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

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Reserved on: 30.01.2024
Pronounced on: 20.03.2024+ **CRL.M.C. 722/2024 & CRL.M.A. 2890/2024****MOHIT YADAV**

..... Petitioner

Through: **Mr. Viney Sharma, Advocate**
(through VC)

versus

STATE GOVT OF NCT OF DELHI

..... Respondent

Through: **Mr. Satish Kumar, APP for the**
State.**CORAM:****HON'BLE MS. JUSTICE SWARANA KANTA SHARMA****JUDGMENT****SWARANA KANTA SHARMA, J.**

1. The instant petition under Section 482 of the Code of Criminal Procedure, 1973 ('Cr.P.C.') has been filed on behalf of petitioner seeking setting aside of orders dated 02.11.2023 passed by learned Trial Court in SC No. 56668/16 pending before the Court of learned Additional Sessions Judge, (S.F.T.C)-01, West, Tis Hazari Court, Delhi vide which the a cost of Rs. 25,000/- was imposed on the accused and his application regarding providing a duplicate copy of DVD to the accused was rejected.



2. Briefly stated, facts of the present case are that charges under Sections 328/376(2)(n)/506 of IPC were framed on 14.09.2015 against the petitioner. It is the case of the petitioner that during investigation and at the time of arrest of the petitioner, a mobile phone was seized by the concerned Investigating officer. The petitioner had requested the Investigating officer that the data in the mobile phone contains the recordings between him and the prosecutrix, which establishes their love relationship and therefore, the contents of the same be preserved. The phone was sent to the Forensic Science Laboratory (‘FSL’) with request by the Investigating Officer to retrieve the data. Thereafter, FSL report was received on 01.08.2016 and 17.08.2016. During the course of the trial, an application under Section 91 of Cr.P.C. was moved by the petitioner for supply of the copy of the same, which was withdrawn by the petitioner *vide* order dated 21.10.2019. Thereafter, the learned Trial Court had supplied the copy of the DVR’s received from FSL *vide* order dated 31.01.2020. The cross-examination of PW1 was concluded after a period of around seven years 06.10.2023. The present petitioner had moved an application for providing duplicate copy of DVD1 in which it was mentioned that as the accused during the proceedings one of the DVD i.e. DVD1 was lost and it contained all the recording/conversation between the prosecutrix and petitioner but since it was lost, which was declined *vide* order dated 02.11.2023. Therefore, the present petition was filed.



3. Learned counsel for the petitioner argues that the learned Trial Court had failed to appreciate that in criminal cases, the accused has a right to fair trial and the same could not have been overlooked by the learned Trial Court on the ground that it was an old case. It is argued that the memory card and the mobile phone seized by the Investigating Officer are case property and when the petitioner had made request to play a memory card voice recordings it was relevant and his request could not have been declined. It is further argued that the learned Trial Court has failed to appreciate that the data/recording contained in DVDs is relevant for the proper adjudication of the present case as it contains conversations between the prosecutrix and accused, which reflect that love affair existed between the parties. It is argued that the learned Trial Court has failed to consider that during the cross examination of PW-1 only two files had been located in DVDs, which contained the conversation between the parties, and the prosecutrix had failed to identify her voice. It is further argued that due to huge data which the files contained, the same was misplaced and thus the petitioner had failed to put these recording to the prosecutrix, which would have helped the petitioner to prove his innocence. It is further argued that the learned Trial Court has imposed an exorbitant cost of Rs. 25,000/- on the ground that unnecessary adjournments were taken by the petitioner, while on several occasions it was the prosecutrix who had failed to turn up for her evidence. It is also stated that for more than 2 years i.e from March 2020 to 2022, the proceedings were hampered due to Covid-



19 crisis. Thus, the present petition be allowed, and the impugned order be set aside.

4. Learned APP for the State argues that the petitioner had sought unnecessary adjournments from time to time, which had substantially delayed the cross-examination of PW-1. It is further argued that the petitioner had preferred the same application before the learned Trial Court on various occasions, and was also provided the copy of the DVDs in question, but still the petitioner has moved the present petition to further delay the trial of the case. Thus, the present petition be dismissed.

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

6. The petitioner in the present case faces charges under Sections 328/376(2)(n)/506 of IPC. During the course of investigation, mobile phone of the petitioner was seized which contained recordings between him and the prosecutrix, which was sent to FSL for data retrieval, and the reports from the FSL were received in 2016. Subsequently, during the trial, the petitioner had requested copies of these reports, but he had withdrawn the application in 2019. The learned Trial Court had later provided copies of the DVRs to the petitioner herein from the FSL. The petitioner had then requested a duplicate copy of DVDs, which contained recordings of conversations between the petitioner and the prosecutrix, which was



declined *vide* order dated 02.11.2023, leading to the filing of the present. The impugned order dated 02.11.2023 reads as under:

“On IA No. 05/2023 (Order:Oral)

9. This application filed on 26.10.2023 is on record of which notice was directed to be issued to the prosecutrix and summons were issued to case IO. The summons is not received back. The arguing counsel is stated to be not present. In the application, the prayer is made for providing the duplicate copy of DVD-1. It is in the application that the copy of DVD-1 has been lost and that data of DVD-2 is important for conducting cross-examination of prosecutrix.

10. Prayer is made in the application to provide the accused with the data of DVD-1 only. I am not inclined to keep the application pending as major evidence has been recorded before this Court only. It is to be specifically noted that PW..1 who has been cross-examined for a long period of almost Seven years was finally discharged on 06.10.2023,

11. There is no other witnesses to whom the contents of DVD. 1 or for that matter DVD-2 would be required to be put to.

12. This application was not moved prior to her discharge.

13. various orders of the Court i.e. 04.10.2018, 23.10.2018, 21.10.2019 (when application U/Sec.91 Cr.P.C for supplying copy of DVDs to defence was disposed of), 31.01.2020 (when extra set of DVD-1 and DVD-2 was supplied to the accused, despite that permission was given to defence to have both the DVDs copied from the Court record), 24.02.2020 (when similar directions were again passed) and on 22.08.2020 (When it was recorded by the Court that the DVDs had been received by the counsel for the accused).

14. Not only this, the similar issue (as is now being made in the application at hand) has arisen a number of times during the cross-examination of this witness and put to rest each time as can be observed from the cross-examination of the victim recorded on 22.08.2023, 12.09.2023 and 06.10.2023 respectively.

15. Accordingly, this application is nothing but a blatant attempt to further derail the case of the prosecution. No



circumstances are provided in the application in hand and as to when and how the DVD-1 was allegedly lost.

16. I find that the application is frivolous and hence, dismissed.

17. Adjournments have been unnecessarily occasioned from time to time including today. Thus a cost of Rs. 25,000/- is imposed upon this accused payable to the State. It shall be deposited within one week from today failing which the State will be at liberty to have realized as fine in terms of Section 421 r/w Section 431 Cr.P.C.

18. It is clarified that costs imposed are not on account of dismissal of the application above but under Explanation(2) appended to Section 309 Cr.P.C. in view of the conduct of the defence in making repeated adjournment requests under the exceptional circumstances that this case was registered in the year 2016 and dates are always given at the convenience of the defence.

19. All summons directed above shall be served through the direct supervision of the DCP (West) in coordination with the SHO, PS Vikaspuri failing which the Court shall draw presumption of commission of offences punishable u/s 60(a) r/w Sec. 122 (b)(iv) of the Delhi Police Act, 1978. Copy of this order be sent to DCP and SHO for compliance. Now matter be fixed for P.E. as per the abovementioned schedule.”

7. This Court observes that the learned Trial Court has rightly observed that PW1 had been cross-examined for a long period of almost seven years and was finally discharged on 06.10.2023. A perusal of the order dated 02.11.2023 passed by the learned Trial Court reveals that the petitioner had made various requests with respect to the DVDs in question, which had been dealt with by the learned Trial Court, and were also recorded in various orders passed by the learned Trial Court i.e. orders dated 04.10.2018, 23.10.2018, and 21.10.2019, when application under Section 91 of Cr.P.C. for supplying a copy of DVDs to the petitioner was disposed of. It is also



noted that *vide* order dated 31.01.2020 passed by learned Trial Court, extra set of DVD-1 and DVD-2 was supplied to the petitioner. It was also noted by the learned Trial Court *vide* order dated 02.11.2023 that similar directions were passed on prior dates, including order dated 24.02.2020, and in order dated 22.08.2020 when it was recorded by the Court that the DVDs had been received by the counsel for the petitioner herein. The learned Trial Court had also noted that similar issue in relation to the DVD had also been raised a number of times during the cross-examination of PW-1, and the same was also recorded in orders passed by learned Trial Court *vide* order dated 22.08.2023, 12.09.2023 and 06.10.2023.

8. This Court observes that the application for procuring the duplicate copy of the DVDs in question was preferred by the learned counsel for the petitioner herein only after the discharge of PW-1, who was cross-examined for a long period of seven years. It has also been noted that the learned Trial had time and again dealt with the request of providing DVDs in question, on various dates, which has been discussed in preceding paragraphs.

9. In cases involving rape victims, any unnecessary delay in the legal process only serves to prolong the victim's suffering and obstruct the delivery of timely justice. **The trauma experienced by survivors of sexual assault is profound and enduring, and each moment spent waiting for justice exacerbates their pain.**

10. Delay in cross-examination of victims results in additional unjustified emotional strain on survivors of sexual assault. They are



forced to re-live their traumatic experiences repeatedly, and are left grappling with the renewed effect of such sexual assault. This is the result of wilful delays in cross-examination by an accused. **This delay in administration of justice not only interferes with their healing process but also prolongs their journey towards closure and recovery of such traumatic experience.** Recognizing the emotional toll of such delays is crucial in ensuring that survivors are treated with the sensitivity and respect they deserve throughout the legal proceedings which includes expeditious trials and minimum possible essential appearances in the Court for the purpose of deposition.

11. Further, the claim by the accused, after several years, of having lost a crucial piece of evidence i.e. the DVD containing alleged conversations between the accused and the victim – appears to be a calculated attempt to exploit the legal process, as the accused was given the same DVR on various occasions previously. It is also crucial to note that this conversation was the data of the mobile phone of the petitioner himself. Thus, the petitioner's conduct in this case demonstrates a pattern of repetitive attempts to delay the trial, despite the already substantial seven-year delay in cross-examination of PW-1. By repeatedly filing applications for being provided with the same evidence, that is the DVD, which has already been provided to him on multiple previous occasions, it appears that the petitioner is attempting to manipulate the system for his benefit.



12. In this regard, it is observed that the victim should not be made to suffer due to the carelessness or manipulative tactics of the accused. It is unjust for the victim to bear the consequences of any negligence or misconduct on the part of the accused. The legal system must balance the rights and well-being of the victims and fair trial to the accused. However, at the same time, the accused also has to remain accountable for his actions, if the same point out towards deliberate delay. By upholding these principles can the legal system fulfill its duty to ensure a fast and fair judicial adjudicatory process.

13. It is important to recognize that the cost imposed by the learned Trial Court in the present case is not excessive, but rather it serves a purpose beyond mere financial penalty. While the amount may seem exorbitant to the accused, **it is intended to send a clear message that attempts to prolong legal proceedings and trial through unnecessary delays will not be allowed.** By imposing these costs, the Court aims to deter parties from engaging in tactics aimed at stalling or obstructing justice.

14. In the present context, the imposition of costs **may serve a dual purpose:** as a punitive measure and a deterrent. The completion of the cross-examination of the victim after a prolonged period of seven years underscores the gravity of the delay in this case. Despite this extended time frame, the accused now seeks further postponement on the pretext of losing a crucial piece of evidence, despite having been provided with it on multiple occasions.



15. In the halls of justice, delay is the silent enemy of truth and fairness. Such deliberate attempts to prolong legal proceedings for personal advantage or strategic reasons cannot go unchecked. They not only undermine the integrity of the judicial process but also inflict additional hardship on all parties involved, particularly the victim. Therefore, the Courts impose costs as a means of discouraging such behaviour and ensuring that justice is administered efficiently and without undue delay.

16. Thus, considering overall facts and circumstances, this Court is of the opinion that there is no infirmity in the order of the learned Trial Court as the DVD in question which contained conversations between the petitioner and the prosecutrix had been provided to the learned counsel for the petitioner, time and again, on various dates.

17. Accordingly, the present petition alongwith pending application, if any, stands dismissed.

18. It is also clarified that nothing expressed hereinabove shall tantamount to expression of opinion on the merits of the case.

19. The judgment be uploaded on the website forthwith.

SWARANA KANTA SHARMA, J

MARCH 20, 2024/zp