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

+ CRL.REV.P. 714/2016 & Crl.M.A.17275/2016 (Stay)

DR SUSHANT SINGH & ORS

..... Petitioners

Through : Mr. Kapil Sankhla, Mr. Ashutosh
Sharma and Mr. Shashank Mishra,
Advs.

versus

STATE (GOVT OF NCT OF DELHI)

..... Respondent

Through : Mr. Sudershan Joon, APP with
W/ASI Clara Toppo PS Malviya
Nagar.

CORAM:

HON'BLE MR. JUSTICE A.K. PATHAK

ORDER

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07.11.2016

Crl.M.A.17276/2016 (Exemption)

Allowed, subject to all just exceptions.

Application is disposed of.

CRL.REV.P. 714/2016

Petitioners have filed this revision petition against the order dated 27th July, 2016, passed by the learned Additional Sessions Judge, Spl. FTC, South District, Saket Courts, New Delhi; whereby charge under Section 376 IPC and in the alternative for bigamy under Section 494 IPC has been framed against the petitioner no.1. Charge under Section 4 of the Dowry Prohibition Act, 1961 has also been framed against the petitioner nos.2 & 3,

who are parents of petitioner no.1. Prosecutrix in her statement under Section 161 Cr.P.C. as well as under Section 164 Cr.P.C. has alleged that petitioner no.1 had cheated and sexually abused her after extending promises to marry her. They got married on 23rd May, 2011 in Arya Samaj Temple, Jamuna Bazar, Delhi. But thereafter, they continued to live in their respective parents' houses. Petitioner no.1 represented that he would disclose the marriage to their family members in due course but he avoided to do so. However, he continued to have physical relations with her by assuring her that he would disclose factum of marriage to his family. In the month of May, 2013, the prosecutrix told her family members about the marriage and all of them went to the house of petitioner no.1 and disclosed the factum of marriage to his family members when it was revealed that marriage of petitioner no.1 had been fixed with some other girl. They told prosecutrix and her parents that if they wanted to marry the prosecutrix with petitioner no.1, they will have to give ₹20 Lakhs in cash, one Audi Car and jewellery. Petitioner no.1 denied that he had married the prosecutrix. Petitioner no.1 had performed a fake marriage with the prosecutrix.

Trial court has held that the court while framing charge has to see whether a, prima facie, case was made out against the accused and it was not

required to sift and weigh the evidence. At the stage of framing of charge, defence of the accused cannot be put forth, the probative value of the material on record cannot be gone into and the material brought on record by the prosecution has to be accepted as true. Marshalling and appreciation of evidence is not in the domain of the court at the stage of framing of charge. Charge can be framed on the basis of a strong suspicion. The court cannot apply the same standard and test to frame charge as which is applied to determine the guilt of the accused. Charges can be framed against the accused when the court comes to the conclusion that commission of the offence was a probable consequence and a case of framing of charge exists. Reliance has been placed on Union of India v. Prafulla Kumar Samal, (1979) 3 SCC 4, State of Orissa v. Debendra Nath Padi AIR 2005 SC 359, Soma Chakravarty v. State through CBI, AIR 2007 SC 2149 and Palvinder Singh v. Balvinder Singh, AIR 2009 SC 887, Smt. Inderjit Kaur v. State of Delhi 94 (2001) DLT 584, Stree Attyachar Virodhi Parishad v. Dilip Nathumal Chordia (1989) 1 SCC 715, State of Bihar v. Ramesh Singh AIR 1977 SC 2018 and State of Maharashtra v. Som Nath Thapa, AIR 1966 SC 1744.

Trial court has also placed reliance on Uday v. State of Karnataka

AIR 2003 SC 1639; Deelip Singh v. State of Bihar AIR 2005 SC 203; and Yedla Srinivasa Rao v. State of AP (2006) 11 SCC 615 wherein it is held that the consent of the prosecutrix for sexual intercourse, where it is obtained under a misconception of fact, was not true consent. Reliance was placed on Girish Baruah v. State of Assam [2008 (4) GLT 977] and Chanchal v. State [2012 (1) JCC 445] wherein it is held that submission of the body by a woman under the fear or misconception of fact cannot be construed as consented sexual act for the purpose of Section 375 IPC. Reliance was also placed on Ram Chandra Bhagat v. State of Jharkhand [(2010) 13 SCC 780] wherein it is held that Section 493 IPC does not presuppose a marriage between the accused and the victim necessarily by following a ritual or marriage by customary ceremony. What has been clearly laid down is that there should be an inducement of belief in the woman that she is lawfully married to the accused and the inducement of belief of lawful marriage cannot be interpreted so as to mean or infer that the marriage necessarily had to be in accordance with any custom or ritual. In Gopal Lal v. State of Rajasthan AIR 1979 SC 713 it is held that the essential ingredients of the offence under Section 494 IPC are that - (1) the accused spouse must have contracted the 1st marriage, (2) that while the 1st marriage

was subsisting the spouse concerned must have contacted a 2nd marriage and (3) that both the marriages must be valid in the sense that the necessary ceremonies required by the personal law governing the parties had been duly performed.

Trial court has concluded as under:-

“At this stage, this court is required to look at the allegations made as a whole to assess whether a prima facie case is made out against all the three accused persons. I am required to consider the broader probabilities to the case, the total effect of the evidence and documents produced before me however, I am not required to make a roving inquiry into the pros and cons of the matter and weigh the evidence as if I am conducting a trial. At the stage of framing charge, this court cannot overlook the allegations made by the prosecutrix in her complaint and statement under Section 164 Cr.P.C. cumulatively. As per the complaint of the prosecutrix and her statement under Section 164 Cr.P.C. the prosecutrix has specifically alleged that the accused Sushant befriended her and elicited her consent for sexual intercourse on the promise of marriage in March 2011. They had physical relations in his house in Noida in March 2011 because of his assurance. The prosecutrix and the accused Sushant did undergo a marriage ceremony on 23.05.2011 which was witnessed by Nishant Arora and Dr.Vikas Yadav both of whose statement has been recorded under Section 161 Cr.P.C. After the said marriage ceremony accused Sushant and the prosecutrix on his insistence continued to live in their respective houses representing to the society

that they were both having single status however, for the next 2 years as per the version of the prosecutrix he continued to have sexual intercourse with her while assuring her that they would disclose about their marriage at the right time. Subsequently the accused got married to Pooja Jaggi on 13.06.14. The prosecutrix has alleged that accused Shashank underwent a fake marriage ceremony only to elicit her consent for sexual intercourse. He refused to get their marriage registered. The marriage certificates of both the marriages (of the accused Sushant with the prosecutrix and Pooja Jaggi) have been filed with the chargesheet. Thus in the light of the above discussion and the case law *prima facie*, considering the nature of allegations made and documents filed with the chargesheet I find sufficient material to frame charge against accused Sushant Singh for the offences of cohabiting by deceitfully inducing a belief of lawful marriage under Sections 493 IPC, for the offence of rape [clause “fourthly” of Section 375 IPC] under Section 376 IPC and in the alternative for bigamy under Section 494 IPC. The allegations against accused Hukum Singh Kardam and Pushpa Kardam being that they demanded dowry, *prima facie*, I find sufficient material against both of them to frame charge under Section 4 of the Dowry Prohibition Act, 1961. Let the charge be framed against all the three accused persons.”

By placing reliance on *Jatinder Kumar & Ors. Vs. State (Delhi Admn.)* Delhi, 1992 Cri LJ 1482 and *Anil Kumar Vs. State*, 2006 (1) JCC 22, learned counsel for the petitioners has contended that alternative charge of rape and bigamy could not have been framed being diametrically opposed

to each other. The ingredients of two sections are different. In *Jatinder Kumar (supra)*, charge under Section 302 IPC was framed and in the alternative charge under Section 306 IPC was also framed. In this context, it was held that ingredients of two sections are different. Accordingly, framing of charge in the alternative is, likely, to be prejudicial to accused. Similar is the view expressed in *Anil Kumar (supra)*. Both the judgments have been rendered by the Delhi High Court. Learned Additional Public Prosecutor has contended that in subsequent judgements, Supreme Court has held that alternative charge of Section 302 IPC can be framed in cases of dowry death. In *Rajbir @ Raju & Anr. Vs. State of Haryana*, MANU/SC/0967/2010, Supreme Court has directed the trial court to ordinarily add section 302 to the charge of section 304B, so that death sentences can be imposed in such heinous and barbaric crimes. In *Jasvinder Saini & Ors. Vs. State (Govt. NCT of Delhi)*, MANU/SC/0642/2013, Supreme Court has clarified that directions passed in *Rajbir (supra)* was not meant to be followed mechanically and without due regard to the nature of the evidence available in the case. All that the Supreme Court meant to say was that in any case where a charge alleging dowry death is framed, a charge under Section 302 can also be framed if the evidence otherwise

permits; meaning thereby in case of dowry death, an alternative charge under Section 302 IPC can be framed. In *Kisan @ Pilaji Gangaram Khatale & Ors. Vs. State of Maharashtra*, MANU/MH/0463/2006, the question raised was whether the accused could be tried for the offences both under Sections 302 & 306 of IPC, which are distinct offences having altogether different ingredients and whether that would cause any prejudice to the accused in propounding his defence. Bombay High Court held that if the facts and circumstances demand, the trial court should frame alternative charge under Section 306 also so as to keep the accused on guard and make him aware that there could be a conviction under Section 306 even if a charge under Section 302 IPC is not established. It was held that no prejudice whatsoever would be caused to the accused if an alternative charge under Section 306 IPC is also framed, keeping in view the allegations against the accused. Reliance was placed on *Dalbir Singh Vs. State of U.P.*, 2004 (Cri) 503 wherein it was held that if the Court has sufficient power to convict the accused under Section 306 of IPC in a case where the accused was charged and tried only for the offence punishable under Sections 302, 498-A read with Section 34 of IPC, there should not be any difficulty in framing an alternative charge under Section 306 in case of bride

burning or where the allegations attracting an offence under Section 498-A of IPC are sufficient to drive a person to commit suicide.

Accordingly, judgments relied on by learned counsel for petitioners, are of no benefit to petitioners.

In the facts of the present case, as noted above, I am of the view that trial court has committed no error or legal infirmity in framing of alternative charge under Section 494 IPC.

Revision petition is dismissed. Miscellaneous application is disposed of as infructuous.

A.K. PATHAK, J.

NOVEMBER 07, 2016/dk