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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ **CRL.M.C. 6164/2024, CRL.M.A. 23561/2024**
MR. MANISH KUMAR CHOUDHARYPetitioner
Through: **Mr.Jitender Chaudhary and Mr. Varun Jain, Advs.**

versus

THE STATE NCT OF DELHI AND ORS.Respondents
Through: **Ms. Manjeet Arya, APP.**

CORAM:

HON'BLE MR. JUSTICE ANOOP KUMAR MENDIRATTA

ORDER

% **08.08.2024**

CRL.M.A. 23562/2024

Exemption allowed, subject to just exceptions.

Application stands disposed of.

CRL.M.A. 23563/2024

Learned counsel for petitioner does not press the application under Section 432 read with Section 482 of the Bharatiya Nagarik Suraksha Sanhita, 2023 ('BNSS') seeking leave to place on record additional documents.

Application is accordingly disposed of.

CRL.M.C. 6164/2024, CRL.M.A. 23561/2024

1. Petition under Section 528 of BNSS has been preferred on behalf of the petitioner challenging order dated 04.04.2024 passed by learned ASJ-04, Patiala House Courts, New Delhi in Cr. Rev. 104/2024, whereby, order dated 06.12.2023 passed by learned MM dismissing the application under Section 156(3) Cr.P.C., was upheld.
2. Learned APP for the State appears on advance notice.
3. In brief, as per the case of petitioner, an application under Section



156(3) Cr.P.C. was preferred on behalf of petitioner before the learned MM for further investigation in respect of a CD pertaining to conversation between the parties recorded on 14.07.2018, in FIR No. 1275/2018, under Sections 498A/406/323/504/506 IPC and Sections 3/4 of Dowry Prohibition Act 1961, PS: New Agra, Distt. Agra, U.P., which was registered on the complaint of respondent No. 2 / wife. The said CD containing the conversation is claimed to have been forwarded through courier on 18.09.2019 after filing of charge sheet on 16.09.2019.

4. The application was dismissed by learned MM vide order dated 06.12.2023 since the application for further investigation in respect of CD had only been preferred on 19.09.2022 after filing of chargesheet. Similarly, revision petition preferred on behalf of the petitioner was dismissed by learned ASJ vide order dated 04.04.2024 and it was also observed that the application had been filed by petitioner under an incorrect provision of law.

5. Learned counsel for petitioner submits that aforesaid piece of evidence is crucial and needs to be forwarded to CFSL for the purpose of verification. He further submits that no offence is disclosed against the petitioner on the basis of aforesaid conversation recorded in CD. It is also urged that an attempt was made to deliver the aforesaid CD to the IO during investigation and petitioner could not file an application earlier before the learned Magistrate, since the matter was transferred on the directions of Hon'ble Supreme Court of India to Delhi from Agra, U.P. to Delhi.

6. Learned APP for the State opposes the petition and submits that even the chargesheet was filed prior to forwarding the CD, which is claimed to have been sent through courier. The application is stated to have been preferred before the learned MM only in September, 2022. It is further



contended that the CD, which forms the defence of accused can be appropriately proved by petitioner in defence evidence, if the same is relied upon by petitioner.

7. At the outset, it may be observed that no steps appear to have been taken up by the petitioner on judicial side prior to filing of application in September, 2022. The chargesheet had already been filed in 2019 after investigation. Nothing prevented the petitioner for placing the same with investigating agency for consideration. Application moved under Section 156(3) Cr.P.C. for the purpose of further investigation apparently is under incorrect provision of law. Even if the aforesaid piece of conversation contained in CD is relevant, the same can be duly proved in defence evidence and the contents can be duly put up to witnesses during cross-examination. The contention that petitioner could not file an application earlier before the learned MM, since the matter was transferred by the directions of Hon'ble Supreme Court of India to Delhi from Agra, U.P., appears to be without merit, as an application or correspondence in this regard could have been duly made through counsel.

In the facts and circumstances, there is no infirmity in the impugned orders passed by learned MM as well as learned Revisional Court.

Petition is accordingly dismissed without expressing any opinion on the merits of the case. Pending applications, if any, also stand disposed of.

A copy of this order be forwarded to learned Trial Court for information.

ANOOP KUMAR MENDIRATTA, J.

AUGUST 8, 2024/R