hon'ble Supreme court of India in Vinubhai Haribhai Malaviya Vs. State of Gujarat (Supra), this Court is of the opinion that the present application u/s. 173 (8) Cr.PC filed by prosecutrix for further investigation is not maintainable, as trial has already commenced in this case with framing of charge against the accused and aforesaid application is accordingly dismissed...”

SUBMISSIONS BY BOTH THE PARTIES

4. Learned counsel for the petitioner argues that further investigation is required in the present case since the police has ignored certain vital points of investigation which were mentioned by the complainant, including obtaining the details of hotels which the complainant and the accused had visited. It is further stated that the



chargesheet/final report of the investigation was never communicated to the petitioner and charges were framed in her absence.

5. *Per contra*, learned APP for the State argues that no new fact has been raised by the petitioner, and the investigating officer has sufficiently investigated on all the issues which were mentioned by the complainant in her statement and during the course of investigation.

6. This Court has heard arguments addressed by learned counsel for the petitioner and learned APP for the State, and has perused material on record.

ANALYSIS AND FINDINGS

7. The learned Trial Court has refused to order further investigation on the ground that as per law, the Court was not authorized to order further investigation after framing of charge and commencement of trial.

8. As per records, the chargesheet in this case was filed on 15.01.2020. Perusal of the chargesheet reveals that the investigating officer has mentioned that the additional evidence, if any, comes on record will be filed through supplementary chargesheet.

9. In the present case, as per petitioner/complainant, the information that the investigation had been concluded by the investigating officer and the chargesheet had been filed before the learned Trial Court was never communicated to complainant. Thus, it is the grievance of petitioner that she was not informed about the filing of the chargesheet as per mandate of Section 173(2)(ii) of



Cr.P.C. and there was a lapse on the part of investigating officer as he was duty bound to communicate the same to her.

i. Mandate of Section 173(2) of Cr.P.C.

10. The procedural requirement for communicating information to the Magistrate and the complainant upon the conclusion of an investigation is provided in Section 173(2) of the Cr.P.C., which reads as under:

“Section 173. Report of police officer on completion of investigation

(2) (i) As soon as it is completed, the officer in charge of the police station shall forward to a Magistrate empowered to take cognizance of the offence on a police report, a report in the form prescribed by the State Government, stating-

- (a) the names of the parties;
- (b) the nature of the information;
- (c) the names of the persons who appear to be acquainted with the circumstances of the case;
- (d) whether any offence appears to have been committed and, if so, by whom;
- (e) whether the accused has been arrested;
- (f) whether he has been released on his bond and, if so, whether with or without sureties;
- (g) whether he has been forwarded in custody under section 170.

(ii) The officer shall also communicate, in such manner as may be prescribed by the State Government, the action taken by him, to the person, if any whom the information relating to the commission of the offence was first given.”

(Emphasis supplied)

11. This Court notes that Section 173(2)(ii) mandates the officer in charge of the police station that upon completion of the investigation, he shall:



- i. Forward the report to the Magistrate empowered to take cognizance of the offence on a police report, and;
- ii. Communicate the action taken by him to the first informant.

12. Thus, Section 173(2)(ii) casts a duty upon the officer in-charge of the police station to communicate to the complainant about the action taken by him i.e. filing of the final report before the concerned Magistrate.

ii. Grievance of the Petitioner

13. It is stated by the investigating officer that the petitioner/complainant was duly informed about the filing of chargesheet whereas the petitioner denies that she was informed and therefore states that since she was not informed about the filing of the charge-sheet, she only came to know about filing of chargesheet through CWC after the charges had been framed. It is her case that the additional evidence which was to be collected by the investigating officer as conveyed by the petitioner had not been incorporated in the chargesheet.

14. Learned counsel for the petitioner states that there is no bar in law for this Court to exercise its jurisdiction under Section 482 Cr.P.C., and for ensuring fair trial to the complainant, this Court can allow placing of additional evidence on record by way of filing a supplementary chargesheet under Section 173(8) Cr.P.C. It is also stated that without going into the merits of the impugned order, this Court may use its jurisdiction for the said purpose, considering that the petitioner has leveled serious allegations that she was taken to



different hotels where she was sexually assaulted and to that limited extent, this Court permits the investigating officer to collect evidence in this regard and file supplementary chargesheet before the learned Trial Court.

15. In the present case, as per the petitioner, no communication had been given to her regarding the filing of final report/chargesheet, and nothing has been placed on record by the State to show that the same was communicated to her.

16. In these circumstances, this Court takes note of the fact that on one hand, the petitioner/complainant was not informed about the filing of the charge-sheet, but at the same time, the investigating officer had mentioned that in case of any additional evidence comes on record, the same can be filed through supplementary chargesheet.

17. Thus, in view of the fact that the investigating officer had already mentioned in the chargesheet that he will be filing a supplementary chargesheet in case additional facts are placed on record, read with the accompanying circumstance that the investigating officer did not inform the complainant about the filing of the chargesheet, this Court to ensure fair trial to reach the truth of the matter, *deems it appropriate to allow the prayer of the petitioner to further investigate the case only to the extent of four fresh incidents that the complainant wants to be brought on record.*

iii. Directions apropos mandate of Section 173(2)(ii) of Cr.P.C.

18. The communication regarding completion of investigation and filing of final report to the complainant/informant mandated by



Section 173(2)(ii) of Cr.P.C. aligns with the fundamental principles of natural justice. It nurtures a culture of open communication and accountability within the criminal justice system.

19. It is observed that in Section 173(2)(ii), the legislature has used the word '**shall**' in respect of duty of the officer in-charge of police station to communicate about the action taken by him, which clearly conveys the intent of legislature that it is utmost essential on the part of investigating agency to intimate the complainant about the completion of investigation.

20. On the other hand, the same provision also mentions that such communication shall be made in the manner as '**may**' be prescribed by the State Government.

21. During the course of arguments, this Court was informed by the investigating officer as well as by learned APP for the State that **the State Government has not notified any procedure/mode/manner in which such communications are to be made.**

22. As per general rules of interpretation of statutes, the use of word 'may' ordinarily means that the legislature intends that the provision be construed as directory, and the word 'shall' suggests that the provision be taken as mandatory or obligatory. However, as held by the Hon'ble Apex Court in catena of judgments, whether a statute/provision is mandatory or directory would ultimately depend on the scope and object of the enactment and the intent of legislature.

23. In *H.V. Kamath v. Ahmad Ishaque* 1954 SCC OnLine SC 8, it was held that a mandatory provision is to be strictly observed



whereas substantial compliance of a directory provision is enough.

The relevant observations in this regard read as under:

“...The practical bearing of the distinction between a provision which is mandatory and one which is directory is that while the former must be strictly observed, in the case of the latter it is sufficient that it is **substantially complied** with...”

(Emphasis supplied)

24. The distinction between a ‘mandatory’ and a ‘directory’ rule was also enunciated by the Hon’ble Apex Court in *Sharif-ud-din v. Abdul Gani Lone* (1980) 1 SCC 403 by way of following observations:

“...The difference between a mandatory rule and a directory rule is that while the former must be strictly observed, in the case of the latter, substantial compliance may be sufficient to achieve the object regarding which the rule is enacted. Certain broad propositions which can be deduced from several decisions of courts regarding the rules of construction that should be followed in determining whether a provision of law is directory or mandatory may be summarised thus: The fact that the statute uses the word 'shall' while laying down a duty is not conclusive on the question whether it is a mandatory or directory provision. In order to find out the true character of the legislation, the Court has to ascertain the object which the provision of law in question is to subserve and its design and the context in which it is enacted. If the object of a law is to be defeated by non-compliance with it, it has to be regarded as mandatory. But when a provision of law relates to the performance of any public duty and the invalidation of any act done in disregard of that provision causes serious prejudice to those for whose benefit it is enacted and at the same time who have no control over the performance of the duty, such provision should be treated as a directory one. Where however, a provision of law prescribes that a certain act has to be done in a particular manner by a person in order to acquire a right and it is coupled with another provision which confers an immunity on another when such act is not done in that manner, the former has to be regarded as a mandatory one. A procedural rule ordinarily should not be construed as mandatory if the defect in



the act done in pursuance of it can be cured by permitting appropriate rectification to be carried out at a subsequent stage unless by according such permission to rectify the error later on, another rule would be contravened. Whenever a statute prescribes that a particular act is to be done in a particular manner and also lays down that failure to comply with the said requirement leads to a specific consequence, it would be difficult to hold that the requirement is not mandatory and the specified consequence should not follow...”

25. The intent of the legislature is clear from the bare reading of Section 173(2)(ii) that it is mandatory for the officer in-charge of the police station to communicate to the complainant/informant about the factum of completion of investigation and filing of a final report under Section 173 of Cr.P.C. The Section 173(2)(i) of Cr.P.C. contains provision regarding forwarding the final report under Section 173 Cr.P.C. to the concerned Magistrate. In the same context, 173(2)(ii) relates to information regarding the same being also given mandatorily to the complainant. But the provision mentions that the communication will be in a manner as ‘may’ be prescribed by the State Government.

26. However, a significant lapse arises when what the investigating officer/officer in-charge of police station is unequivocally mandated to do, is not being done appropriately due to absence of notification from the State Government regarding the specific mode and manner by which the officer concerned will make such communication. This Court also notes that since the term used in the provision for prescribing mode/manner of communication is ‘may’, it was not mandatory, rather directory for the State Government to comply with the same. However, despite the fact that



the Code of Criminal Procedure was enacted in the year 1973, no rules in this regard have been notified till date. This oversight raises concern about compliance with the legislative intent and the rights of complainants/first informants in criminal proceedings being defeated in absence of such notification.

27. The complainant may want to participate in the proceedings before the Court right from the stage of taking of cognizance, in absence of any knowledge of action taken by the investigating officer due to lack of communication as per Section 173(2)(ii), the complainant may for the first time come to know about filing of the chargesheet, which is result of his/her own complaint, only at the time of recording of evidence on receipt of summons.

28. While it is not mandatory for the State Government to notify the manner in which communication is to be made as per language used in Section 173(2), the absence of such procedure prescribed by the State Government will undoubtedly result in inconvenient consequences, and ineffective implementation of the provision under Section 173(2)(ii).

29. Furthermore, the mandatory aspect of the provision which necessitates the officer to provide information about the completion of the investigation to the complainant, will, in a way, become redundant if the second part i.e. notifying the mode/manner of communication remains unenforceable. Such a situation would undermine the intent and purpose of the entire provision, which mandates that complainant/informant be made aware of the action taken by the police on his complaint.



30. As on date, there are no rules prescribed by the State Government which provide a particular method of communicating the complainants/informants as per Section 173(2)(ii) to ensure uniformity, transparency and effective implementation of the provision, in its letter and spirit.

31. Thus, having discussed the need to have specific mode and manner for ensuring communication as mandated by Section 173(2)(ii), this Court is of the opinion that a **‘may’ should not remain ‘may’ forever** despite the earlier part of statute using the word ‘shall’ conveying the intent of legislature, and therefore, deems it most appropriate and necessary to issue following **directions**:

- i. The Government of NCT of Delhi shall issue a notification as per Section 173(2)(ii), thereby prescribing the mode and manner in which communications as per Section 173(2)(ii) are to be made, to ensure that object and intent of such provision is not defeated in absence of such notification. Such a notification may be issued within a period of three months from the date of this order.
- ii. In this digital age, the communication as mandated by Section 173(2)(ii) of Cr.P.C. may be done using the **electronic means**. Such direct and immediate mode of communication can eliminate delays associated with traditional methods, ensuring that the first informant/complainant is informed in a timely manner. It shall also make it convenient on the part of the officer



concerned to complete the communication, while also ensuring that it timely reaches the first informant.

32. Compliance report be filed within three months from the date of receipt of this judgment by the Government of NCT of Delhi.

33. Accordingly, the present petition is disposed of in above terms and directions.

34. A copy of this judgment be forwarded to the (i) Secretary, Department of Law, Justice and Legislative Affairs, Govt. of NCT of Delhi, and (ii) Secretary, Department of Home, Govt. of NCT of Delhi, for necessary information and compliance.

35. The judgment be uploaded on the website forthwith.

SWARANA KANTA SHARMA, J

SEPTEMBER 4, 2023/zp