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

+ **CRL.REV.P. 574/2016**

% **Decided on: 15th September, 2016**

SMT KAVITA

..... Petitioner

Represented by: Mr. B.N. Singh, Mr. Robin
George and Ms. Bharti,
Advocates.

versus

STATE (GOVT OF NCT OF DELHI) & ANR Respondents

Represented by: Ms. Rajni Gupta, APP for the
State.

CORAM:

HON'BLE MS. JUSTICE MUKTA GUPTA

MUKTA GUPTA, J. (ORAL)

Crl. M.A. No. 14283/2016 (Recalling of order/restoration)

For the reasons stated in the application Crl. Rev. Petition
No.574/2016 is restored to its original position.

Application is disposed of.

CRL.REV.P. 574/2016

1. FIR No.914/2014 was registered for offences punishable under Sections 376D/354B/509/34 IPC on the statement of the complainant who stated that her sisters-in-law, brothers-in-law, tenant Pradeep and both his sisters used to speak ill of the character of the complainant. On the day of incident Laxmi, her sister-in-law Jyoti, brother-in-law Rinku again spoke ill about her and when she tried to clarify the facts by going downstairs suddenly her brother-in-law Rinku and tenant Pradeep used abusive language. They repeatedly called her prostitute and asked her to have

relations with them. A scuffle ensued wherein Rinku caught hold of her suit which got torn. When she tried to compose herself Rinku caught hold of her hands and Pradeep put his hand in her salwar and inserted his finger in her private part. She further stated that she could withdraw from there and in the meantime, the neighbours and her husband came whereafter Rinku and Pradeep ran inside their house and closed the door. Jyoti with folded hands pleaded to finish of the matter however, there were exchange of abuses even thereafter from both sides. She made a call to 100 number however, the Investigating Officer came after one hour and refused to take her statement asking her to give an application in the Police Station. Thus on her written complaint she sought action.

2. Statement of the complainant was recorded under Section 164 Cr.P.C. wherein she reiterated the allegations made in her complaint. During the course of investigation it was also found that a CCTV camera was installed at the spot. Thus CCTV footage was looked into and the allegations of the complainant that Rinku tore her suit whereafter he caught hold of her hands and Pradeep put his finger in the private part of the complainant was not Substantiated. Recording of the CCTV footage for the relevant time was seized. Hard disk and the DVR of the CCTV were sent to the CFSL which found no tampering in the recording of the hard disk because the video footage was continuous and the mentioned timings were running second by second. On the basis of the complaint, the statement of the complainant under Section 164 Cr.P.C., statement of witnesses and the CCTV footage charge sheet was filed without arresting Rinku and Pradeep Kumar in the above noted FIR.

3. Vide the impugned order dated 11th May, 2016 learned Trial Court discharged Rinku and Pradeep. The learned Trial Court noted that Shakeela, wife of Aslam, resident of first floor though supported the version of the prosecutrix however, the other residents of the house namely Seema, Laxmi, Sunita and Kishan Pal residing on the ground floor and the second floor stated that there were abuses only from both the sides. The learned Trial Court also noted that during investigation it was revealed that there was a property dispute between both the sides, litigation was pending and FIR had been filed against the husband of the prosecutrix which was pending investigation. Another FIR filed by the husband of the prosecutrix, after investigation was pending trial before the Court concerned. It was also noted that both the sides kept on filing complaints against each other. As per the CCTV footage no physical scuffle could be seen between the accused persons and the prosecutrix as alleged by her and the prosecutrix was seen continuously angrily shouting against the persons stating ill about her character while other persons were pacifying her. There was no scene as alleged by the prosecutrix about there being a physical scuffle, Rinku catching hold of her suit, pulling it out, her suit getting torn and thereafter Rinku holding her hands and Pradeep putting his hand in her lower and his finger in her private part. The learned Trial Court noted that out of the statements of six independent witnesses recorded, only one witness supported the version of the prosecutrix and the rest have not supported her case. The learned Trial Court also noted that despite repeated request of the Investigating Officer, the prosecutrix did not produce her clothes which were allegedly torn during the incident. Relying upon the decision of the Supreme

Court reported as 1979 (3) SCC 4 Union of India vs. Prafulla Kumar Samal learned Trial Court discharged the accused.

4. The only contention of the learned counsel for the petitioner before this Court is that in view of the statement of the prosecutrix duly reiterated under Section 164 Cr.P.C. and supported by one independent witness, the learned Trial Court could not have discharged the accused and the accused ought to have faced trial. It is contended that the learned Trial Court at this stage entered into the realm of appreciation of evidence which was not permitted.

5. Fair investigation and a fair trial to the accused is a constitutional mandate and the same cannot be violated. Emphasizing the need of placing on record the documents which are in favour of the accused, the Supreme Court in the decision reported as 2013 (9) SCC 276 Manjeet Singh Khara vs. State of Maharashtra held:

8. The Court also noticed that seizure of large number of documents in the course of investigation of a criminal case is a common feature. After completion of the process of investigation and before submission of the report to the Court under Section 173 Code of Criminal Procedure, a fair amount of application of mind on the part of the investigating agency is inbuilt in the process. These documents would fall in two categories: one, which supports the prosecution case and other which supports the accused. At this stage, duty is cast on the investigating officer to evaluate the two sets of documents and materials collected and, if required, to exonerate the accused at that stage itself. However, many times it so happens that the investigating officer ignores the part of seized documents which favour the accused and forwards to the Court only those documents which supports the prosecution. If such a situation is pointed out by the accused and those documents

which were supporting the accused and have not been forwarded and are not on the record of the Court, whether the prosecution would have to supply those documents when the accused person demands them? The Court did not answer this question specifically stating that the said question did not arise in the said case. In that case, the documents were forwarded to the Court under Section 173(5) Code of Criminal Procedure but were not relied upon by the prosecution and the accused wanted copies/inspection of those documents. This Court held that it was incumbent upon the trial Court to supply the copies of these documents to the accused as that entitlement was a facet of just, fair and transparent investigation/trial and constituted an inalienable attribute of the process of a fair trial which Article 21 of the Constitution guarantees to every accused. We would like to reproduce the following portion of the said judgment discussing this aspect:

21. The issue that has emerged before us is, therefore, somewhat larger than what has been projected by the State and what has been dealt with by the High Court. The question arising would no longer be one of compliance or non-compliance with the provisions of Section 207 Code of Criminal Procedure and would travel beyond the confines of the strict language of the provisions of Code of Criminal Procedure and touch upon the larger doctrine of a free and fair trial that has been painstakingly built up by the courts on a purposive interpretation of Article 21 of the Constitution. It is not the stage of making of the request; the efflux of time that has occurred or the prior conduct of the accused that is material. What is of significance is if in a given situation the accused comes to the court contending that some papers forwarded to the court by the investigating agency have not been exhibited by the prosecution as the same favours the accused the court must concede a right to the accused to

have an access to the said documents, if so claimed. This, according to us, is the core issue in the case which must be answered affirmatively. In this regard, we would like to be specific in saying that we find it difficult to agree with the view taken by the High Court that the accused must be made to await the conclusion of the trial to test the plea of prejudice that he may have raised. Such a plea must be answered at the earliest and certainly before the conclusion of the trial, even though it may be raised by the accused belatedly. This is how the scales of justice in our criminal jurisprudence have to be balanced.

6. Emphasizing the need to place all the relevant documents i.e. the ones that favour the prosecution and those favouring the accused on record the Rajasthan High Court in the decision reported as 2006 CriLJ 2151 Neelesh Jain vs. State of Rajasthan held:

15. At times, the prosecution has used the loophole in the law, in the garb of using the power and Section 173 of the Code, to withhold those documents, which weaken their case against the accused. However, such a free exercise of power is against the spirit of the Code. Once a person has been accused of the commission of an offence, it is for the investigating agency to discover if in fact the offence has been committed by the said offender or by someone else. Like an archaeologist, the investigator must brush layers of evidence to reach the truth. But in his endeavour to book the accused, he cannot collect one- sided evidence and present it to the court. For the investigating agency has to be impartial in its investigation. Moreover, the prosecutor cannot convert himself into a persecutor by submitting one side of the investigation and by withholding relevant portion that would favor the accused person. Neither the investigating agency, nor the prosecution is supposed to

merely claim, "Ashwatham maro," without informing the Court as to who has died, the Man or the elephant.

16. In case the prosecution is permitted to withhold vital evidence from the court, the unscrupulous prosecution would be permitted to keep the Court in the dark. The law does not permit the prosecution to play fowl with the Court. Like any party before the Court, the prosecution, too, must come to the court with clean hands. If information is withheld from the Court, then adverse inference should be drawn against the prosecution. Such an inference flows legally from Section 114 of the Evidence Act.

7. As noted above the Investigating Agency following the mandate of law, rightly placed the entire material before the learned Trial Court along with the charge sheet in the form of statements of the complainant, witnesses both supporting and not supporting the complainant and the CCTV footage. Supreme Court in the decision reported as 2008 (14) SCC 1 Rukmini Narvekar vs. Vijaya Satardekar and Ors. considering the earlier decision in State of Orissa Vs. Debendra Nath Padhi held that even documents of the defence which are of impeccable character can also be looked into. It was held:

"20. We have carefully perused the decision of this Court in State of Orissa v. Debendra Nath Padhi [(2005) 1 SCC 568: 2005 SCC (Cri) 415]. Though the observations in para 16 [Ed.: See also para 23 in Debendra Nath Padhi, (2005) 1 SCC 568] of the said decision seem to support the view canvassed by Shri Rohatgi, it may also be pointed out that in para 29 of the same decision it has been observed that the width of the powers of the High Court under Section 482 CrPC and Article 226 of the Constitution is unlimited whereunder in the interests of justice the High Court can make such orders as may be necessary to prevent abuse of

the process of the Court or otherwise to secure the ends of justice within the parameters laid down in Bhajan Lal case [1992 Supp (1) SCC 335 : 1992 SCC (Cri) 426 : JT (1990) 4 SC 650]. Thus we have to reconcile paras 16 [Ed.: See also para 23 in Debendra Nath Padhi, (2005) 1 SCC 568] and 29 of the decision in State of Orissa v. Debendra Nath Padhi [(2005) 1 SCC 568: 2005 SCC (Cri) 415].

21. *We should also keep in mind that it is well settled that a judgment of the Court has not to be treated as Euclid's formula [vide Rajbir Singh Dalal (Dr.) v. Chaudhari Devi Lal University [(2008) 9 SCC 284: (2008) 2 SCC (L&S) 887: JT (2008) 8 SC 621]]. As observed by this Court in Bharat Petroleum Corpn. Ltd. v. N.R. Vairamani [(2004) 8 SCC 579: AIR 2004 SC 4778] , observations of courts are neither to be read as Euclid's formula nor as provisions of the statute.*

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 [(2005) 1 SCC 568 : 2005 SCC (Cri) 415] , 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.”*

8. The issue before this Court is whether on the basis of this impeccable evidence of CCTV footage the Court could have discharged the accused or not. It is trite law that even at the stage of charge the Court is required to consider the entire material placed by the prosecution. For the purpose of considering whether charge can be framed against the accused, the Court can sift the material placed before it. In Union of India vs. Prafulla Kumar Samal (Supra) it was held:

“10. Thus, on a consideration of the authorities mentioned above, the following principles emerge:

- (1) That the Judge while considering the question of framing the charges under Section 227 of the Code 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 out.*
- (2) 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.*
- (3) The test to determine a prima facie case would naturally depend upon the facts of each case and it is difficult to lay down a rule of universal application. By and large however 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 within his right to discharge the accused.*
- (4) That in exercising his jurisdiction under Section 227 of the Code the Judge which under the present Code is a senior and experienced court cannot act 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, any basic infirmities appearing in the case and so on. This however does not mean that the Judge should make a roving enquiry into the pros and cons of the matter and weigh the evidence as if he was conducting a trial.”

9. Thus at the stage of framing charge, on evaluation of the entire material if the Court finds that there is no strong suspicion against the accused for having committed the offence alleged, the accused is entitled to be discharged. As noted above the Court considered the entire material placed on record by the prosecution and in view of the unimpeachable documentary material in the form of CCTV footage which as per the CFSL report was not tampered with, no such incident as alleged of molestation or rape having taken place, the learned Trial Court rightly came to the conclusion that there was no strong suspicious for the accused to have committed the offence and discharged them.

10. Finding no infirmity in the impugned order, the present petition is dismissed.

(MUKTA GUPTA)
JUDGE

SEPTEMBER 15, 2016
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