

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

% *Judgment Reserved on: August 17, 2017*
Judgment Delivered on: August 21, 2017

+ **CRL.REV.P. 603/2017**

KHUSHWANT SINGH @ SHEEBY KOHLI Petitioner

Through: Mr.Mohit Mathur, Sr. Advocate
with Mr.Rajinder Pal Singh &
Mr.Mahipal Khanganwal,
Advocates

versus

STATE

..... Respondent

Through: Mr.Kewal Singh Ahuja, APP
for the State

CORAM:
HON'BLE MS. JUSTICE PRATIBHA RANI

JUDGMENT

CrI.M.A.13145/2017

1. Exemption allowed, subject to all just exceptions.
2. The application is disposed of.

CRL.REV.P. 603/2017

1. The petitioner has invoked the revisional jurisdiction of this Court under Section 397 & 401 Cr.P.C. for seeking his discharge in case FIR No.707/2015, under Section 328/376/506 IPC, PS Hari Nagar and the inherent power vested in this Court under Section 482

Cr.P.C for quashing the above criminal proceedings initiated against him.

2. Mr.Mohit Mathur, learned Senior Advocate submitted that in view of the decision of the Supreme Court in ***Rukmini Narvekar vs. Vijaya Satardekar & Ors.*** (2008) 14 SCC 1, in exercise of its inherent power under Section 482 Cr.P.C. this Court can examine the material produced by the defence which demonstrates that the whole prosecution in this case is based on a concocted story.

3. Mr.Mohit Mathur, learned Senior Advocate also placed reliance on decision of Hon'ble Supreme Court in ***Dilawar Babu Kurane vs. State of Maharashtra*** AIR 2002 SC 564 submitting that if two views are equally possible the benefit should be extended to the accused.

4. Attention of this Court has also been drawn to the following FIRs got registered by the same complainant against the petitioner and other persons with similar allegations:-

Sl. No.	FIR No.	U/s	P S	Complainant	Suspect
1.	707/2015 dated 14.05.15	376/506 IPC	Hari Nagar	Smt. Rekha W/o Saurabh	Khushwant Singh
2.	438/2015 dated 23.06.15	506/34 IPC	Mianwali Nagar	Rekha	Khushwant Singh
3.	1653/2015 dated 22.12.15	328/376 IPC	Hari Nagar	Suman W/o Rakesh	Raghuvender Singh
4.	1584/2015 dated 31.12.15	376 IPC	Dabri	Rekha Rani D/o Tirath Pal	Rakesh Tyagi

As per Order dated 11.02.2016 passed by Ld. ASJ Dwarka Courts, the FIR 1653/2015 was registered by the prosecutrix - Rekha in a fictitious name – Suman.

5. Learned Senior Counsel for the petitioner also referred to the status reports filed by the State at the stage of bail in various FIRs and contended that on the basis of false and concocted story, the petitioner has been charged for committing the offence punishable under Section 328/376/506 IPC. It has also been contended that during the alleged incident of rape on two dates i.e. first on 7th May, 2015 at Amritsar and second time on 13th May, 2015 at Delhi, as per CDR, the location of the petitioner and the prosecutrix was not at the same place, hence it was not a case to prima facie form a view to charge the petitioner/accused for committing offence under Section 328/376/506 IPC.

6. In this petition, following prayers have been made by the petitioner:-

“A. Set aside the impugned order dated 11/05/2017 passed by the Hon'ble Court of Ms. Shail Jain, ASJ (Special Fast Track Court)-01, West, Tis Hazari Court, Delhi framing charges against the accused person Shri Khushwant Singh son of Shri Kuldeep Singh under Section 328/376/506 of Indian Penal Code in the matter titled as “State Versus Khushwant Singh” vide State Case bearing no.149/16 in FIR No.707/15 at Police Station-Hari Nagar and discharge the accused person in the interest of justice;

B. To call upon or summon and examine the trial Court record of case titled as “State Versus Khushwant Singh” vide

State Case bearing No.149/16 in FIR No.707/15 at Police Station-Hari Nagar pending in the Court of Ms. Shail Jain, ASJ (Special Fast Track Court)-01, West, Tis Hazari Court, Delhi which is fixed for 08/09/2017 for prosecution evidence;

C. To expunge the remarks passed by Ms.Shail Jain, ASJ (Special Fast Track Court)-01, West, Tis Hazari Court, Delhi in impugned order dated 11/05/2017 in the case titled as “State Versus Khushwant Singh” vide State Case bearing No.149/16 in FIR No.70/15 at Police Station-Hari Nagar to the effect that “It is argued on behalf of the accused by Ld.Counsel that Relationship between prosecutrix and accused were consensual.”

D. Stay the proceedings in case titled as “State Versus Khushwant Singh” vide State Case bearing No.149/16 in FIR No.70/15 at Police Station-Hari Nagar pending in the Court of Ms.Shail Jain, ASJ (Special Fast Track Court)-01, West, Tis Hazari Courts, Delhi which is fixed for 08/09/2017 for prosecution evidence till the final disposal of the present revision petition before this Hon'ble Court;

E. Pass such other and further orders which this Hon'ble Court may deem fit and proper.”

7. While passing the impugned order on charge, in para 4, the learned Trial Court had noted the contention on behalf of the petitioner which reads as under:

“4. It is argued on behalf of the accused by Ld. Counsel that allegations as leveled by the prosecutrix are false. Prosecutrix had herself visited the accused. Relationship between Prosecutrix and accused, were consensual. Hence no charge under section 328/376/506 IPC is made out against the accused. With these submissions, it is prayed by Ld. counsel for accused that accused be discharged for the offences, he is charge sheeted.”

8. When the attention of the learned Senior Advocate for the petitioner was drawn to the submissions made in above para in the order impugned, on instructions, he has not pressed the prayer 'C'.

9. In the decision reported as ***Dilawar Babu Kurane vs. State of Maharashtra*** AIR 2002 SC 564, in para 12 relied upon by the learned Senior Counsel for the petitioner, it was held as under:

12. Now the next question is whether a prima facie case has been made out against the appellant. In exercising powers under Section 227 of the Code of Criminal Procedure, the settled position of law is that the Judge while considering the question of framing the charges under the said section has the undoubted power to sift and weigh the evidence for the limited purpose of finding out whether or not a prima facie case against the accused has been made; where the materials placed before the Court disclose grave suspicion against the accused which has not been properly explained the Court will be fully justified in framing a charge and proceeding with the trial; by and large if two views are equally possible and the Judge is satisfied that the evidence produced before him while giving rise to some suspicion but not grave suspicion against the accused, he will be fully justified to discharge the accused, and in exercising jurisdiction under Section 227 of the Code of Criminal Procedure, the Judge cannot merely as a post office or a mouthpiece of the prosecution, but has to consider the broad probabilities of the case, the total effect of the evidence and the documents produced before the Court but should not make a roving enquiry into the pros and cons of the mater and weigh the evidence as if he was conducting a trial (See Union of India v. Prafulla Kumar Samal and another (1979(3) SCC 5)

10. Learned Senior Counsel for the petitioner has also placed reliance on the decision reported as ***Rukmini Narvekar vs. Vijaya Satardekar & Ors.*** (2008) 14 SCC 1, wherein in para 22 & 23 the circumstances under which defence material can be considered have been reiterated as under:-

22. *Thus in our opinion while it is true that ordinarily defence material cannot be looked into by the Court while framing of the charge in view of D.N.Padhi case, there may be some very rare and exceptional cases where some defence material when shown to the trial Court would convincingly demonstrate that the prosecution version is totally absurd or preposterous, and in such very rare cases the defence material can be looked into by the Court at the time of framing of the charges or taking cognizance. In our opinion, therefore, it cannot be said as an absolute proposition that under no circumstances can the Court look into the material produced by the defence at the time of framing of the charges, though this should be done in very rare cases i.e. where the defence produces some material which convincingly demonstrates that the whole prosecution case is totally absurd or totally concocted.*

23. *We agree with Shri Lalit that in some very rare cases the Court is justified in looking into the material produced by the defence at the time of framing of the charges, if such material convincingly establishes that the whole prosecution version is totally absurd, preposterous or concocted. However, in this case it cannot be said that the evidence in the civil suit which was produced by the defence before the trial Court established convincingly that the prosecution case is totally absurd or preposterous. In our opinion this is a matter which has to be looked into by the trial Court.”*

11. Although it has been argued before this Court that in view of the decision of the Hon'ble Supreme Court in *State of Orissa vs. Debendra Nath Padhi* (2005) 1 SCC 568 referred in the decision of Hon'ble Supreme Court in *Rukmini Narvekar vs. Vijaya Satardekar & Ors.* (2008) 14 SCC 1 the documents produced by the defence can be looked into which convincingly demonstrate that the whole story is concocted, no such submission was made at the stage of charge before the learned Trial Court.

12. The effect of Call Detail Records cannot be considered by this Court in exercise of revisional jurisdiction about the location of the parties and their mobiles being not at the same place for the reason that it is a subject matter of trial. It may also be relevant to note here that the submission by the learned defence counsel before the learned Trial Court at the stage of charge was that physical relationship between the accused and prosecutrix was consensual.

13. Merely because some other accused has been discharged by the learned Trial Court in another case (FIR No.1584/2015 under Section 376 IPC, PS Dabri) registered on the complaint of the same prosecutrix, such discharge order cannot have the effect of a 'blanket order' entitling the accused in the FIRs registered at behest of the prosecutrix, to seek discharge.

14. The scope and power of the Court in exercise of the revisional jurisdiction against an order of charge, has been dealt with by the Supreme Court in *Munna Devi vs. State of Rajasthan and Anr.* (2001) 9 SCC 631. The short judgment is reproduced here under:-

"1. Leave granted.

2. Aggrieved by the framing of charges against him under sections 376, 511, 451 and 354 of the Indian Penal Code, the respondent-accused filed a revision petition in the High Court which was allowed vide the order impugned in this appeal by quashing the charges framed against him. The appellant-complainant-prosecutrix has filed this appeal submitting that the impugned order is against the provisions of law as the High Court could not prevent the holding of trial by sitting in appeal against the order of framing of charge by sifting and weighing the evidence recorded during the investigation.

3. We find substance in the submission made on behalf of the appellant. The revision power under the Code of Criminal Procedure cannot be exercised in a routine and casual manner. While exercising such powers, the High Court has no authority to appreciate the evidence in the manner as the trial and the appellate courts are required to do. Revisional powers could be exercised only when it is shown that there is a legal bar against the continuance of the criminal proceedings or the framing of charge or the facts as stated in the first information report even if they are taken at the face value and accepted in their entirety do not constitute the offence for which the accused has been charged. This Court in *Kanti Bhadra Saha & Anr. v. State of West Bengal* (2000 (1) SCC 722) has held that there is no legal requirement for the trial court to write a reasoned or lengthy order for framing the charges.

4. In the instant case, the learned judge ignored the basic principles which conferred the jurisdiction upon the High Court for exercise of revisional powers. It was premature for the High Court to say that the material placed before

the trial court was insufficient for framing the charge or that the statement of the prosecutrix herself was not sufficient to proceed further against the accused-respondent.

5. As the impugned order has been passed against the settled position of law, it is unsustainable and is accordingly set aside. The order of framing the charge passed by the trial court against the accused is upheld with directions to proceed with the trial of the case and dispose of the same on merits in accordance with law.

6. The appeal is allowed accordingly.”

15. When the impugned order is examined in the light of the above legal position as well the submission made before the learned Trial Court at the stage of charge that it was a consensual physical relationship, whether it was a case of consent or not, is a subject matter of trial.

16. The impugned order does not call for any interference by this Court in exercise of revisional or inherent jurisdiction.

17. The petition is dismissed.

Crl.M.A.13143/2017 (for directions) & Crl.M.A.13144/2017 (stay)

Dismissed as infructuous.

**PRATIBHA RANI
(JUDGE)**

AUGUST 21, 2017
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