



2024:DHC:5733



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

%

Reserved on: 05th July, 2024
Pronounced on: 02nd August 2024

+

CRL.REV.P. 342/2024

P (COMPLAINANT)

D/o xyz,

R/o xyz

.....Petitioner

Through: Mr. Prabhoo Dayal Tiwari, Mr. Ajay Tiwari, Mr. Asif Iqbal, Ms. Unnati Agarwal, Mr. Ziaul Haq, Ms. Heena, Mr. Taran Jain, Mr. Asiph Shahid Ali, Ms. Shiwani Bhargava, Ms. Sakshi Bhayana, Mr. Akash Awana & Mr. Aadesh Taneja, Advocates.

versus

1. **STATE OF NCT OF DELHI**

Through SHO,
Police Station Mehrauli,
New Delhi

2. **SYED SHAHNAWAZ HUSSAIN**

S/o Late Nasir Hussain,
R/o 15, South Avenue,
New Delhi

.....Respondents

Through: Mr. Amit Ahlawat, APP for the State with W/S.I. Archana PS Mehrauli, Delhi.

CORAM:

HON'BLE MS. JUSTICE NEENA BANSAL KRISHNA

J U D G M E N T

NEENA BANSAL KRISHNA, J

Signature Not Verified

Digitally Signed By: VIKAS ARORA

Signing Date: 03.08.2024 00:34:15

CRL. REV. P. 342/2024

Page 1 of 27

**CRL.M.A. 7749/2024**

1. By way of present application, the applicant/petitioner seeks condonation of 40 days' delay in re-filing the present petition.
2. For the reasons and grounds stated in the present application, the application is allowed. The delay of 40 days in re-filing the present petition is condoned.
3. The present application is disposed of.

CRL.REV.P. 342/2024

“Innocent until proven guilty” coupled with the rigorous standard of “establishing guilt beyond a reasonable doubt,” forms the foundational tenet of our criminal justice administration. The acquittal of guilty individuals, while regrettable, is a lesser evil compared to the horror of condemning the blameless. When the delicate scales of justice are tipped with utmost care, “protecting” will always weigh more than “punishing”.

4. The Cancellation Report submitted by the State in FIR No. 85/2023 under Sections 376/328/506 of the Indian Penal Code, 1860 (*hereinafter referred to as “IPC, 1860”*) did not meet the approval of learned Additional Chief Metropolitan Magistrate, New Delhi who took cognizance by the Summoning Order dated 10.10.2023, against which *Crl. Revision No. 49/2023* was preferred before the learned Additional Sessions Judge, New Delhi, who set aside the Order of learned Additional Chief Metropolitan Magistrate, New Delhi and accepted the Cancellation Report, by Order dated 16.12.2023. Aggrieved by the acceptance of Cancellation Report, the petitioner/Complainant has filed the present *Revision Petition* under Section 397 read with Section 482 of the Code of Criminal Procedure, 1973 (*hereinafter referred to as “Cr.P.C., 1973”*) to set aside the Order of



learned Additional Sessions Judge and take cognizance of the Final Report.

5. **Briefly stated,** the *Complainant/Prosecutrix/“Ms.P”* (name withheld), on 12.04.2018 during the BJP dharna in Delhi, received a call from Shri Syed Shahnawaz Hussain (*hereinafter referred to as “respondent No. 2”*) to meet him at Roshan Tent House, New Khanna Market, Lodhi Colony, New Delhi at about 06:00 P.M., to accompany him to his Farmhouse in Chhatarpur where his brother and his brother’s wife, Mrs. Lama Hussain would also be present, to sort out the ongoing difference/issues between her and his brother Shri Syed Shabbaz Hussain. Allegedly, when she reached the Farmhouse along with respondent No. 2, she was asked by him to switch off her mobile phone. Thereafter, respondent No. 2 gave her some eatables and cold drinks, on consumption of which she lost her consciousness. Taking advantage of the situation, he raped her till late night. He then threatened to tarnish her image by circulating her explicit/sexual videos recorded by him and even threatened to kill her and her family members.

6. The prosecutrix/complainant was thus, compelled to report the above incident of 12.04.2018, *vide* the Complaint dated 22.04.2018 to Station House Officer, Police Station Mehrauli, New Delhi and the Deputy Commissioner of Police, South Delhi as well as Complaint dated 26.04.2018 to Commissioner of Police, whereby she sought registration of an FIR under Section 376/328/506 of IPC 1860, against the respondent no. 2.

7. However, despite making several calls on Number 100 and Number 112 to Delhi Police and being called to the Police Station several times, no FIR was registered against the respondent No. 2. All her complaints to Police (Vigilance Department) at Barakhamba Road, Delhi and also to



Deputy Commissioner of Police, Commissioner, did not result in any action either against the respondent No. 2 or against the Police Officers involved in protecting him.

8. Aggrieved by the inaction of the State Authorities, the prosecutrix filed a *Complaint under Section 156 (3) Cr. P.C., 1973 read with Section 200 Cr.P.C., 1973 before the learned Metropolitan Magistrate, Saket Court, Delhi*. After consideration of the allegations made by the prosecutrix, the learned Metropolitan Magistrate finding that the allegations in the Complaint disclosed commission of cognizable offence, following the decision of the Apex Court in the case of Lalita Kumari vs. Government of U.P. & Ors., decided *vide* W.P. CrI. No. 68/2008, directed the registration of FIR *vide* Order dated 07.07.2018. Further, the learned Metropolitan Magistrate on 07.07.2018, directed the recording of Statement under Section 164 of Cr.P.C., 1973 and for the Medical examination of victim/complainant and the accused/respondent No.2. Despite the above Orders, no FIR was registered by the Station House Officer, Police Station Mehrauli. Instead, the Police continued to protect the accused, who was also able to commit theft of documents from the Saket Court, in connivance with the police officials.

9. The above Order dated 07.07.2018 of the learned Metropolitan Magistrate, Saket Court was assailed by the respondent No. 2 in a *Revision Petition* before the Session Court, Saket Court, Delhi on 09.07.2018. However, after due Notice to the Prosecutrix and hearing the matter, the Court of Special Judge (PC Act), CBI-01 (South), Saket Courts, New Delhi dismissed the Revision Petition of respondent No. 2, *vide* Order dated 12.07.2018.



10. Then, the respondent No. 2 approached this Court by filing a *Quashing Petition under Section 482 Cr.P.C., 1973* bearing *Crl. M.C. Petition No. 3456/18* and the same was dismissed on 17.08.2022. The Supreme Court of India refused to interfere in the impugned Order and dismissed the *SLP (Criminal) No. 7653/2022* vide Order dated 16.01.2023. The Order dated 07.07.2018 of the learned Metropolitan Magistrate, Saket Court directing registration of FIR thus, got upheld.

11. It is only on the dismissal of the SLP, that the Station House Officer, Police Station, Mehrauli registered the FIR bearing No. 85/2023 under Sections 376/328/506 of IPC, 1860 on 21.01.2023 against the respondent No. 2.

12. The *Complainant/petitioner* has asserted that the Investigating Officer/SHO, Police Station Mehrauli had intentionally harassed and tortured the *Complainant/prosecutrix* and pressurized her many times to compromise with the accused. Police persons had also threatened and pressurized the witnesses of *Complainant/prosecutrix*; while several witnesses were also beaten mercilessly by the Police. This is supported by the fact that one witness, namely, Sangeeta Singh has filed a criminal complaint against the Mehrauli Police/SHO/Investigating Officer and other accused persons which is pending in the Saket Court, Delhi.

13. The Investigating Officer/SHO Police Station Mehrauli, under the undue influence of the respondent No. 2, tried to save him from this case and filed the false Report/Cancellation Report dated 25.04.2023 in the FIR No. 85/2023, before the learned Metropolitan Magistrate, Saket Court, Delhi.

14. A *Protest Petition* was filed by the *Complainant/prosecutrix* against



the Cancellation Report dated 25.04.2023 before the learned Additional Chief Metropolitan Magistrate, Rouse Avenue Court, Delhi. The Court *vide* Order dated 10.10.2023 allowed the said Protest Petition filed by the complainant and rejected the Cancellation Report filed by the Investigating Agency. Consequently, cognizance was taken under Sections 376/328/506 of IPC, 1860 thereby summoning the accused person to face trial for the said offences.

15. This Order of the learned Additional Chief Metropolitan Magistrate was challenged by the respondent No. 2 in *Criminal Revision Petition No. 49 /2023* before the Session Court, Rouse Avenue Court, New Delhi. The learned Additional Sessions Judge, Special Judge, Rouse Avenue Courts set aside the Summoning Order dated 10.10.2023 of learned Additional Chief Metropolitan Magistrate *vide* the impugned Order dated 16.12.2023.

16. Aggrieved by the acceptance of the Closure Report, the petitioner has challenged it by way of present petition. The *Complainant/prosecutrix* has contended that the respondent No. 2 has concealed material facts and not place on record the Orders of this Court and Supreme Court of India because *vide* those Orders, his petitions, which were essentially on the same grounds, have already been dismissed. She has further averred that it is a settled law that in the rape case, the conviction can be done on the basis of medical evidence and also the Statement under Section 164 Cr.P.C., 1973. However, the learned Additional Sessions Judge, Special Judge, Rouse Avenue Courts, has failed to appreciate that the statement of the victim under Section 164 Cr.P.C., 1973 and medical report of the victim which support the prosecution case and make it a fit case for summoning the accused and to proceed with the trial for offences made out.



17. Additionally, in such serious cases of rape, there is a requirement of proper trial by the competent court of law and only after complete trial and perusal of all the evidences can the court conclude on the merits of the case.

18. The petitioner has further claimed that SHO, Police Station Mehrauli and Investigating Officer of the case FIR No. 85/2023 *did not conduct proper investigation*. In such type of serious case, the investigations must be conducted by SIT/Crime Branch or DIU as only the Senior Police Officials can investigate the case properly and file the Chargesheet.

19. Thus, the impugned Order dated 16.12.2023 of learned Additional Sessions Judge, New Delhi has been assailed on the **grounds** that, *firstly*, impugned Order dated 16.12.2023 is legally unsound, bereft of cogent reasoning, suffers from various legal infirmities and is against the settled principles of law. It is based clearly against the material on record, without taking into account all the documents, orders and judicial precedents favouring the prosecutrix; the material facts regarding the place of offence where the petitioner/prosecutrix was raped, have also not been appreciated.

20. *Secondly*, learned Additional Sessions Judge failed to appreciate that conviction can be recorded on the basis of sole testimony of prosecutrix if found reliable; it does not require any corroboration. The medical evidence in support of the case of the prosecutrix and Statement under Section 164 of Cr.P.C., 1973, despite being strong evidence, have been completely ignored.

21. *Thirdly*, the learned Special Judge has failed to appreciate that the IO/Police SHO Police Station Mehrauli, has intentionally not produced the CDR Report/CCTV footage of India Gate which is important evidence to prosecute respondent No. 2.

22. *Fourthly*, the IO/SHO, Police Station Mehrauli, Delhi has not filed the



statement of witnesses in favour of the prosecution because the police have taken bribe from the accused person.

23. *Fifthly*, in rape cases and other serious cases, the trial is mandatory as the Trial Court can draw conclusion regarding the commission and the involvement of the accused in such serious offence only after the trial.

24. Hence, the present Revision Petition has been filed to challenge *the legality, correctness and propriety of the Order dated 16.12.2023 passed by the learned Additional Sessions Judge in accepting the Cancellation Report.*

25. *Per Contra*, **learned Additional Public Prosecutor** has vehemently **argued** that there are major inconsistencies in the statements of the prosecutrix/complainant under Sections 161 and 164 of Cr.P.C., 1973 and the oral, documentary and scientific evidence collected during investigation. Further, the evidence in the form of CDRs, location charts, CCTV Footage and Statements of PSOs/Security Officials/Guards support the case of the respondent No. 2 and clearly establish beyond an *iota* of doubt that there was no possibility of the prosecutrix/complainant being raped by the respondent No. 2, as alleged by her.

26. Hence, it is contended that the impugned Order dated 16.12.2023 warrants no interference as the same has been passed after due consideration and appreciation of the oral and documentary evidence which was collected during the investigations on which the Cancellation Report dated 25.04.2023 has been submitted.

27. **Submissions heard and record perused.**

28. The case of the *complainant/prosecutrix* is that on 12.04.2018, the respondent No. 2 lured her to accompany him to his Farmhouse in Chattarpur on the assurance of sorting out ongoing issues between her and



his brother, where he gave her laced eatables because of which she lost her consciousness, taking advantage of which he raped her. The respondent No. 2 then threatened the complainant that he has prepared explicit videos of her and he would show it to her relatives to tarnish her image.

29. The alleged incident was of 12.04 2018 while the complaint has been made on 22.04.2018 i.e., *after about ten days*. This has been explained by the complainant/prosecutrix who has contended that the respondent No. 2 is a fraudulent man and has always been involved in many scams. He had extended threats of killing the complainant/prosecutrix and her family members, because of which she was unable to muster the courage to take any legal action against him, being a simple lady. For a long time, the complainant/prosecutrix was under depression and eventually on 22.04.2018 she gave a complaint to the SHO, Police Station Mehrauli, but no action was taken. It is only after the directions of the learned Metropolitan Magistrate under Section 156 (3) of Cr.P.C., 1973 which were upheld till the Apex Court by dismissal of the SLP filed by the respondent No. 2 on 16.01.2023, that the FIR No. 85/2023 under Sections 376/328/506 of IPC, 1860 got registered.

30. It needs no reiteration that in the offences against woman, delay, if any, has to be appreciated in the light of surrounding circumstances and the delay if explained, is of little consequence and is not a factor for discrediting the statement of the prosecutrix. In the present case, even though the *complainant/prosecutrix*, as per her submissions, could gather courage to make the complaint after 10 days, still the FIR got registered only by the intervention of the Court right upto the Apex Court. The delay of 10 days, *per se* may be of little significance but the events as have been alleged by



the petitioner need to be appreciated in the light of the attending circumstances.

31. At the outset, it may be observed that the Order of learned Metropolitan Magistrate directing the registration of FIR against the respondent No. 2 went right upto Apex Court till where it did not find any favour and the FIR No. 85/2023 was eventually registered in regard to the alleged incident on 12.04.2018 i.e., after about five years. The petitioner's contention that the commission of the offence has been upheld till Apex Court is not correct as it is only the order of registration of FIR which was upheld. This is the point of investigations when all relevant facts are collected to ascertain whether the commission of offence is made out. The assertion of the petitioner that the issues raised herein have already been upheld upto Apex Court is fallacious.

32. The *first aspect* highlighted by the petitioner is that the sole testimony of the prosecutrix if reliable, can result in conviction. This contention found favour with the learned Additional Chief Metropolitan Magistrate, who rejected the Cancellation Report on this premise alone by observing thus:

“9. Coming now to the facts of the case at hand complainant has alleged that she was intoxicated and rape by accused Syed Shahnawaz Hussain. The complaint given by the Complainant to the police, complaint given by the Complainant to the court as well as the statement of the Complainant u/s 164 Cr.P.C. have been perused by the Court. It is observed that Complainant has remained consistent in her allegation of rape and threat against Accused Syed Shahnawaz Hussain. However, Ld. APP for the State has argued that Complainant's veracity is questionable as she has improved her statement with the passage of time and so is not reliable. The above submissions of Ld. APP for the State do not carry much



weight and appear to be pre-emptive for the simple reason that at this stage, the court taking cognizance is only required to see whether prima-facie an offence appears to have been committed or not and not to test the authenticity of witnesses and see whether there is sufficient material on record to secure guilt of the accused. Here is a woman before the Court who is stating before the police and before the court, repeatedly, that she has been raped by being intoxicated; unless IO brings such material on record to establish that there is no possibility that she could have been raped, this court has no reason to throw out her case at the outset. Statement of the Prosecutrix u/s 164 Cr.P.C. is the most clinching piece of evidence especially in cases of rape as there are seldom any eye-witnesses to such heinous offences. Whether the statement of the Complainant is reliable or not can be found out only after the same is put to scrutiny before the Court of Trial.

CONCLUSION

10. This court after going through the cancellation report, protest petition filed by the complainant, the reply to the protest petition filed by the IO and other material on, record is of the view that the complainant has given consistent statements to, the police, to the court in her application u/s 156 (3) Cr. P.C. and before the Ld. Magistrate in her statement u/s 164 Cr.P.C. Minor contentions in the statements of the complainant cannot be a ground to disbelieve a version in toto to disbelieve a version in toto. The judgments of the Hon'ble Supreme Court relied upon by the complaint show that the sole testimony of the prosecutrix if reliable, is sufficient to convict the accused so it is safe to say that the consistent sole testimony of the prosecutrix is sufficient to summon the accused and to take the case to trial the issues raised by the IO while filing the cancellation report regarding the presence of the complainant and the accused at the place of the offence are matters which can be decided during trial. Moreover, this court is of the view that the



*version of the complainant and her trustworthy ness can be tested only during trial when she is cross examined by the accused and so this court on the basis of material placed on record along with the cancellation report especially the statement of the complainant/ victim u/s 164 Cr. P.C. wherein she has supported her allegations of rape and threats by accused Syed Shahnawaz Hussain and in exercise of powers u/s.190(1)(b) Cr.P.C., **this court takes cognizance of offences u/s 376/328/506 IPC. Accordingly, accused Syed Shahnawaz Hussain be summoned through SHO. P.S concerned for next date of hearing.***

33. **In this regard**, it must be observed that the learned Additional Chief Metropolitan Magistrate has rightly observed that the statement of the prosecutrix cannot be outrightly disbelieved. Learned Additional Chief Metropolitan Magistrate referred to the judgments in the case of Phool Singh vs. The State of M.P., decided vide Crl. Appeal No. 1520/2021 by the Apex Court vide Judgment dated 01.12.2021, Santhosh Moolya & Anr. vs. State of Karnataka, Criminal Appeal No. 479/2009 and Ganesan vs. State (Represented by its Inspector of Police), Criminal Appeal No. 680/2020, wherein it has been observed that the sole testimony of the victim or prosecutrix, **if reliable**, is sufficient to convict an accused and it requires no corroboration.

34. Learned Additional Sessions Judge, while considering the summoning Order dated 10.10.2023 of learned Additional Chief Metropolitan Magistrate, considered the Protest Petition filed by petitioner, all the evidence that was collected by the Police and came to the contrary conclusion that the Cancellation Report was rightly filed. In regard to the sole statement of the petitioner being the basis of conviction, learned



Additional Sessions Judge observed as under: -

“44. As discussed above, it is not that some minor contradictions, inconsistencies, variations or improvements are there in the case of prosecutrix, as set up in the criminal complaint originally filed by her and as sought to be projected in her statements recorded U/Ss 161 and 164 Cr.P.C. subsequently, but it is apparent from record that the same are very material and amount to major contradictions and improvements made by her which go to root of the case. The subsequent improvements made by her in these statements, which are in sharp contrast and contradiction to her earlier version given in the complaint on certain material aspects, were apparently made to counter the documentary and other scientific evidence, with which she was confronted during the course of enquiry conducted by the police prior to registration of FIR of this case. Had no other record of movement of the accused or of the prosecutrix existed or been available to IO during the course of investigation. the things would have been otherwise and the statement(s) of prosecutrix or her sole testimony could have been sufficient for taking cognizance of the alleged offences or for summoning of the accused to face trial for the said offences. However, the same should not have been considered sufficient by the Ld. ACMM for this purpose, when the other oral, documentary and scientific evidence was totally in contrast to the same and showed that no incident as alleged by her could have even taken place on the above said date.”

35. Learned Additional Sessions Judge, while referring to the Cancellation Report, has rightly observed that there is no quarrel with the proposition of law that the sole testimony of the prosecutrix, if reliable, can be sufficient to convict the accused, *but the entire focus of all the judgments of the Apex Court is on the reliability of the testimony.*



36. This proposition of law is well settled and sole testimony of the prosecutrix can be the basis of conviction *but has a caveat that it must be of sterling quality and absolutely reliable*. To ascertain the credibility and reliability of the testimony of the prosecutrix, the surrounding circumstances as deciphered during investigation, also require equal consideration.

37. It would be relevant to refer to the observations of learned Additional Sessions Judge, while accepting the cancellation report, that *though even some contradictions, discrepancies, inconsistencies or improvements etc. found in statements of the complainant or prosecutrix could be ignored for the purposes of taking cognizance, but the same have to be minor in nature and not material contradictions and inconsistencies etc. and those going to root of the case or affecting the testimony of prosecutrix or a victim to the extent of nullifying or negating the incident itself*. In the present case, the contradictions and improvements etc. in statement of prosecutrix are material and the same go to the root of the case and negate the very happening of incident. Again, her statement is also against the documentary and other scientific evidence collected during the course of investigation. Further, even though some issues raised or conclusions drawn by the IO in a final report can be left to be adjudicated upon during the course of trial, but the same can be so left only when version of the incident being given by the prosecutrix or a complainant actually holding of a trial, which was not required in the present case.

38. Hence, **the core question** for consideration before this Court is *whether the testimony/statement of the prosecutrix/complainant has been consistent to warrants summoning of the respondent No. 2 and initiating a criminal trial against him or whether the evidence collected by the*



Investigating Officer shakes the credibility of the testimony and creates a grave suspicion that the alleged offences could not possibly have occurred

39. To answer the above question, it would be apposite to holistically examine the background of the case from a bird's eye view and understand the entire quintessential facets around the incident which led to the registration of the FIR No. 85/2023 against the respondent No. 2.

Presence of the Prosecutrix at Roshan Tent House, New Khanna Market, Lodhi Colony:

40. The entire chain of events commenced on 12.04.2018 when according to the prosecutrix in her statement made by her under Section 161 of Cr.P.C., 1973, she received a *WhatsApp Call* from the respondent No. 2 calling her to Roshan Tent House, New Khanna Market, Lodhi Colony. The prosecutrix was picked up from the Market Sector 6, Dwarka from near her residence at about 05:00 to 06:00 P.M. by one *Ranaji* accompanied by two other persons and she was brought to the Roshan Tent House, New Khanna Market, Lodhi Colony *where she was served with tea and pakoras which made her dizzy*.

41. In the Cancellation Report, it is submitted that during investigation, CDR, CAF and location chart of the complainant were obtained and as per CDR location, complainant remained present at Dwarka area from 10.52 A.M. to 10.44 P.M. on 12.04.2018 and thereafter, she started moving towards New Delhi *via* Vasant Vihar and her last location was at Rafi Marg, Udyog Bhawan Metro Station, NR Ministry of Textile building and so the CDR of the complainant does not corroborate her allegations at all. *The presence of the Complainant at Khanna Market is not supported by the CDR call record of her own mobile phone.*



42. Pertinently, this entire narration of being picked up by one Ranaji and two other persons from near her residence in Dwarka or that she was brought to the Roshan Tent House, New Khanna Market, Lodhi Colony or was served by them with tea and *pakor*s which made her dizzy, does not find mention in her initial complaint, according to which she was served some cold drinks and eatables by the respondent No. 2, while she was waiting at the Sharma Farmhouse which made her unconscious. There is neither any mention of Ranaji who picked her up from Dwarka, nor any details of her brief visit to Roshan Tent House before reaching the Farmhouse or serving of the tea and *pakor*s which made her dizzy. Pertinently, as per the first version, she was picked up from Khanna Market by the respondent No.2 himself.

43. In her complaint, she claimed that she had been served with cold drinks at Sharma Farmhouse and after consuming the same, she became unconscious. Surprisingly, according to her Statement under Section 161 of Cr.P.C., 1973, the tea and *pakor*s had been first served to her at Roshan Tent House, New Khanna Market, Lodhi Colony which made her drowsy, which is in stark improvement to her initial complaint, according to which the laced snacks and drinks were served in the Farmhouse and there is no mention of any laced snacks being served at Khanna Market.

44. The prosecutrix also stated *that her mobile phone was taken away by Ranaji at Roshan Tent House, New Khanna Market, Lodhi Colony*. However, the complainant/prosecutrix had stated in her Complaint dated 22.04.2018 that she was asked to switch off her mobile phone by the respondent No. 2 ,when she reached Sharma Farmhouse at Mehrauli. If the mobile phone had been taken away from her by Ranaji at Roshan Tent



House New Khanna Market, Lodhi Colony, there was no question of it being switched off at Sharma Farmhouse.

45. This is a significant aspect as it was in her state of unconsciousness that the alleged rape was committed.

CCTV Footage and statements of workers and manager of Roshan Tent House:-

46. To confirm her presence in Khanna market, the Investigating Officer during the investigations, recorded the *statements of the owner and the Manager* of the Roshan Tent House, New Khanna Market, Lodhi Colony, namely, *Mr. Himanish Rana* and *Mr. Uday Veer*, were also recorded who all stated that the prosecutrix had not visited or was brought to Roshan Tent House, New Khanna Market, Lodhi Colony on 12.04.2018.

47. The Investigating Officer, further collected the *CCTV footage* thereof in a DVR to confirm the reliability of the statements of the witnesses, wherein the presence of the prosecutrix was nowhere to be seen. The statements stood fully corroborated by the contents of the CCTV footage. The claim of the prosecutrix that she had been taken to Roshan Tent House, New Khanna Market, Lodhi Colony is not supported by any independent evidence.

48. The Investigating Officer during the investigations also *obtained the Location Chart of the mobile of Ranaji i.e., Rajiv Rana*, but the CDR and Location Charts of Ranaji also did not corroborate the claim of the petitioner. The location of Ranaji was found to be in the vicinity of New Khanna Market, Lodhi Colony, Delhi when he is claimed to have gone to Dwarka at about 05:00 to 06:00 P.M. to pick up the prosecutrix to bring her to Roshan Tent House, New Khanna Market, Lodhi Colony, Delhi or to take



her to Sharma Farmhouse.

49. *The conclusion of the I.O. in the Cancellation Report about the presence of the Petitioner not found established from the statements of the Staff and CCTV footage of Roshan Tent House is well founded on the independent investigations.*

Location charts and CDR's of the Complainant and respondent No.2 on the day of alleged incident on 12.04.2018:-

50. The Investigating Officer had also collected the CDRs of mobile numbers of the prosecutrix as well as of the respondent No. 2 along with the Location Charts which revealed that on that day, no conversation whatsoever had taken place between the complainant/prosecutrix and the respondent No. 2. The complainant/prosecutrix had tried to cover up the lack of no call details by stating in her statement under Section 161 of Cr.P.C., 1973 that the call that was made by respondent No. 2 was made through WhatsApp and not an ordinary call. Even if it was a WhatsApp call, it would have reflected in the mobile phone of the complainant/petitioner or of the respondent No. 2, which was not found.

51. Furthermore, the Investigating Officer found the averments of the complainant/petitioner that she was made to switch off her mobile phone in Sharma Farmhouse by the respondent No. 2, was also not corroborated by the CDRs which reflect that on 12.04.2018, she had never switched off her mobile phone at any point of time.

52. Pertinently, the Location Chart of these mobile phones also reflected that the complainant/petitioner and the respondent No. 2 were at different places and they both never met each other on the date of the incident. According to the Location Chart, the complainant/petitioner was found to be



in different areas of Dwarka, while the Location Chart of the mobile of respondent No. 2 reflected his presence at Ashoka Hotel and at sometimes near Parliament.

53. The details of CDR of Syed Shahnawaz Hussain which revealed that he remained present at Ashoka Road on 12.04.2018 till 11.55 am, further remained present at Connaught Place from 12.00 pm till 03.05 p.m. Thereafter he remained present at Chandni Chowk near Town Hall at 04.21 p.m. and he was found present at Ashoka Hotel from 07.00 P.M. to 08.00 P.M. and finally moved to Parliament House cell Tower till 11.29 P.M.

54. Thus, the Location Charts of the complainant/petitioner and the respondent No. 2 reflect that they both had been at different locations on the day of incident, making their presence together at Sharma Farmhouse, Mehrauli impossible.

55. The Investigating Officer also recorded the statement of Mr. Sahil Sharma, the owner of the Sharma Farmhouse *at Mehrauli*, as well as the statements of Mr. Narender Singh, the owner of Raj Security Services which provided Security Guards to the Sharma Farmhouse and one Mr. Wasim Akhbar, the *Security Guard of Sharma Farmhouse*. Pertinently, even they disclosed that they neither had any function nor any party in their farmhouse on 12.04.2018. They further stated that the complainant/prosecutrix was not even known to them. The statements of the Farm owner and Security Guards are fully corroborated by the records of movement of the security officials of the respondent No. 2.

56. Thus, the Investigation Officer has concluded in his Report that as per analysis of the CDRs of the mobile phones of the alleged, complainant and others, it establishes that Rajiv Rana and complainant or the respondent



No. 2 were never found to be at one location or even at Sharma Farmhouse place at any point of time on 12.04.2018 and this is even corroborated by the statements of Security Guards and other persons, which also completely demolishes the version of the complainant.

57. Thus, the conclusion of the learned Additional Sessions Judge that the very happening of incident of rape after administration of some drug or intoxicating substance to her at these places stands clearly ruled as the oral as well as other documentary or scientific evidence collected by I.O. during the course of investigation, has shown that the prosecutrix and respondent never met each other or were at the same location or visited Roshan Tent house or the Sharma Farmhouse on the alleged day of incident i.e., on 12.04.2018.

Statements of the Security Officials/Gaurds/ PSO's on duty with the respondent No.2:-

58. Furthermore, with two PSOs and one Escort Vehicle having four security officials besides the Driver, as part of the security cover on daily basis. *In the cancellation report, it is also submitted that the respondent No. 2 had been provided with 'Z Category Security Cover' in the year 2018 and during that period two PSOs and one escort vehicle along with driver and four police personnel were deployed for the security of Syed Shahnawaz Hussain, the respondent No.2.*

59. The Investigating Officer during the investigations recorded the statements under Section 161 of Cr.P.C., 1973 of the security officials namely, ASI Rishi Kumar, HC Brijmohan, HC Sandeep, ASI Mahender Singh, HC Shiv Singh and ASI Kanahiyalal, who were on duty with the respondent No. 2 on the relevant date, but they all stated that none of them



had visited Roshan Tent House, New Khanna Market, Lodhi Colony, Delhi or any Farmhouse at Mehrauli on that day or that the respondent No. 2 had a meeting with the complainant/petitioner. As per their statements, respondent No. 2 was present at his house till 12 noon and on 12.04.2018, thereafter, they along with respondent No. 2 went to Hanuman Mandir, Connaught Place for dharna where they stayed for two hours after which they went to Chandni Chowk along with respondent No.2 and attended the *dharna* and later they had gone to office at Asaf Ali Road and from there to Ashok Hotel where they stayed for 2-2.5 hours.

60. Further, during the course of investigation on the basis of the enquiry conducted from the witnesses, their mobile phone has been seized during inquiry conducted in 2018 and it contains the video and photos of the said program namely “*Upwas*” captured at 03:48 P.M. on 12.04.2018 and it shows the presence of Syed Shahnawaz Hussain along with other Ministers.

61. The statements of the security officials are fully corroborated by the relevant records/entries made in the Register maintained regarding the deployment of security for the respondent No. 2 and the movement of his vehicle with the security officials on that day. The entire Record had been collected during the course of enquiry, prior to registration of FIR and some records had been seized during the course of investigations.

62. Also, the statement of Shri Mahesh Kumar, Attendant at Amartra Gym Ashoka Hotel has been recorded and it was confirmed from the register the presence of Syed Shahnawaz Hussain from 07:00 P.M. to 08.30 P.M. on 12.04.2018 i.e., the alleged date of the incident, which also confirmed the presence of respondent No. 2 at Ashoka Hotel at the relevant time. The presence of respondent No. 2 at the Farmhouse at the relevant



time stands completely discredited.

63. The Investigating Officer in his Report had thus, concluded that on basis of above material and other investigation that the respondent No. 2 remained present at his residence then attended two protest/*dharna* at Hanuman Mandir, Connaught at Chandni Chowk, Town Hall, after which he visited Asif Ali Road and from there, he went to the Gym at Ashoka Road at around 07:00 P.M. after which he reached back to his residence. Hence, at no instance was he at the Roshan tent house, or at Sharma Farmhouse as alleged by the Complainant.

64. The learned Additional Sessions Judge has rightly observed that the statements of the security officials who were public servants were supported by the documentary evidence in the form of registers pertaining to their movement as well as the movement of respondent No. 2 on the alleged day of incident; hence, should not have been ignored while considering the possibility of the commission of the offence.

Statements of Sh. Syed Shahbaz Hussain and Mrs. Lama Hussain in regard to Previous Disputes:-

65. It emerges that after registration of FIR, a Statement under Section 161 of Cr.P.C., 1973 of the prosecutrix was recorded by the I.O. on 23.01.2023, wherein she has disclosed about her *previously existing disputes* with brother of the respondent No. 2, namely, Syed Shahbaz Hussain since 2013. Pertinently, it is her claim that the respondent No. 2's brother, Shri Sayed Sahahbaz Hussain had also raped her in the year 2013 in regard to which she had met the respondent No. 2, who was a Member of Parliament at that time. The complainant/prosecutrix even approached the Delhi Commission for Women in the year 2016 with the above allegation of rape



by the brother of the respondent No. 2 and she had also alleged that she was forcibly made to convert her religion by signing papers of conversion and even a fake *Nikahnama* in the name of complainant/prosecutrix and Syed Shahbaz Hussain (brother of the respondent No. 2), was prepared.

66. It is also stated by her that in regard to the said incident involving the brother of the respondent No. 2, she had made a complaint under Section 156(3) of Cr.P.C., 1973 for registration of an FIR, though it was dismissed by the learned Metropolitan Magistrate. It was subsequently allowed by the learned Additional Sessions Judge in revision, but since the same was done with issuing notice to respondent No. 2, the High Court set the order aside and remanded it back which is pending adjudication before learned Additional Sessions Judge, Patiala House Courts, Delhi.

67. Though, the previous history of the complainant/prosecutrix may not be relevant while considering such cases, however, it cannot be overlooked that the petitioner, as per her own submissions, has been regularly meeting the respondent No. 2 in connection therewith.

68. Syed Shahbaz Hussain, brother of the respondent No. 2, was also examined who disclosed that the complainant/petitioner had sought his help for some NGO work which he had given her and she had visited his house on few occasions, but suddenly she started posting some objectionable posts on social media about him and blackmailing him for money and fraud and also extended threats to implicate him in false rape case. She even started pressuring him to divorce his wife and to marry her. When he refused to accede to her illegal demands, she made a complaint in Women Commission, Delhi making false allegations of rape against him on the pretext of marriage and forcible conversion etc. He denied having any



relationship with the complainant/petitioner.

69. He also disclosed to the Investigating Officer that under the pressure and threats and on a promise made by the complainant/prosecutrix to withdraw her complaints against him, he agreed to marry her and they both got married on 10.01.2017, but she continued to blackmail and threaten him and even visited his house on various occasions and created scene, resulting in filing of different complaints in the local Police Station and registration of some FIRs against her at Police Station Sarita Vihar and Jamia Nagar. He also stated about continuous extension of threats and the cross complaints given or filed by them against each other to different authorities.

70. Mrs. Lama Hussain, wife of the respondent No. 2, also deposed and gave the statement on similar lines.

71. This part of investigations is to explain the reference of the Petitioner to the issues that she had with the brother of respondent No.2.

The Additional Contentions of the Petitioner:

72. The complainant in the Petition has raised a ground that the IO/SHO Police Station Mehrauli has not produced the CDR report/CCTV Footage of India Gate which is important evidence to corroborate that after the incident, she was abandoned at India Gate, in the middle of the night after the incident.

73. The I.O. in the Cancellation Report has explained this aspect by stating that the CDR records of her mobile phone, which was with her, clearly reflect that her presence at India Gate has not been confirmed by the location charts. She was seen to be present at various places in Dwarka on the date of the incident and at even the alleged time of incident which is



10:00 PM to 10:30 P.M., her Cell-ID location is of Sector 22, Dwarka at 22:31:42 hrs.

74. In light of the above discussion, when it is evident that the complainant was at different places in Dwarka throughout the day and when the mobile number has not been denied by the complainant, there arises no question that the CDR of the mobile phone would incorrectly reflect her location, since a person cannot be present at two locations at one time, the CCTV footage of India Gate would not be of any assistance in the present case. Further, even if the CCTV would have reflected her presence at India Gate, it could not have provided any assistance in proving the alleged incident of rape or commission of the alleged offence.

Conclusion:-

75. Learned Additional Sessions Judge referred to the entire detailed investigations carried out by the Investigating Officer to conclude that the allegations of rape as made by the *complainant/petitioner* was not corroborated by the independent documentary and oral evidence that was collected during the investigations. The relevant part of his Order dated 16.12.2023 reads as under: -

“45. In the present era, when the scientific devices exist to assist and guide in investigations and also during the trial, the evidence gathered or collected through such devices cannot be ignored and has to be taken into consideration during the course of any enquiry, investigation or trial. In fact, the evidentiary value of such technical evidence stands on a higher footing in comparison to the oral evidence which may be available in support of allegations of commission of some offences, unless such technical evidence is surrounded by any doubtful circumstances or suffers from some other inherent defects which render it



inadmissible in evidence or affect its reliability to a considerable extent. No such facts or circumstances affecting the credibility or reliability of the above documentary or technical evidence collected by IO during the course of investigation of this case, in the form of CDRs and location charts of mobile phones of the petitioner, prosecutrix and of some other witnesses, are found to have come on record through the above cancellation report. Hence, Ld. ACMM-03 was not right in just believing and acting upon the oral testimony of prosecutrix about commission of said offences, which was totally in contrast and contradiction to such scientific and other documentary evidence.

.....
.....

49. Hence, in of the above discussion, this court is of considered opinion that the Ld. ACMM-03 had failed to apply his judicial mind to the entirety of facts and circumstances of the case and the documents and material placed on record for his perusal before taking cognizance of the alleged offences and directing summoning of the petitioner herein as an accused for a serious offence of rape. Therefore, it is held that the impugned order dated 10.10.2023 passed by the Ld. ACMM-03 is not correct, legal or proper as the same has been passed on wrong appreciation of facts and legal position and is, thus, liable to be set aside.”

76. This court may hasten to note that though a Magistrate is not required to conduct a detailed appreciation of evidence at the stage of taking cognizance on the Final Report/Chargesheet, but the assessment of the allegations as presented by the prosecution need to be considered to ascertain if sufficient grounds are disclosed for summoning of the accused. This consideration should not merely be technical in nature and evaluation of the broader context of the events and the implication of the summoning of



2024:DHC:5733



an accused can lead to serious personal and legal consequences which also includes a protracted trial, such a decision to summon the accused should not be a mere formality, and judicial discretion must be exercised with great caution when concluding if a trial for the alleged offence, is justified.

77. In the present case, the overwhelming independent ocular, documentary and scientific evidence collected during the investigations, whereby the presence of the respondent no.2 and complainant on the date of the alleged incident at the place of alleged incident i.e. Sharma Farmhouse is completely ruled out, the possibility of the commission of alleged offence is rendered zilch. Hence, conclusion of the learned Additional Sessions Judge in accepting the Cancellation Report has to be upheld.

78. **In view of the foregoing discussions, there is no infirmity in the impugned Order dated 16.12.2023 and the Revision Petition is hereby dismissed.**

**NEENA BANSAL KRISHNA
(JUDGE)**

AUGUST 02, 2024
S.Sharma