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IN THE HIGH COURT OF DELHI AT NEW DELHI

RESERVED ON : OCTOBER 09, 2015

DECIDED ON : NOVEMBER 05, 2015

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CRL.REV.P. 642/2014, CRL.M.A.Nos.16219/14 & 20097/14

RAJAT MITTAL

..... Petitioner

Through : Mr.Sidharth Luthra, Sr.Advocate
with Mr.Mahavir Prasad Mittal &
Mr.Anupam Prasad, Advocates.

versus

STATE

..... Respondent

Through : Mr.Sanjeev Sabharwal, APP with
Insp.Kamlesh.
Mr.Rituraj Shahi, Proxy counsel for
the complainant along with
complainant in person.

CORAM:

HON'BLE MR. JUSTICE S.P.GARG

S.P.GARG, J.

1. The instant Revision Petition has been preferred by the petitioner to challenge the legality and propriety of an order dated 30.08.2014 of learned Additional Sessions Judge by which the petitioner was charged for commission of offences under Sections 328/376/420/506/313/406 and 376 read with Section 417 IPC. Status Report is on record.

2. I have heard the learned Senior counsel for the petitioner and learned Additional Public Prosecutor and have examined the Trial Court record. Admittedly, the prosecutix 'X' (assumed name) and the petitioner were acquainted with each other since 2006. 'X' lodged a comprehensive written complaint implicating the petitioner for committing various offences on 01.03.2012. Upon completion of investigation, a charge-sheet against the petitioner under Sections 376/328/506 IPC was filed. It is relevant to note that the petitioner's mother and sister were not charge-sheeted though they were also implicated in the complaint. By an order dated 2.2.2013, the learned Metropolitan Magistrate took cognizance under Section 190 (1) (b) Cr.P.C. for the offences under Sections 376/328/506 IPC and committed the case to the Court of Sessions on 06.05.2014. By the impugned order the learned Sessions Court, prima facie, found the petitioner to have committed the aforesaid offences.

3. During the course of arguments, the learned Senior counsel, on instructions, stated at Bar that the petitioner has opted not to challenge the impugned order on charge under Sections 376/506/420/417 Cr.P.C. Learned Senior Counsel restricted the arguments to challenge the legality of charges under Sections 313/328 and 406 IPC.

This Court is conscious that at the stage of framing of charge, the court is not required to meticulously judge the truth, veracity and effect of the evidence. There has to be strong suspicion which leads the court to think that there is a ground for presuming that the accused has committed the offence. This strong suspicion is to be founded on material laid before the court on which the court can form a presumptive opinion regarding the existence of factual ingredients constituting the offence alleged, only then the court is justified in framing the charges against the accused.

4. On perusal of the materials collected during investigation by the Investigating Agency, I find no sufficient ground to proceed against the petitioner under Sections 328/313/406 IPC. There is a bald statement of the prosecutrix in the complaint that on 10.12.2007 when the petitioner visited her residence and expressed desire to have a cold drink, she brought cold drink in two glasses; one for herself and the other for the petitioner. The petitioner then desired to have some snacks also with the cold drink. When she went to the kitchen to bring the snacks and took her cold drink on return, it tasted a little different. Soon her limbs started shaking and the cold drink fell from her hands; she became unconscious. When she regained senses, she was shocked to find herself completely

nude. During investigation, allegations of having been administered some poisonous or stupefying substance could not be verified or confirmed. The prosecutrix did not get herself medically examined any time soon after the said incident. Nature of 'substance' allegedly mixed in the cold drink could not be ascertained. Nothing emerged as to from where any such 'substance' was procured by the petitioner. It is on record that subsequent to that, the petitioner and the prosecutrix had maintained their friendly relations. Physical relations were established; albeit on the alleged promise of marriage on various occasions. 'X' did not complain about petitioner's conduct promptly to the police. In *Prashant Bharti vs. State (NCT of Delhi)* (2013) 9 SCC 113, the victim had alleged that the accused therein had offered her cold drink (Pepsi) allegedly containing poisonous/intoxicating substance. After drinking the same, she felt inebriated whereupon the appellant started misbehaving with her and also touched her breasts. She was taken for medical examination but no evidence of poisoning was found by the police during investigation. The Apex Court quashed the charge under Section 328 IPC observing that allegations levelled by the prosecutrix of having been administered some intoxicant in a cold drink could not be established by the cogent evidence.

5. Regarding Section 313 IPC, I find no cogent material on record to presume if 'X' was ever forced or compelled to abort pregnancy, as alleged. After a considerable delay in 2012 only, 'X' complained that she became pregnant thrice, in June, 2009 and once in November, 2011. She further disclosed that the pregnancies were got terminated by the petitioner on the pretext that they could not marry till the marriage of his sister Ms.Vandana. She resigned to her fate and obliged the petitioner with his demands including demands of maintaining physical intimacy. In the complaint, nowhere it finds mention if at any stage the prosecutrix was forced or compelled to abort the pregnancies against her wishes. The allegations are vague and uncertain. Nothing was revealed as to when and where the pregnancies were aborted/terminated and what was its duration that time. As observed, the parties maintained physical relations even subsequent to that and as per the averments in the complaint, they had physical relations on 28.01.2012 too. In 161 Cr.P.C. statement, the prosecutrix disclosed that the accused used to bring some 'pills' to get the pregnancies aborted. Again, nothing was divulged as to from where the petitioner used to procure the pills or whether these were administered to her against her wishes. Apparently, abortions (if any) were with the free consent of the prosecutrix. Section 313 would be attracted only if it is

established that the pregnancy was terminated without the free consent of the prosecutrix. In the instant case 'X' willingly submitted herself to abortion (if any) and even thereafter, had sexual intercourse with the petitioner.

6. Regarding Section 406 IPC, again, its ingredients are not attracted. To constitute the offence of 'criminal breach of trust', there must be dishonest misappropriation by a person in whom confidence is placed as to the custody or management of the property in respect of which the breach of trust is charged. There must be entrustment, there must be misappropriation or conversion to one's own use or use in violation of any legal direction or of any legal contract; and thirdly the misappropriation or conversion or disposal must be with a dishonest intention. All these ingredients are lacking in the instant case. The prosecutrix alleged in the complaint that she had given ₹6 lacs on one occasion and ₹3.5 lacs on 23.01.2012 to the petitioner on the pretext of investment for common benefit of the parties. Apparently, payment (if any) by the prosecutrix to the petitioner was with her free consent and nothing is in the complaint to show if it was to be entrusted to him for return after a specific period. Details of such payment have not come on record.

7. In the light of the above discussion I am of the view that there is no cogent and sufficient material on record to presume commission of offence under Sections 328/313/406 IPC. The impugned order to this extent is unsustainable and the petitioner is discharged of the offences under Section 328/313/406 IPC. The Trial Court shall proceed as per law against the petitioner for commission of other offences for which he has been charged.

8. The Revision Petition stands disposed of in the above terms. All pending applications also stand disposed of. Trial Court record be sent back forthwith along with the copy of the order.

(S.P.GARG)
JUDGE

NOVEMBER 05, 2015
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