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

+ **CRL.M.C. 2310/2018**

DEVPATI DEVI

.....Petitioner

Through: Mr. Abid Ibrahim & Mr. Athar
Saeed, Advocates.

versus

STATE OF NCT OF DELHI & ORS

.....Respondents

Through: Mr. Satish Kumar, APP for the
State with Mr. S.N. Verma, Mr. Vinod
Kumar, Mr. Aditya Raina & Mr.
Matru Gupta Mishra, Advocates.
SI Chetan, P.S. Begampur.
Counsel for R-2 (appearance not
given)

CORAM:

HON'BLE MR. JUSTICE AMIT SHARMA

ORDER

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19.07.2024

1. The present petition under Section 482 of the Cr.P.C. seeks the following prayers:

“a) Set aside the Order dated 29.01.2018 passed in CR. (CRIMINAL REVISION) No.235 of 2017 by the Ld. Court of Sh. Ashutosh Kumar, Special Judge-02, (P.C. ACT), CBI, North-West District, Rohini Court, Delhi whereby the Ld. Revision Petition dismissed the Revision filed by the petitioner against the Order dated 21.11.2017 of Ms. Akansha Vyas, Ld. MM (Mahila Court), North-West District, Rohini Courts, Delhi.

b) Pass any other order(s) and further orders may also be passed by this Hon'ble Court in favour of the petitioner and against the Respondents as may be deemed fit in the facts and circumstances of the case”



2. The facts relevant for adjudication of the present petition are as under:
- a) It is alleged that on 23.11.2015 at around 06:00 PM when the petitioner was coming to her house from Pooth Kala, respondent no. 2 gave a punch on her back, abused her in filthy language. It is also alleged that respondent no. 2 tore her blouse and tried to rape her. It is further alleged that the petitioner blacked out and became unconscious. Thereafter, husband of the petitioner reached the spot. They went to Begum Pur police station for filing a complaint. The petitioner was taken by the police officials for medical checkup in Sanjay Gandhi Memorial Hospital, Mangol Puri, Delhi.
- b) It is the case of the petitioner that a formal written complaint was given to the SHO, P.S. Begum Pur on 01.12.2015, however; no steps were taken by the police with respect to the said complaint and thereafter, an application under Section 156(3) of the Cr.P.C. was filed before the concerned Metropolitan Magistrate, seeking registration of FIR against respondent no. 2.
- c) *Vide* order dated 16.11.2016, the learned Metropolitan Magistrate directed registration of FIR and consequently, the same was registered as FIR No. 927/2016, under Sections 323/354/354B/506 of the IPC with P.S. Begum Pur.
- d) After conducting the investigation, the Investigating Officer filed a cancellation report under Section 173 of the Cr.P.C on 29.04.2017, before the learned Metropolitan Magistrate.
- e) On 18.09.2017, a protest petition was preferred by the petitioner against the said cancellation report.
- f) *Vide* order dated 21.11.2017, Ms. Akansha Vyas, learned Metropolitan Magistrate-02, Mahila Court, North-West, Rohini Courts, dismissed the



protest petition filed by the petitioner and accepted the cancellation report.

g) Feeling aggrieved by the aforesaid order, the petitioner preferred a revision petition being CR No. 235/2017 before the learned Additional Sessions Judge and the same was dismissed *vide* order/judgment dated 29.01.2018.

h) Hence, the present petition.

3. Learned counsel appearing on behalf of the petitioner submits that the impugned judgment passed by learned Additional Sessions Judge, is liable to be set aside on account of the fact that the learned Additional Sessions Judge erred in believing the plea of alibi of respondent no. 2 on the basis of a letter of Assistant Commandant, CISF, certifying that respondent no. 2 was not present at the time of incident as alleged by the petitioner but was in fact on duty at Indralok Metro Station and thereafter he was present at the same period in Rithala Line.

4. It is further submitted that the statements made by the petitioner under Section 161 and Section 164 Cr.P.C. have not been taken into account. It is further argued that the MLC of the date of incident, which was on record, also reflected that the petitioner had received injuries.

5. *Per contra*, learned counsel appearing on behalf of respondent no. 2 submits that after thorough investigation, it had come on record that respondent no. 2 who was a constable with CISF at that relevant point of time was on duty and not at the place of the alleged incident. It is further submitted that the complaint made by the petitioner was malafide inasmuch as, respondent no. 2 is her son-in-law and admittedly, the relationship between the parties are strained. It is submitted that the daughter of the petitioner married respondent no. 2 with her own consent but against the wishes of her



parents including the present petitioner. It is stated that the petitioner and her husband have been filing various complaints against respondent no. 2 with malafide intention to spoil the happy married life of the couple. It is further submitted that the petitioner's daughter and respondent no. 2 are living happily and are enjoying matrimonial life with their minor children. It is further submitted that the order dated 21.11.2017, passed by learned Metropolitan Magistrate and the impugned order dated 29.01.2018, passed by the learned Additional Sessions Judge, suffers from no illegality.

6. Heard learned counsel for the parties and perused the record.

7. The status report dated 01.04.2018, authored by Insp. Rani Swaroop, SHO, P.S. Begumpur, Delhi records as under:

“ Briefly stated the facts that on 16.11.2016, for the perusal of the order passed by the Ld. M.M. on her complaint u/s 156(3) Cr.P.C, the present case FIR No. 927/2016 u/s 323/354/354B/506 IPC was registered at P.S. Begumpur, Delhi wherein she alleged that on 23.11.2015 at about 6.00 PM while she was coming home than someone from behind punched her due to which she felt down and when she became stable and turned, she saw Santosh whom she knows well standing there. She also alleged that he abused her in filthy language and torn her blouse and threatened her to kill and when she raised alarm, people gathered there but the accused fled away. After the registration of FIR investigation was taken up.

During the course of investigation; statements of all witnesses were recorded and complainant was bound U/s 170(2) Cr.P.C and thereafter, on 22/11/2016 the complainant statement was recorded U/s 164 Cr.PC.

During the course of investigation wife of the alleged namely Smt. Jayalata was contacted and was examined. She stated that she got married with Sh. Santosh Kumar. Their marriage was love marriage due to which her parents are against their marriage. Smt. Devpati Devi is her mother who is not accepting their love marriage and had filed a false complaint against her husband Santosh Kumar. She further told that her husband Santosh Kumar is working in CISF as a constable and presently posted at Rithala Metro Station.

That during the further investigation alleged Santosh Kumar was



made to join the investigation and was interrogated in the case FIR. He disclosed that he is working in CISF as Constable and presently posted at Rithala Metro Station. He further produced a letter issued by Assistant Commandant/Red line/CISF unit DMRC vide letter no. CISF/DMRC/R.L./17-1099 unit DMRC Delhi, red line dated 29/03/17, letter stating herein, that "Battalion No.107370385 constable/GD Santosh Kumar Sangam was appointed in kausub unit DMRC Delhi Red line since April 2015.

That during the further investigation the above letter which was produced by the alleged Santosh Kumar was got verified from CISF. It was informed that the duty of Constable Santosh was in first session at Inderlok metro station from 06:00 to 14:00. After finishing of first session force member were present at Rithala line in the event of game period from 16:30 to 17:15 and was present in roll call on 18:00."

It is further submitted that as per the investigation conducted the accusations against Santosh Kumar were not found true as during the time of incident alleged Santosh Kumar was not present at the place of occurrence. Evidences were collected but nothing came on record to substantiate the allegations made by the . complainant, thereafter the cancellation report was filed before the Hon'ble Court and the same was accepted by the Ld. M.M. vide order dated 29.11.2017. thereafter, the petitioner filed a Criminal Revision Petition before the court of Ld. ASJ against the above said order of Ld. M.M. dated 29.11.2017, which was also dismissed vide order dated 29.1.2018."

8. In the cancellation report placed on record, it is recorded by the Investigating Officer, after receiving the letter issued by Assistant Commandant, made proper enquiries with the said Assistant Commandant and after verifying the same proceeded to file the said report before the Court of learned Metropolitan Magistrate. *Vide* its order dated 21.11.2017, the learned Metropolitan Magistrate while accepting the cancellation, observed and recorded as under:

"3. The abovementioned application was allowed and FIR was registered. During investigation while trying to locate the accused, the 10 spoke to the wife of the accused namely Jailata who informed him



that the complainant is her mother and as she had solemnized love marriage with the accused, the complainant and her father keep filing false complaints against the accused regarding which she had she had filed complaint in PS Aman Vihar vide DD no. 32 A dated 19/6/2016. She also told the 10 that the accused was working in CISF and he was posted in Delhi Metro. A letter was produced by the accused issued by

Assistant Commandant to the effect that on the date of the alleged incident i.e. 23/11/2015 the Accused was on duty from 6:00 am to 2:00 pm at Inderlok metro station and thereafter the accused was also present at the game period at Rithala line from 4:30 pm to well as the roll call which took place at 6:00 pm. It is stated by the 10 in the report that he got verified the letter from the Assistant Commandant. In light of this fact, the IO filed the present cancellation report on the ground that the allegations of the complainant were not substantiated as the accused was not present at the place of the alleged incident at the relevant time. Hence the present protest petition was filed by the complainant.

4. It is averred in the protest petition that the letter on which reliance has been placed by the IO does not explain the whereabouts of the accused from 5:16 pm to 5:59 pm. Further the distance between Rithala and the spot of the alleged incident is only 5-7 minutes. It was therefore urged by the complainant that the presence of the accused at the place of the incident cannot be ruled out. Further CCTV footage showing the presence of the accused at the place mentioned in the abovementioned letter had not been procured by the IO. Moreover the IO has also not taken into account the torn blouse and the MLC of the complainant. The statement made by the complainant before the Ld. MM under section 164 CrPC also corroborated the case of the complainant. It was also alleged that on 15/1/2017, the accused had again restrained the complainant and abused her and threatened her to withdraw the present case or he would commit rape upon her.

5. I have carefully considered the cancellation report as well as the objections raised by the complainant and I find no merit in the same. The accused presented an alibi to the 10 which stands corroborated by the letter of the Assistant Commandant wherein he has clearly stated that on 23/11/2015 from 4:30 pm to 5:15 pm, the accused was on duty at Inderlok metro station and thereafter the accused was also present at the game period at Rithala line from 4:30 pm to 5:15 pm as well as the roll call which took place at 6:00 pm and as per the complainant, the incident took place at about 6:00 pm



between Rohini Sector 20 and 21. There is no reason to doubt the said letter which has been issued by the Assistant Commandant Red Line to SHO PS Begumpur. Now the argument of the complainant is to the effect that the distance between the spot and Rithala line is only 5-7 minutes. However this argument is not tenable. The incident alleged by the complainant was not a fleeting incident. According to the complainant the accused punched her, abused her, caught hold of her, hugged her, tore her clothes and also beat her and at that time the public had also gathered. In other words, it does not seem likely that the accused reached the committed the abovementioned acts which are not fleeting acts but would have taken time and then rushed back to Rithala line so as to be present at the time of the roll call. Further, he would have accomplished this feat at rush hour. There is also no explanation furnished by the complainant as to how the accused knew exactly where to find the complainant at the alleged time. In so far as the torn blouse and MLC of the complainant are concerned, they alone cannot substantiate the case of the complainant. It is also pertinent to note that the blouse of the complainant was not seized by the police at the spot but was handed over by the complainant herself when the FIR was lodged. I am also unable to attach much significance to the fact that CCTV footage of the place where the accused was supposedly present at the time of the incident was not obtained by the police. The alibi presented by the accused is supported by satisfactory documentary evidence. The fact that there is animosity between the parties also casts suspicion upon the case of the complainant.”

9. Similarly, the learned Additional Sessions Judge, while dismissing the revision petition challenging the aforesaid order, observed as under:

“7. When the alleged incident took place in an area inhabited by large number of people and that too at peak hour of 6:00 p.m, when office returnees and people going for marketing etc. must have been on the roads, still no public witness qua the said incident has been named by the complainant or joined in the investigation by the investigating agency. Admittedly in the MLC of the complainant nowhere she has named the respondent no.2 as the perpetrator of the alleged crime. Her MLC mentions only tenderness over left breast and B/L arm and scalp. Thus it is clear that there was no serious injury to her. Injuries mentioned are / not which can be caused only by a third person and cannot occur otherwise.

8. Much significance cannot be attached to the seizure of the



torn blouse of the original complainant after many days incident by the investigating agency as due to time lapse manipulation regarding turning of the blouse cannot be ruled out in view of the strained relationship between the parties.

“9. In view of the reasoning in the foregoing paras, I am of the considered opinion that the torn blouse and MLC of the complainant were not sufficient to substantiate the case of the complainant in the absence of any independent corroboration, in the absence of aforesaid CCTV footage, the plea of alibi of original accused supported by the documentary evidence and strained relationship between the parties. Hence there is no illegality and infirmity in the impugned order of Id. Trial court.”

10. The present petition is in the nature of a second revision petition which would otherwise be barred in view of provisions of Section 397 (3) of the Cr.P.C. It is also settled principle of law that in such cases inherent powers under Section 482 of the Cr.P.C. should be exercised sparingly and with great caution. The said power is to be exercised by this Court if there is an apparent mistake committed by the revisional Court or an error apparent from the records. In these circumstances, it is for the petitioner to demonstrate perverseness in the impugned judgment/order passed by the learned Additional Sessions Judge in order to cause interference of this Court with two concurrent findings in favour of respondent no. 2.

11. It is observed that the grounds taken by the petitioner in the present petition are same as those taken in the protest petition as well as the revision petition filed before the learned Additional Sessions Judge. The learned Metropolitan Magistrate as well as the learned Additional Sessions Judge after examining the said grounds have passed detailed orders, relevant portions of which have been extracted hereinabove. Respondent no. 2 was admittedly posted at the relevant point of time as a Constable with CISF. The Investigating Officer had made necessary enquiries with the said department



and had accepted the plea of alibi. As per the cancellation report, the Investigating Officer had verified the said position from the Assistant Commandant of the Battalion, in which respondent no. 2 was posted. Needless to say that the same is a public record and that the plea of learned counsel for the petitioner that the same was not tested by way of trial, cannot be accepted.

12. In view of the above, this Court does not find any illegality and infirmity in the impugned judgment/order passed by the learned Additional Sessions Judge. The learned Additional Sessions Judge, based on material placed on record, has rightly dismissed the revision petition filed on behalf of the petitioner.

13. In totality of the facts and circumstances of the case, this Court finds no reason to interfere with the impugned judgement/order passed by the learned Additional Sessions Judge. Accordingly, the present petition is dismissed and disposed of.

14. Pending application(s), if any, also stands disposed of.

AMIT SHARMA, J

JULY 19, 2024/bsr

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