

(2019) 08 DEL CK 0095

In the Delhi High Court

Case No : Criminal Writ Petition No. 2220 Of 2019

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APPELLANT

Vs

State (Nct Of Delhi) & Ors

RESPONDENT

Date of Decision : 09-08-2019

Acts Referred:

Constitution Of India, 1950 — Article 226
Code Of Criminal Procedure, 1973 — Section 156(3)
Indian Penal Code, 1860 — Section 166A, 354, 376, 506

Citation : (2019) 08 DEL CK 0095

Hon'ble Judges : A.K. Chawla, J

Bench : Single Bench

Advocate : Sougat Mishra, Jamal Akhtar, Rahul Mehra

Final Decision : Dismissed

Judgement

A.K. Chawla, J

CRL.M.A. 33246/2019

Allowed, subject to just exceptions.

W.P.(CRL) 2220/2019 & CRL.M.A. 33245/2019

1. By the instant petition, the petitioner seeks to invoke the extra-ordinary jurisdiction of the Court under Article 226 of the Constitution of India to assail the orders dated 17.12.2018 passed by the Id. MM dismissing the complaint filed by the petitioner under Section 156(3) Cr.P.C. and the other order dated 09.04.2019, whereby, the revision preferred against order passed by the Id. MM was dismissed by the Id. Additional Sessions Judge.

2. Concisely, the relevant facts are that the petitioner had filed an application before the Id. MM under Section 156(3) Cr.P.C. seeking registration of an FIR under Sections 376/354/506 IPC, besides, commission of the offence under Section 166A IPC. Such complaint, she made some time on or after 16.10.2018.

During the course of hearing, it transpires that prior to making such complaint under Section 156(3) Cr.P.C., the petitioner had approached the police for the first time only on 09.10.2018. On filing such complaint, the Id. MM called for the action taken reports on the complaint made and the police submitted the report dated 25.10.2018, as follows:

"It is submitted that a complaint filed by Ms. Simmi Diwedi d/o Sh. Vijay Kumar Diwedi r/o B-3713/16A, Gali No.110, Sant Nagar Burari, Delhi u/s 156.3 CrPC was received by undersigned on 24/10/18, after that undersigned contacted her on her mobile number given in the complaint twice and she replied that she is in her office and can not talk to me, whenever she gets time she will contact me. It is therefore requested that some more time may please be given for enquiry. Any further order shall be abide by the undersigned."

Thereafter, another action taken report dated 28.10.2018 came to be placed before the Id. MM to the following effect:

"It is submitted that the complainant was tried to contact for the enquiry of the complaint and identification of the place of occurrence. But she did not join the enquiry till date. The complainant has neither got identified the place of occurrence and nor mentioned the clear location/ address of Wazirabad, Delhi. Due to non-joining of enquiry by the complainant, the further enquiry could not be made.

It is therefore requested that the complainant may be directed to join the enquiry and some more time may be given for concluding the complaint. The enquiry officer W/SI Neelam is on leave till 31-10-18."

3. Vide order dated 17.12.2018, the Id. MM dismissed the complaint taking note of the ratio of the judgment of this Court in Subhkaran Luharuka vs. State ILR (2010) IV Delhi 495, which inter alia, lays that the Magistrate, before passing any order to proceed under Chapter XII, should not only satisfy himself about the pre-requisite as aforesaid, but, additionally, he should also be satisfied that it is necessary to direct Police investigation in the matter for collection of evidence which is neither in the possession of the complainant nor can be produced by the witnesses on being summoned by the Court at the instance of complainant and the matter is such which calls for investigation by a State agency. Aggrieved thereof, the petitioner preferred a revision and that came to be dismissed by the Id. Sessions Judge vide the impugned order dated 09.04.2019, taking note of the facts and the circumstances, as follows:

"7. It is a matter of record that the first instance of allegation of rape pertains to 12/13.12.2015 when complainant / revisionist had gone along with respondent no.1 to Manali. It has not been explained by the complainant / revisionist or her counsel that when she was having any apprehension of any untoward incident, then why she did not object or accompanied respondent no.1 to Manali, that too alone and more particularly when she found that only one room was booked in the hotel. This incident is alleged to have taken place after the incident of

28.02.2015 when complainant / revisionist has alleged that respondent no.1 had tried to attempt rape upon her. The allegations made in the complaint are that after the incident of 12/13.12.2015, complainant / revisionist remained with the respondent no.1 at Manali in same hotel till 16.12.2015. All these facts reflects that whatever could be the situation on 12/13.12.2015, complainant / revisionist stayed with the respondent no.1 with her consent. Allegations are that respondent no.1 promise to marry the complainant / revisionist. In this regard, reference can be laid upon the landmark judgment of the Hon'ble Supreme Court of India i.e. Harish Kumar Vs. State 2010 (4) JCC 2371, wherein it has been alleged that,

".....to contend that a promise to marry which is later denied does not amount to commission of offence of rape."

8. At the outset, it is mentioned here that it has been settled in numerous landmark judgments passed by the Hon'ble Supreme Court of India and Hon'ble High Courts that where allegations are that physical relations have been maintained under false pretext of marriage, then it is doubtful that rape has been committed. With these observations, the directions laid down in judgment titled as "Lalita Kumari" (supra) are perused. Impugned order dated 17.12.2018 is also perused. It has been categorically mentioned that complainant / revisionist is aware about all the facts and whereabouts of respondents. Allegations leveled in the complaint are oral and not supported with any document. Thus, in my considered opinion it has been rightly observed by the Ld. Trial Court that no further investigation is required to be conducted by the police and all the allegations are such, being oral in nature, which are within the knowledge of complainant / revisionist herself. Therefore, Ld. Trial Court has rightly come to the conclusion to dismiss the application under Section 156(3) CrPC vide impugned order. I do not find any illegality or infirmity in the impugned order dated 17.12.2018. Hence, the present criminal revision is dismissed and disposed off accordingly. Copy of order be sent to the concerned Trial Court for necessary intimation. File be consigned to Record Room after due compliance."

4. This Court does not consider it necessary to reiterate the facts that have been concisely taken note of by Id. ASJ. The very act of lodging the complaint only on 09.10.2018 though the instance related to the period of about 04 years before and then, as per the action taken reports taken note of, she did not prefer to co-operate with the police having made the complaint dated 09.10.2018, this Court does not see any such perversity in the impugned orders to invoke its extra-ordinary jurisdiction under Article 226 of the Constitution of India.

5. No merits. Dismissed along with pending application.