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

+ CRL.REV.P. 609/2024

STATE

..... Petitioner

Through: Mr. Utkarsh, APP with SI Komal, PS
Jagatpuri.

versus

KULVINDER @ RAJAN SAINI

..... Respondent

Through: None.

CORAM:

HON'BLE MR. JUSTICE ANOOP KUMAR MENDIRATTA

ORDER

% **07.05.2024**

CRL.M.A. 13984/2024

Exemption allowed, subject to just exceptions.

Application stands disposed of.

CRL. REV.P. 609/2024 & CRL.M.A. 13985/2024

1. Criminal Revision Petition under Section 397 read with Section 401 of the Code of Criminal Procedure, 1973 ('Cr.P.C.') has been preferred on behalf of the State challenging order dated 03.12.2021 passed by learned ASJ (SFTC), East/KKD Courts, Delhi in FIR No. 094/2020 under Section 376 IPC, P.S.: Jagat Puri, whereby the respondent has been discharged.

Alongwith the petition, an application under Section 482 of the Code of Criminal Procedure, 1973 ('Cr.P.C.') read with Section 5 of Limitation Act has also been preferred on behalf of the petitioner for condonation of delay of 775 days in filing the petition.

2. Learned APP for the State submits that the impugned order was passed on 03.12.2021 and after obtaining copy of judgment, since the matter was examined at various levels, the process of filing of revision petition was delayed. It is urged that the matter was earlier marked to previous Additional



Public Prosecutor Ms. Asha Tiwari on 18.01.2022 and after that new Additional Public Prosecutor was appointed and file was marked on 22.03.2024. The file was sent to the Competent Authority for seeking approval of the government for filing revision petition and after approval from the Competent Authority, Revision Petition could only be filed on 15.04.2024.

3. It may be observed that condonation of delay depends upon the sufficiency of cause shown and degree of acceptability of the explanation. The discretion to condone long delay may not be exercised if the negligence, inaction or lack of bonafides is apparent from record.

4. A bare perusal of the application for condonation of delay reflects that the explanation is cryptic without specifying as to the period for which the file was under examination with the respective officers and counsels. Only a bald assertion has been made on behalf of State seeking condonation of 775 days. The application is completely bereft of reasons explaining as to why the file could not be examined at various levels and the officer/counsel responsible for same.

In the facts and circumstances, since State has completely failed to show 'sufficient cause' for purpose of condoning the delay, the application is dismissed.

5. Looking even on merits, it may be observed that impugned order on discharge reflects that in an earlier proceedings initiated by the prosecutrix / complainant, the accused was acquitted vide judgment dated 11.03.2020 and the concerned SHO was directed to take action against the prosecutrix for lodging a false case. The Court also took note of the fact that in the earlier FIR No.311/2018 registered at P.S. Jagatpuri, the complainant/ prosecutrix



had turned hostile and did not support the case of the prosecution. Thereafter, registration of second FIR after delay of 16 days in respect of establishment of physical relation again on 01.04.2020 on promise of marriage was found to be doubtful. Learned Trial Court was further of categorical view that it would be difficult to convict the accused on the basis of testimony of an unreliable witness and considering the delay in lodging the complaint. The reasons recorded by learned Trial Court in para 5 to 8 may be reproduced for reference :

“5. Our High Court in recent judgment in Deepak Dua vs. State CRL.REV.P. 968/2018 & CRL.M.A. 35640/2018 dt. 31.08.2021. In this case Hon'ble High Court while discussing number of previous judgments has held that:

"13. A reading of the above mentioned judgments would show that while framing a charge, the Court has the power to sift and weigh the evidence for the limited purpose of finding out whether or not a prima facie case against the accused has been made out and after analysing the materials before it, and if two views are possible and one of them gives rise to suspicion only, as distinguished from grave suspicion, the Judge will be justified to discharge the accused, and at this stage he is not to see whether the trial will end in conviction or acquittal. The Supreme Court has held that, the words "not sufficient ground for proceeding against the accused" clearly show that the Judge is not a mere post office to frame the charge at the behest of the prosecution, but has to exercise his judicial mind to the facts of the case in order to determine whether a case for trial has been made out by the prosecution or not.

14. Absence of application of judicial mind can lead to grave injustice which may entail an individual being driven through the rigours of the legal system due to no fault of their own. It is the duty of the Court to, therefore, ensure that such injustice can be mitigated and that an



accused does not have expend their resources in contesting a potentially mala fide prosecution. This can also resultantly reduce the burden on trial courts and High Courts."

6. *In State of M.P. v. S.B. Johari, (2000) 2 SCC 57, the Supreme Court has held that charge can be quashed if the evidence which the prosecutor proposes to adduce to prove the guilt of the accused, even if fully accepted before it is challenged by cross-examination or rebutted by defence evidence, if any, cannot show that the accused committed the particular offence and in such case, there would be no sufficient ground for proceeding with the trial.*

7. *Now reverting back to the case, from perusal of complaint of the prosecutrix, it is evident that according to her, after withdrawal of her earlier case, accused was making physical relations with her on the basis of promise of marriage. In my view, no lady can be so fool that once she has lodged the case of rape and accused promised to marry her, will again believe him and will again establish physical relations with him believing his promise of marriage. Further more from the judgment passed by undersigned itself in case FIR no. 311/18 PS Jagat Puri, it is evident that the prosecutrix has not withdrawn the case but she has turned hostile and did not support the case of prosecution, thus this court acquitted the accused and also ordered to lodge case against the prosecutrix. Further, I found substance in the contention of Ld. Counsel for accused that present case is a counter blast of the said case. Further more, the prosecutrix has stated both in her compliant and statement u/s 164 Cr.P.C. that accused made physical relations with her on 01.04.2020 despite her refusal but she has not stated in what way she has refused to accused not to make physical relations with her, whether she resisted the act of accused physically to stop him to make physical relations with her or that she was threatened by the accused due to which she could not put physical resistance. She has not stated she received any injury when accused tried to establish physical relations with her forcibly which is quite natural in case of forcible sexual intercourse was done by the accused with prosecutrix. Further, she*



neither made call to the police on 100 number nor made any complaint to the police on that day and made complaint to the police only on 16.04.2020 i.e. after 15 days of incident or to any of her family members or known person. From her averment in her complaint that now he has said to her clearly that he will not marry her "ab usne mujhe saaf saaf kah diya, ki main chahe kuch bhi kar lu, wo mujhse shadi nahi karega". In her complaint, she has not given the date when accused said these words to her but in her statement u/s 164 Cr.P.C. she has stated that accused had made phone call to her on 15.04.2020 and told that he does not want to marry with her. Further in my view, this conduct of prosecutrix not reporting to the police immediately led to presumption that if accused had made physical relations with her on 01.04.2020 same was not against her will and consent. Prosecutrix had not stated either in her complaint or in her statement u/s 164 Cr.P.C. that after committing rape on 01.04.2020, accused promised to marry her which also creates doubt that even accused promised to marry her and the incident of 01.04.2020 appeared to be concocted.

Further, in her statement u/s 164. Cr.P.C. the prosecutrix has stated that she has given her statement in the court in case FIR no. 311/18 as told to her by accused's counsel but said fact has not been stated by her in her complaint. There is no medical evidence to corroborate the testimony of the prosecutrix that on 01.04.2020, she was raped by the accused. Hence, case is based only on bald statement of the prosecutrix, who is not a reliable witness as it is evident from the fact that either she lodged the false case FIR no. 311/18 against the accused or she deposed falsely in the case. In my view, it would be very difficult to convict the accused on the basis of sole testimony of such unreliable witness even if I frame charge against the accused and it would be futile exercise to frame the charge.

8. In view of aforesaid facts and circumstances of the case, no grave suspicion arise against the accused that he has committed rape upon the prosecutrix, therefore, I discharge the accused from the present case. It is ordered accordingly."



6. Considering the totality of facts and circumstances, no grounds are made out for interfering in the impugned order.

Petition is accordingly dismissed. Pending applications, if any, also stand disposed of.

ANOOP KUMAR MENDIRATTA, J

MAY 07, 2024/akc