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

+ CRL.M.C. 4046/2015 & Crl.M.A. Nos.14412-14413/2015

Date of Decision : September 30th, 2015

ANKUSH KUMAR

..... Petitioner

Through Mr.Vijay Singla, Adv.

versus

STATE & ANR

..... Respondents

Through Ms.Manjeet Arya, APP with SI Aditya,
PS Rajouri Garden.
Mr.Deepak Kumar, Adv. for R-2.
Father of Respondent No.2 in person.

CORAM:

HON'BLE MR. JUSTICE P.S.TEJI

% **P.S.TEJI, J. (ORAL)**

1. The present petition has been filed by the petitioner under Sections 482, 483 Cr.P.C. read with Article 226/227 of the Constitution of India for quashing of FIR No.300/2012, under Section 377 IPC, Police Station Rajouri Garden, Delhi and the proceedings relating thereto.

2. As per the FIR, the allegations levelled against the petitioner are that he lured the complainant/victim Parful Kumar, aged about 12 years when he was wandering in a park saying that he would give him a job of cleaning vehicles for which he would be paid Rs.4,000/- per month.

Thereafter, the petitioner took the complainant behind a vehicle and did something wrong with him. When the victim felt pain, he started shouting, on which many people came there. Accused was apprehended and on arrival of the police, he was handed over to the police. The complainant was taken to the hospital where on medical examination, it was confirmed that the child was sexually assaulted by the petitioner.

3. The present petition has been filed for quashing of the FIR in question on the basis of compromise dated 28.09.2015 arrived at between the petitioner and the father of the victim, namely, Swami Nath.

4. The respondent no.2 being a minor, is added as respondent through his father Mr.Swami Nath and a Memorandum of Understanding/ settlement signed by the minor and his father Mr.Swami Nath has been relied upon. The respondent no.2 is represented through counsel. The present petition has been filed for quashing of the FIR and perusal of the same shows that the FIR has been lodged on the statement of a minor child who happened to be about 12 years of age and who was subjected to cruelty, torture, inhumanity, sexual assault and act of sin of the accused.

5. The FIR was lodged three years back and charges have been framed but substantial progress has not been done. Apparently, the

petitioner is using all possible weapons to pressurize and to win over the victim i.e. the minor, to tamper with the evidence and to hamper the trial.

6. In *Shimbhu and Anr. v. State of Haryana (2014) 13 SCC 318*, it was observed that :

“22. Further, a compromise entered into between the parties cannot be construed as a leading factor based on which lesser punishment can be awarded. Rape is a non-compoundable offence and it is an offence against the society and is not a matter to be left for the parties to compromise and settle. Since the Court cannot always be assured that the consent given by the victim in compromising the case is a genuine consent, there is every chance that she might have been pressurized by the convicts or the trauma undergone by her all the years might have compelled her to opt for a compromise. In fact, accepting this proposition will put an additional burden on the victim. The accused may use all his influence to pressurize her for a compromise. So, in the interest of justice and to avoid unnecessary pressure/harassment to the victim, it would not be safe in considering the compromise arrived at between the parties in rape cases to be a ground for the Court to exercise the discretionary power under the proviso of Section 376(2) of IPC.”

Similar views have been expressed in *Mayank Pandey v. State and ors* (Crl.MC 2206/2013 dt. 16.12.2013) ; *Purushottam v. The State of Madhya Pradesh, AIR 1980 SC 1872* and *Anil Kumar and others v. State of NCT of Delhi, MANU/DE/1203/2012*.

7. The case in hand is otherwise the petitioner's wish to use the provision of Section 482 of Cr.P.C. to cause injustice by way of putting undue pressure upon the minor child to get rid of the due process of law which is neither permitted by the Statute nor by the law laid down by the Hon'ble Apex Court. The conduct of petitioner itself is an abuse of the process of law. It would be pertinent to mention here that to achieve his covert object, the petitioner also made the father of the minor child a party. The father of the minor has been used to get procured the Memorandum of Understanding which is not permissible under the law on behalf of the minor to digress from the justice delivery system. The role of the petitioner is also condemnable and the practice adopted in this case, needs to be curbed and warrants dismissal of the present petition. This Court has observed that ample pressure has been put by the accused upon the minor child to concede to his wishes and to tamper with the evidence.

8. *Child sexual abuse is one of the most pervasive social problems faced by our society. Its impact is profound because of the sheer frequency with which it occurs and because of the trauma brought to the lives of the children who have experienced this crime. Child sexual abuse is an epidemic. Children who have suffered sexual abuse at the hands of the sexual perpetrators do not only suffer from physical pain but are also subjected to mental and emotional trauma. The results of child sex abuse are severe and far reaching. As a society, it is important to recognize that the sexual exploitation of children is a very sensitive issue and must be addressed humanely. The effects of sexual abuse extend far beyond childhood. Sexual abuse robs children of their childhood and creates a loss of trust and may lead to depression and other serious emotional problems. The sexual victimization of children is ethically and morally wrong. Children who have been sexually abused face the social stigma attached to such offences and the discrimination they experience can make their difficulty worse and make it harder for them to recover. This is because the society in general has stereotyped views about sexual offences and how it affects people. The parents of such victims have even a greater role to play in helping and aiding the child in overcoming the trauma. Children are our country's future and they need to be protected.*

Offences, particularly sexual offences, against them should not be neglected or taken lightly. Their proper development in every aspect is indispensable. The best interest and well being of the children must be regarded as being of paramount importance at every stage, to ensure the healthy physical, emotional, intellectual and social development of children.

9. In the present matter, the petitioner has caused terror upon the minor victim by committing a criminal act of sexual abuse and by creating the compelling circumstances as discussed above. There is a lot of pressure from the accused as well as parents of the victim and the child witness is being compelled by circumstances not to bring true facts before the Court. The conduct of the petitioner is apparently going to affect the due process of law and the testimony of the victim. As a result, the Trial Court is directed to ensure the examination of the child witness by giving due protection to him and bring the child out of the pressure of the petitioner and of the father of the victim and even if need arises, shall also consider cancellation of bail for the independent testimony of the child.

10. *All the Criminal Courts are directed to adopt all the reasonable precautions to ensure the true testimony of the child witnesses and to*

provide atmosphere and the circumstances to the effect that the child witnesses shall not be compelled by the circumstances, by the accused including the parents, from bringing truth before the Court. It shall further be ensured that the child witnesses be examined in special court room meant for it and provide all the precautions available to the child victims under the Prevention of Children from Sexual Offences Act, 2012.

11. Judgment be circulated to all the Criminal Courts below for implementation of para 10.

12. With this observation, the present petition is dismissed.

(P.S.TEJI)
JUDGE

SEPTEMBER 30, 2015

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