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IN THE HIGH COURT OF DELHI AT NEW DELHI

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Date of Decision: 01.02.2024

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W.P.(CRL) 350/2024

PIYUSH AGARWAL

..... Petitioner

Through: Mr.Anoop Prakash Awasthi,
Ms.Parthvi Ahuja and Ms.Prapti
Singh, Advocates

versus

NCT OF DELHI

..... Respondent

Through: Ms.Rupali Bandhopadya, ASC for
State with W/SI Lovely Priyanka, PS
Connaught Place, New Delhi.

CORAM:

HON'BLE MR. JUSTICE ANOOP KUMAR MENDIRATTA

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ORDER

ANOOP KUMAR MENDIRATTA, J (ORAL)

CRL.M.A. 3256/2024

Exemption allowed, subject to just exceptions.

Application stands disposed of.

W.P.(CRL) 350/2024 & CRL.M.A. 3257/2024

1. Petition under Article 226/227 of the Constitution of India read with Section 482 of the Code of Criminal Procedure, 1973 ('Cr.P.C.') has been preferred on behalf of the petitioner for setting aside the order dated 02.11.2023 passed by learned ASJ/SPL. FTC in SC No.126/2022 whereby the application filed on behalf of the petitioner for further investigation in FIR No.127/2021 under section 376 IPC registered at PS: Connaught Place

has been dismissed.

2. Issue notice. Learned ASC for the respondent/State appears on advance notice and accepts notice.

3. In brief, as per the facts noticed in the impugned order, the petitioner came in contact with prosecutrix through a '*Dating App*' and both started communicating with each other. Eventually, both of them entered into sexual relationship, which the prosecutrix alleged to be on 'promise of marriage' by the petitioner. Prosecutrix further alleged that she got pregnant and thereafter the petitioner blocked her mobile number and also allegations of abuse and criminal intimidation were levelled.

4. An application preferred on behalf of the petitioner before the learned Trial Court for conduct of further investigation qua the angle of honey trapping and extortion by the prosecutrix, stands dismissed by the learned Trial Court.

5. Learned counsel for the petitioner/accused submits that the investigating agency seized only one of the mobile phones which was in possession of the prosecutrix, while the other mobile phone being used by the prosecutrix on which *WhatsApp* messages were exchanged, was not seized during the course of investigation. As such, it is submitted that an important aspect of investigation has been overlooked and not collected by the investigating agency.

6. On the other hand, learned ASC for the State submits that the other mobile phone on which *WhatsApp* messages are alleged to have been exchanged could not be seized as the complainant/prosecutrix claimed that the same belonged to her friend. Further despite efforts, the same could not be seized.

7. The application preferred by the petitioner has been dismissed by learned trial court observing that the same is devoid of merits and abuse of process of Court, merely to pressurize the prosecutrix. It is noticed that no complaint of extortion was made by the petitioner and there is no iota of allegation to substantiate the case that the prosecutrix is a member of gang of honey trapping. It is further observed that the purpose of further investigation is not to prove or establish the defence of the accused.

8. It is well settled that where chargesheet has been filed by the police under Sub section 2 of Section 173 of CrPC, the police can undertake further investigation in respect of the offence, under Sub section 8 of section 173 CrPC. The objective for 'further investigation' remains to find the truth and bring evidence on record for ensuring substantial justice. However, this right does not extend for mere 'reinvestigation' or 'fresh investigation' to be started *ab initio*. If the circumstances deserve for a further investigation, the power of the jurisdictional court to direct the police to conduct further investigation cannot have any inhibition and the same is not ruled out merely because cognizance has been taken by the Court. Whether further investigation should or should not be directed is within the discretion of the jurisdictional court which exercises the discretion on the facts of each case, before the trial actually commences by framing of charge. A fair trial is the imperative in dispensation of justice.

9. In the instant case, if any *WhatsApp* messages were exchanged between the petitioner with the prosecutrix, the same must have been also recorded even on the '*WhatsApp*' of the petitioner's device. The aforesaid messages can be duly looked into or brought to notice of court, if deemed appropriate by the petitioner during evidence. Merely, on the basis of

allegation that the prosecutrix may be a member of gang of 'honey trapping' or the second mobile phone used by prosecutrix may contain some evidence of extortion, does not appeal to direct further investigation under Sub-section (8) of Section 173 Cr.P.C. In view of above, no grounds are made out to direct further investigation as prayed by the petitioner. However, the cost of Rs.20,000/- directed to be deposited by the petitioner vide impugned order is set aside. Petition is accordingly disposed of.

A copy of this order be forwarded to the learned trial court for information.

(ANOOP KUMAR MENDIRATTA)
JUDGE

FEBRUARY 1, 2024/v