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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ **CRL.REV.P. 216/2015 & CrI.M.A.5174/2015**

Date of Decision: 21.09.2015

SEEMA

..... Petitioner

Through Mr.Atul T.N., Mr.Amit Bhalla
& Mr.Deepak Tanwar, Advs.

versus

STATE OF NCT OF DELHI & ORS

..... Respondents

Through Ms.Rajni Gupta, APP for the
State.
SI Ashok Kumar PS Fatehpur
Beri.
Mr.Vishwendra Verma, Adv.
for R2 & R3.
Mr.Sachin Sangwan, Adv. for
R4 to R8.

CORAM:
HON'BLE MR. JUSTICE ASHUTOSH KUMAR

ASHUTOSH KUMAR, J. (ORAL)

1. The petitioner, who is the complainant and at whose instance FIR 287/2012 (PS Fatehpur Beri) dated 24.11.2012 was registered for offence under Sections 452/308/323/34 of the IPC, is aggrieved by the order dated 03.12.2014 passed by the learned Additional Sessions Judge-02, (South), New Delhi, whereby the Trial Court has held that charges are required to be framed under Sections 452/308/506 IPC read with Section 34 of the IPC and the order dated 02.02.2015

whereby the respondents have been charged for the aforesaid sections.

2. It has been submitted on behalf of the petitioner that from the averments made in the First Information Report ('FIR' for short) itself, it would appear that apart from the aforesaid sections of the IPC namely 452/308/506 IPC, offences under Sections 394/395/397/506 of the IPC are also made out. It is alleged that at the time of registration of the FIR itself, such sections ought to have been added for a proper investigation.

3. The FIR which is based on the statement of the petitioner inter alia states that in the absence of husband of the petitioner, the respondents came to her house, variously armed with lathi, danda, iron farsha, etc. and started looking for her husband. When the petitioner informed the respondents that her husband has gone to Saket Court, all the accused persons/respondents started abusing and threatened her of dire consequences. She was made to understand that if her husband deposed against the respondents in Saket Court on 22.11.2011, he as well as the petitioner would be killed. Thereafter, respondent no.3 (Ravinder) exhorted the other respondents to kill the petitioner. On such exhortation, respondent no.3 and respondent no.4 broke open the main gate and entered the premises of the house and started assaulting the petitioner. The household articles were ransacked. The respondents are alleged to have taken away Rs.2 lacs in cash which was kept in a bag hung over a peg and a gold chain weighing about 2 ½ tolas. The petitioner has alleged that when her son telephoned her husband, he came but by that time, the petitioner had become unconscious. On regaining her consciousness, the petitioner found herself admitted in

Trauma Centre at AIIMS Hospital.

4. On the basis of the aforesaid narration, FIR was instituted under Sections 452/308/323/506 IPC read with Section 34 of the IPC.

5. The police after investigation, submitted chargesheet under the same very sections in which the FIR was lodged namely Sections 452/308/323/34 of the IPC.

6. It has been submitted on behalf of the State that police, on investigation, found the allegations of taking away of money and gold chain to be incorrect and therefore, chargesheet was not submitted under Sections 394/395/397 of the IPC along with other sections.

7. It is further submitted on behalf of the State that the respondents are related to each other and from the statement made in the FIR itself, it would appear that there was an earlier case in which the husband of the petitioner had deposed against the respondents. It was in this context that the respondents are alleged to have threatened the petitioner of dire consequences and also assaulted her.

8. It has been pointed out by the State that though one injury was found on the person of the petitioner on parietal region but the injury was opined to be simple and blunt.

9. A perusal of the order dated 03.02.2014 reveals that the Trial Court did not accept the submission of the petitioner that Rs.2 lacs was taken away from her house. The Court below has found the story of the petitioner of her having kept Rs.2 lacs in cash in her home to be unpalatable. No document with respect to the purchase of the gold chain was furnished by the petitioner during the course of the investigation. There has not been any recovery of farsa and the

petitioner was not attacked on any vital portion of the body. Thus, on the basis of police papers and materials available before the Trial Court, charges were framed under Sections 452/308/506/34 of the IPC.

10. Learned counsel for the petitioner submits that the Trial Court was required to sift the material evidence available in the police papers before having framed charges against the respondents.

11. A reference has been made to Section 227 of the Cr.P.C. and it is stated that the aforesaid section enjoins a Judge, to find out whether or not there are sufficient grounds for proceeding against the accused persons under particular sections. The sufficiency of ground would take within its fold, the nature of the evidence recorded by the police or the documents produced before the Court which *ex facie* disclose that there are such circumstances against the accused so as to frame the charge against him under corresponding sections of IPC.

12. A reference has been made to Union of India vs. Praful Kumar Samal and Anr. (1979) 3 SCC 4 and State of Bihar vs. Ramesh Singh 1977 CLJ 1606 wherein the Supreme Court has held that at the initial stage, if there is strong suspicion which leads the court to think that there is ground for presuming that an accused has committed an offence, then it would not be open for the Court to say that there is no sufficient ground for proceeding under particular sections against the accused. The requirement of law is to find out whether a *prima facie* case exists.

13. It has been submitted on behalf of the petitioner that the order passed by the learned Trial Court is speculative and much too

presumptuous. When there is specific averment that the accused persons/respondents, assaulted the petitioner fatally and took away Rs.2 lacs and a gold chain, it was only desirable for the Trial Court to have framed charges under Sections 394/395/397 of the IPC along with other sections in which the charges have been framed. All the ingredients of the aforesaid offences are made out.

14. True it is that at the stage of framing of the charge, the Trial Court has to look into the materials namely police papers and has to come to an independent finding that prima facie offences in particular are made out, nonetheless the Trial Court is not to act as a mere rubber stamp and has to apply its mind over the facts of the case. In the present case, the Trial Court has given good reasons for not framing charges under Sections 394/395/397 of the IPC along with other sections.

15. The pending litigation between the parties, absurdity of the allegations, probability/improbability of commission of particular offences, materials in the police papers and the chargesheet have been taken into account while passing the order impugned.

16. This Court is not inclined to interfere with the order framing charges.

17. However, the petitioner would be at liberty to approach the Trial Court after some witnesses are examined, for addition/alteration of the charge in case requisite materials come before the Trial Court by way of deposition of witnesses.

18. The writ petition and the Crl.M.A.5174/2015 are, therefore,

dismissed with the aforesaid observations.

SEPTEMBER 21, 2015/ab

ASHUTOSH KUMAR, J