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IN THE HIGH COURT OF DELHI AT NEW DELHI

Date of Decision: 20th April, 2015

Crl.Rev.P.623/2014

ASHOK CHAWLA

..... Petitioner

Through: Mr.Ajay Burman and Mr.Kunal Malhotra,
Advocates

Versus

STATE (NCT OF DELHI)

..... Respondent

Through: Mr.O.P.Saxena, Additional Public
Prosecutor for the State.

CORAM:

HON'BLE MS. JUSTICE SUNITA GUPTA

J U D G M E N T

: SUNITA GUPTA, J.

1. The present petition has been filed by the petitioner under Section 397/401 read with Section 482 of the Code of Criminal Procedure, 1973 for setting aside the order on charge dated 19.08.2014 passed by learned Additional Sessions Judge in case FIR No. 34/2013 dated 20.03.2013 under Section 376/354 IPC Police Station South Campus.

2. Before dealing with the rival submissions of learned counsel for the parties, a brief reference to the relevant facts of the case leading to the registration of the FIR is necessary.

3. On receipt of DD No.30A dated 20.03.2013 WSI Pritima alongwith Constable Sudhir Maan reached at E-6, Anand Niketan, New Delhi where complainant Manisha met her and submitted a written complaint regarding commission of rape on her. In the complaint, complainant alleged that she is residing at house no. 202, R.K.Apartment, Patparganj, Delhi alongwith her 17 years old daughter Upasana since last one year and working as a Remiser in Geojit BP Paribas Company. In the year 2007, divorce took place between her and her husband. She knew Ashok Chawla through Jeevansathi.com since the year 2007. She was on talking terms with him and also used to visit his house.

She further alleged that in the year 2012 Ashok Chawla leased out a house to her and agreement was in the name of Ashok Chawla. On 20.03.2013 she had gone to the house of Ashok Chawla in connection with termination/renewal of lease agreement of the tenanted premises. She was in the office at first floor of the residence of Ashok Chawla where she was offered some coffee after which she lost her consciousness. When she gained her senses, she found herself lying on the carpet and no undergarments/jeans in the lower part of her body. She alleged that she had been raped by Ashok Chawla. After she gained consciousness she somehow managed to escape and filed this complaint. After completing investigation, chargesheet was submitted against the accused. Vide impugned order, learned Additional Sessions Judge found that a prima facie case for offence under Section 376/354 IPC is made out against the accused as such, charge was framed.

4. Aggrieved by framing of the aforesaid order on charge, the petitioner has filed the present revision petition stating inter alia that Trial Court has failed to appreciate the fact that a false complaint was lodged by the complainant with malafide intention and ulterior motive to wriggle out from the criminal case of forgery, cheating and theft committed by her. Mr.Ajay Burman, Advocate urges that in the year 2012 the complainant taking advantage of her relationship with petitioner stole the voter ID card of the petitioner in March, 2012 and thereafter forged his signatures on a tripartite agreement i.e., the lease agreement without the knowledge of the petitioner. The factum of fraud, forgery and cheating came to the knowledge of the petitioner only on 20.03.2013 when the complainant came to meet the petitioner at his residence-cum-office to inform about the notice served on him by the landlord. The petitioner lodged FIR against the complainant bearing No. 347/13 under Section 420/468/471 IPC at Police Station Madhu Vihar and chargesheet has been filed in the Court. It was further submitted that on 19.03.2013 the complainant received a notice for vacating the premises where she was residing as she had not paid rent of the said flat for nearly seven months. The allegations regarding commission of rape on her is falsified by the scientific evidence in the form of CCTV installed at the place of occurrence which was seized by the Investigating Officer and sent to FSL, Rohini and it was opined that there was no tampering in the same. A perusal

of the CCTV footage rather shows that the petitioner was being seduced by the complainant to make love with her as her intention from the beginning was and she wanted to frame the petitioner in this false and frivolous case to extort money and to wriggle out from criminal acts committed by her. Learned counsel also referred to the order passed by the learned Additional Sessions Judge while granting bail to the petitioner for showing that the relation was consensual. It was further submitted that the complainant and her daughter are in the habit of levelling similar allegations against other persons. Reference was made to one of such complaint lodged at police station Madhu Vihar being FIR No. 16/2013 against one Krishan. Reliance was placed on ***Prashant Bharti vs. State (NCT of Delhi) (2013) 9 SCC 293*** and it was submitted that this very judgment was cited even before the learned Trial Court and although he had relied upon Para 21 of the said judgment however learned Trial Court wrongly referred to Para 24 mentioning it as Para 21. It was submitted that since the scientific evidence takes precedence over the oral evidence which falsifies the allegations of the complainant as such, the Trial Court fell in error in framing charge against the petitioner and same be set aside.

5. Per contra, learned Public Prosecutor for the State submitted that there are specific allegations of commission of rape upon the prosecutrix by the petitioner which are reiterated by her in her statement recorded under Section 164 Cr.P.C. The CCTV footage was produced by the brother of the accused during the investigation when accused was in custody. Identity of the prosecutrix and her consent, if any, will be required to be ascertained during the course of trial and the prosecutrix has to be confronted with the CCTV footage. At this stage no inference can be drawn that the FIR is false. Prima facie view is required to be taken and appreciation of evidence is not required. That being so, the impugned order does not suffer from any infirmity which calls for interference and the petition is liable to be dismissed.

6. The Court has examined the impugned order and considered the submissions made by learned counsel for the petitioner and learned Additional Public Prosecutor in the light of facts of the case. It is settled law that at the time of framing of charge, the Trial Court is required to examine the evidence brought before it only for the limited

purpose of deciding as to whether a prima facie case has been made out against the accused or not. Based on said evidence, if the Judge is satisfied that a sufficient case is made out then he ought to proceed to direct the framing of charges and conduct the trial based thereon. However, at that stage, the Judge is not required to shift the entire evidence and discuss the relative merits and demerits of the case to arrive at conclusive decision. The only requirement is that if the Judge is satisfied that the evidence produced before him gives rise to suspicion, enough for him to discharge the accused, then he ought to be discharged but if that is not the case and the material on record is sufficient to make a conviction reasonably possible, then the Court should proceed to frame the charges. The learned Trial Court was right in observing that the factum of intercourse being consensual is required to be ascertained during the course of trial. In her complaint as well as her statement under Section 164 Cr.P.C the complainant has alleged that she was raped by the accused after she fell unconscious as she was offered some coffee after which she lost her consciousness. The main thrust of learned counsel for the petitioner is on CCTV footage however complainant has to be confronted with CCTV footage during the course of her examination and her identity is required to be ascertained. The observations made while granting bail to the accused cannot be made a ground for discharge of the accused. In Prashant Bharti's case the complainant herself had filed a writ petition before High Court seeking quashing of the FIR lodged by her. Further, presence of the complainant as well as of the accused at the alleged place of occurrence on the fateful day at the relevant time was negated by the call details of the parties. The allegations made by the complainant could not be verified by the police from any direct or scientific evidence. The material relied upon by the accused was not refuted by the complainant rather she herself approached the High Court for quashing of the FIR. Even the Investigating Officer had acknowledged in the chargesheet that he could not find any proof to substantiate the charges and that the chargesheet was filed only on the basis of the statement of the prosecutrix under Section 164 Cr.P.C. Taking note of all these circumstances appearing in the case, the order of framing charge was quashed. However, things are different in the instant case. Truthfulness or falsity of the allegations cannot be prejudged at this initial stage. Complainant has to be afforded an opportunity regarding the CCTV footage. The complaints and counter complaints made by parties against each

other will also required to be considered at the appropriate stage. In view of the aforesaid facts and circumstances and upon perusing the impugned order, this Court is of the opinion that no such illegality, arbitrariness or perversity has been pointed out in the conclusion arrived at by learned Additional Sessions Judge while framing the charges against the petitioner for this Court to interfere therein. As a result, the present petition is dismissed.

(SUNITA GUPTA)
JUDGE

APRIL 20, 2015
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