

1. However, no samples of vaginal swab were taken for examination at FSL, as incident being old.

6. That during further investigation, the petitioner was arrested on 17.03.2022 and thereafter his sexual medical examination was conducted at B.K. Hospital, Faridabad vide his MLR No.252/PK/CH/2022 dated 18.03.2022, the medical office opined that " **In my opinion there is nothing found suggesting that the person examined is not capable of performing sexual intercourse**". Copy of MLR of petitioner is being annexed herewith as Annexure P-2.

9. That during further investigation, copy of FIR No.329 dated 14.05.2022 under Sections 457, 380 IPC, Police Station Surajkund, Faridabad, was taken into possession. In said FIR No.329 dated 14.05.2022, accused Nandu was arrested on 06.06.2021 and after completion of investigation, challan against Nandu (friend of complainant) and his co-accused was submitted before the Ld. Illaqa Magistrate, Faridabad on 17.11.2021, which is pending trial. During investigation, it was revealed that to create pressure on the Investigating Officer Rajesh Kumar Sharma, the complainant wrongly alleged that her friend Nandu was taken by the petitioner Rajesh Kumar Sharma four months ago. Hence, the allegations against the petitioner in the present FIR to the effect that he has committed rape upon the complainant and put his finger in her private part have been found levelled due to animosity of arrest of Nandu in FIR No.329 dated 14.05.2022, under Sections 457, 380 IPC, Police Station Surajkund, Faridabad. However, no truthfulness have been found in the allegations of committing rape upon the complainant/respondent No.2 and putting finger in her private part.

10. That thereafter on 20.03.2022, the complainant recorded her supplementary statement before the legal aid counsel stating therein that the petitioner committed sexual

harassment to complainant but he did not commit rape upon her nor put his finger in her private part, was under someone's influence. She further stated that earlier statement that the petitioner has committed rape upon her and put his finger in her private part. It is pertinent to mention here that in pen drive's video recording, the petitioner is being seen only committing sexual harassment to complainant. Furthermore, the commission of offence under Section 354-A IPC has been found committed by the petitioner in the present case. Therefore, no offence under Section 376(2)(n) was committed by the petitioner upon the complainant/respondent No.2, upon which Section 376(2)(n) IPC was deleted in the present case.

12. That after completing all formalities of investigation, the challan/final report under Section 173 Cr.P.C. was prepared under Section 354A, 506 IPC on 22.04.2022 and submitted before the Ld. Illaqa Magistrate, Faridabad on 13.05.2022. Charges against the petitioner has not been framed so far. Now, the present case is pending in the Court of Ld. Judicial Magistrate 1st Class, Faridabad on 03.05.2023 for consideration on charge. There are total 17 prosecution witnesses in the present case.

15. That the offences committed by the petitioner are non compundable and are against the society, which falls within the category of serious offence, the petitioner/accused is not entitled for any relief as prayed for under Section 482 Cr.P.C on the basis of affidavit (Annexure P-2) due to the offences against the State/Society. Hence, mere on the basis of affidavit (Annexure P-2), FIR cannot be quashed. There is no justification for quashing the FIR under Section 482 Cr.P.C at this stage and hence, deserves dismissal.

Learned State counsel further submits that the challan has been presented on 13.04.2022 and the charges were framed on 23.08.2023. Out of 17

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is 04.03.2024.

Learned counsel for the petitioner submits that he wants to withdraw the present petition at this stage.

Dismissed as withdrawn.

All pending applications, if any, stand disposed of.

23.01.2024
renubala

(SUDEEPTI SHARMA)
JUDGE

Whether speaking/reasoned: Yes/No
Whether reportable: Yes/No