

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

**RESERVED ON : JANUARY 20, 2015
DECIDED ON : FEBRUARY 05, 2015**

**+ CRL.REV.P. 511/2013 & CRL. M.A. 17351/2013, CRL. M.A.
13499/2013**

DR VIJAY KUMAR KADAM Petitioner
Through : Mr. R.K. Pandey and Ms.Kanika
Kadam, Advocates.

VERSUS

STATE & ANR Respondent
Through : Mr. Navin K. Jha, APP for State
along with IO/SI Ajay Kumar, P.S.
Dabri.
Mr. Sameer Chandra, Advocate for
R2.

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 correctness of an order dated 02.08.2013 by which charge under Sections 323/342/376/511 IPC was ordered to be framed against him. Prayer has also been made for quashing of the FIR 394/11 registered at Police Station Dabri. Respondent No.2/complainant has contested it.

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2. In a complaint case filed under Section 200 Cr.P.C., the respondent No.2 alleged that on 26.11.2011 when she had gone to the petitioner's office to inquire whether she could resume her duties, at around 09:30 a.m., the petitioner closed the door from inside and pushed her on the sofa. Thereafter, he started using unparliamentary and obscene words stating that he would not at all spare her. He forcibly broke open the 'nada' of her salwar after pushing her down on the 'sofa' and removed her under-garments. When he was in the process of removing his under-garments, she protested and used legs and fists to get rid of him. At that point of time, the petitioner slapped and inflicted injuries on her breast and private parts. She, however, succeeded in coming out of the room after opening the door and intimated the incident to PCR. Before arrival of PCR, she was beaten by the petitioner and his associate Anita Chaudhary. She was also criminally intimidated. Police of PS Dabri brought her to the police station. She was medically examined at Deen Dayal Upadhyay hospital. She lodged complaint in writing to the police and the matter was assigned for investigation to SI Moolchand. The police, however, did not take any action in the matter.

3. On her application under Section 156 (3) Cr.P.C., by an order dated 29.11.2011, FIR was registered on 08.12.2011 at the police station.

During investigation, in an inquiry conducted by ACP(PG)/SWD allegations levelled by the victim could not be substantiated. The Investigating Officer submitted cancellation report. However, by an order dated 19.04.2012 the court ordered reinvestigation. Again, after reinvestigation, when closure/cancellation report was filed second time, the learned Metropolitan Magistrate by an order dated 16.05.2013 took cognizance of the offences under Section 354/323/342/376/511 IPC and summoned the petitioner. After committal of the case to Sessions, instant charge order was passed, which is under challenge.

4. Learned counsel for the petitioner urged that R.S.Verma, Binesh Kumar, Mir Singh and Vipin Solanki, officials in the hospital who nurtured ill-will against the petitioner hatched a conspiracy to implicate him and hired the complainant to execute their plan. One 'Heena' had lodged complaint for outraging her modesty against R.S.Verma and Vipin Solanki and FIR 373/11 dated 9.11.2011 was lodged against them at Police Station Dabri. The petitioner was threatened by them and he lodged complaints to the Principal Secretary, Department of Health and Family Welfare, Govt.of NCT of Delhi against them. Consequently, both were transferred on 24.11.2011. It is further urged that respondent No.2 used to work at two places (Dada Dev Hospital and Anganwadi ICDS

Sagarpur (Project) and was removed from the hospital by her company Core Security Services for indiscipline, rampant corruption and polluting environment of the hospital. On 26.11.2011 when the petitioner reached office at about 09:00 a.m., the respondent No.2 and her associate Saroj Rani, chased him; forcibly entered in the office and bolted it from inside. Sensing trouble, he shouted for help and tried to escape crying 'Bachao-Bachao'. The respondent blocked the way and attacked him with fists; his shirt and baniyan were torn. He managed to come out of the room with the assistance of guard Ramesh and was taken to administrative officer's room. The whole incident was recorded in CCTV. In the independent Vigilance enquiry, the petitioner was given clean chit and allegations were found false and fabricated. It is further contended that in CCTV footage, respondent was seen causing abrasions on her chest/breasts and thighs to create evidence. There was no material before the learned Trial Court to proceed against him. Duration of the prosecutrix inside the room was only for one minute and eighteen seconds which makes the allegations inherently improbable. The complaint was made at behest of the third party with ulterior motives. Contradictory and inconsistent statements have been given by the witnesses during investigation.

5. Learned counsel for the respondent/complainant urged that at the initial stage of framing of charge the court is concerned not with proof but with a strong suspicion that the accused has committed the offence, which if put to trial, could prove him guilty. Statements of the prosecutrix and her witnesses cannot be disbelieved at this juncture.

6. Allegations in the complaint case, prima facie, constitute cognizable offences. The petitioner was specifically named and definite role was attributed to him for committing various offences. Despite filing two cancellation reports after registration of the FIR by the police, cognizance was taken by an order dated 16.05.2013 with detail reasons. It is unclear if the revision petition of the petitioner challenging the summoning order has been allowed/disposed of.

7. In the instant case, statements of the prosecutrix and her witnesses including Saroj Rani and Vipin Solanki were recorded. They have supported the complainant's version. Their version cannot be rejected or thrown away at this stage. The Ocular testimony of the prosecutrix, prima facie, is in consonance with medical evidence where abrasions were found over her breasts and thighs. The pleas raised for discharge or quashing of the FIR are primarily arguments on the merits of the case which are to be taken into consideration after the parties are given

opportunities to establish their respective cases during trial. At the stage of framing of charge, the court has no jurisdiction to go into the merits of the allegations, and is only required to evaluate the material and documents on record with a view to find out if the facts emerging therefrom taken at their face value disclose the existence of all ingredients constituting the alleged offence. The Trial Court was not required to weigh the evidence as if it was for conviction or acquittal. In *State of Maharashtra vs. Som Nath Thapa & Ors.* 1996 Cr.5, 2448, the Supreme Court observed:

“ If on the basis of materials on record a court could come to the conclusion that commission of the offence is a probable consequence, a case for framing of charge exists. To put it differently if the court were to think that the accused might have committed the offence, it can frame the charge, though for conviction, the conclusion is required to be that the accused has committed the offence. It is apparent at the stage of framing of a charge, probative value of the materials on record cannot be gone into; the materials brought on record by the prosecution has to be accepted as true at that stage.”

8. In *Amit Kapoor vs. Ramesh Chander & Anr.* (2013) 1 SCC (Cri) 986 the Supreme Court observed as under:-

9. “*Framing of charge is a kind of tentative view that the trial court forms in terms of Section 228 which is subject to final culmination of the proceedings. The legislature in its wisdom has used the expression 'there is ground for presuming that*

the accused has committed an offence'. This has an inbuilt element of presumption once the ingredients of an offence with reference to the allegations made are satisfied, the Court would not doubt the case of the prosecution unduly and extend its jurisdiction to quash the charge in haste, A Bench of this Court in the case of State of Maharashtra v. Som Nath Thapa and referred to the meaning of the word 'presume' while relying upon the Black's Law Dictionary. It was defined to mean 'to believe or accept upon probable evidence'; 'to take as proved until evidence to the contrary is forthcoming'. In other words, the truth of the matter has to come out when the prosecution evidence is led, the witnesses are cross-examined by the defence, the incriminating material and evidence is put to the accused in terms of Section 313 of the Code and then the accused is provided an opportunity to lead defence, if any. It is only upon completion of such steps that the trial concludes with the court forming its final opinion and delivering its judgment. Merely because there was civil transaction between the parties would not by itself alter the status of the allegations constituting the criminal offence.'"

10. In the light of the above discussion, the revision petition filed by the petitioner lacks merits and is dismissed. Pending applications also stand disposed of.

11. Observations in the order shall not have any impact on the merits of the case.

(S.P.GARG)
JUDGE

FEBRUARY 05, 2015/sa