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

+ **CRL.REV.P. 819/2016**

**MS SUNITA**

..... Petitioner

Through: Ms. Indu Kaul, Advocate

versus

**STATE & ORS**

..... Respondent

Through: Mr. Rajat Katyal, APP with SI  
Manish, PS Vasant Kunj

**CORAM:**

**HON'BLE MR. JUSTICE VIPIN SANGHI**

**ORDER**  
**20.12.2016**

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1. The petitioner has preferred the present criminal revision u/s 397 Cr PC to assail the order dated 30.07.2016 passed by the learned ASJ-02/FTC, New Delhi District Patiala House Courts, New Delhi in case FIR No.218/2014 registered at PS Vasant Kunj (North) titled State v. Rajeev Ranjan Nirala. By the impugned order on charge on the supplementary charge sheet, the learned ASJ has discharged the accused in respect of allegations made in the supplementary report.

2. The petitioner is the prosecutrix in the aforesaid case. Initially, the charges were framed against the accused vide order dated 09.02.2014 for the offences punishable u/s 376(2) (n)/328/506 IPC. During the pendency of

trial, the IO moved an application seeking permission for further investigation u/s 173(8) Cr PC, which was allowed. In pursuance of the further investigation conducted by the IO, the aforesaid supplementary charge sheet was filed for offences punishable u/s 3(1)(x) and 3(1)(xii) of The Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989 (the SC/ST Act).

3. The aforesaid FIR came to be registered on the complaint of the petitioner/ prosecutrix dated 15.03.2014. In substance, she alleged that the accused promised to marry the prosecutrix by making a proposal in June, 2011. Both the prosecutrix and the accused were studying at Jawaharlal Nehru University (JNU). On the pretext of the said promise, the accused allegedly established physical relationship with the prosecutrix between 2011 and 2012 in the hostel premises. He also forced the prosecutrix to consume medicines which adversely affected her health.

4. In her complaint, she alleged that the accused did not agree to marry her because she was a dalit. This was despite the fact that the accused was aware from day one itself that the prosecutrix belongs to a poor dalit family. She also alleged that the accused also expected a large dowry, which her father could not afford.

5. The supplementary charge sheet in question came to be filed on account of the fact that the prosecutrix made a written complaint dated 26.05.2014 to the National Commissioner for SC/ST. The Commission marked the said complaint to the Commissioner of Police, which was then assigned to the IO. The prosecutrix made a further complaint dated 26.05.2014 as well, wherein she alleged that after registration of the initial FIR, the accused was arrested. Thereafter the accused sent a message

through his friends that he would marry the prosecutrix if she helped him in securing bail from the court, to which she agreed. The Court, accordingly, granted time to the accused to get married to the prosecutrix between 8<sup>th</sup> to 24<sup>th</sup> May, 2014. However, after securing the bail, the accused changed his stand and started pressurising the prosecutrix to take back the case.

6. During the course of further investigation, the supplementary statement of the prosecutrix was recorded on 02.12.2015, wherein she stated for the first time that the accused addressed her by calling her “churi chamar” in front of several people in Kalkaji temple. The supplementary charge sheet contains the statement of two witnesses, Uma Ratudi and Manju Singh dated 10.12.2015 in support of the allegation made under the SC/ST Act.

7. The learned ASJ has discharged the accused of the additional charges by observing in the impugned order as follows:

*“17. Further investigation was a result of a complaint dated 26.05.2014 made by the prosecutrix to the SC/ST Commission. Even in this complaint, there is no mention of any incident in which the accused had intimidated or insulted the prosecutrix with respect to her caste. Such an allegation has surfaced for the first time in her supplementary statement dated 02.12.2015. In that statement only a bald allegation is made by the prosecutrix. No specific date, month or year of the alleged incident in which the accused uttered caste specific derogatory remarks to her has been mentioned. The witnesses of this alleged incident Uma Ratudi and Manju Singh themselves have also not mentioned any specific date, month or year when the said alleged incident took place. They have only stated that the incident took place about 1 ½ - 2 years ago (from their statement being recorded in December, 2015).*

*18. There is no mention of any such incident in the complaint dated 26.05.2014 of the prosecutrix made to the SC/ST*

*Commission. If one were to go by the sequence of events of this case then the alleged incident regarding caste specific derogatory remarks being uttered by the accused to the prosecutrix in Kalkaji Temple would have taken place after the accused was granted interim bail. As per the record, the accused was arrested on 06.05.2014. He was granted interim bail on 08.05.2014 till 24.05.2014 to get married with the prosecutrix. The marriage did not take place. The interim bail application was adjourned for 31.05.2014. On 31.05.2014, the accused submitted that the complainant was not ready to get married to the accused. After considering the submissions of the parties, the following order was passed on 31.05.2014 on the interim bail application of the accused:*

*“I have given careful consideration to the submissions of ld counsel for the accused/ applicant and ld APP as well. Since, the interim bail was granted to the accused at the instance of the complainant, so the I.O. is directed that before effecting the arrest of the accused/ applicant Rajeev Ranjan Nirala, he may issue 10 days notice to the accused/ applicant Rajeev Ranjan Nirala. Accordingly application stands disposed of”.*

*19. The marriage between the prosecutrix and the accused did not materialise even though interim bail had been granted for this purpose. In these facts and circumstances after 31.0.2015, there could not have been any reasonable possibility of the accused and the prosecutrix going together to Kalkaji Mandir to perform seva when the alleged incident in which the accused made caste specific derogatory remarks to the prosecutrix in the said temple took place.*

*20. The offence under Section 3(1)(xii) of the SC/ST Act punishes sexual exploitation of a woman belonging to a scheduled caste by a person (not being a scheduled caste) in a position to dominate the will of such a woman. A plain and simple reading of this section would imply that it is where a person who is not a scheduled caste but is in a position to dominate a woman only for the reason that she belongs to a scheduled caste, uses such domination to exploit her sexually.*

*In the present case, the FIR has been registered on a written complaint dated 15.03.2014 of the prosecutrix. The contents of the same have already been referred to in the preceding paras of this order. The basic allegation levelled was that the accused had indulged in sexual intercourse with her under a false promise of marriage. There is no allegation that the accused was in a position to dominate the prosecutrix only for the reason that she belonged to a scheduled caste and then exploited her sexually. There is no such allegation at all in this case in any of the complaints of the prosecutrix.*

21. *In the case of L. Krishna Reddy v. State, (2014) 14 SCC 401, at page 405:*

*“10. Our attention has been drawn to Stree Atyachar Virodhi Parishad v. Dilip Nathumal Chordia [(1989) 1 SCC 715 : 1989 SCC (Cri) 285] as well as K. Narayana Rao [CBI v. K. Narayana Rao, (2012) 9 SCC 512 : (2012) 4 SCC (Civ) 737 : (2012) 3 SCC (Cri) 1183] but we are unable to appreciate any manner in which they would persuade a court to continue the prosecution of the parents of the deceased. After considering Union of India v. Prafulla Kumar Samal [(1979) 3 SCC 4 : 1979 SCC (Cri) 609] , this Court has expounded the law in these words: (Stree Atyachar Virodhi Parishad case [(1989) 1 SCC 715 : 1989 SCC (Cri) 285] , SCC p. 721, para 14)*

*“14. ... In fact, Section 227, itself contains enough guidelines as to the scope of enquiry for the purpose of discharging an accused. It provides that ‘the Judge shall discharge when he considers that there is no sufficient ground for proceeding against the accused’. The ‘ground’ in the context is not a ground for conviction, but a ground for putting the accused on trial. It is in the trial, the guilt or the innocence of the accused will be determined and not at the time of framing of charge. The court, therefore, need not*

*undertake an elaborate enquiry in sifting and weighing the material. Nor is it necessary to delve deep into various aspects. All that the court has to consider is whether the evidentiary material on record if generally accepted, would reasonably connect the accused with the crime. No more need be enquired into.”*

11. *The court is neither a substitute nor an adjunct of the prosecution. On the contrary, once a case is presented to it by the prosecution, its bounden duty is to sift through the material to ascertain whether a prima facie case has been established which would justify and merit the prosecution of a person. The interest of a person arraigned as an accused must also be kept in perspective lest, on the basis of flippant or vague or vindictive accusations, bereft of probative evidence, the ordeals of a trial have to be needlessly suffered and endured. We hasten to clarify that we think the statements of the complainant are those of an anguished father who has lost his daughter due to the greed and cruelty of his son-in-law. As we have already noted, the husband has taken his own life possibly in remorse and repentance. The death of a child even to avaricious parents is the worst conceivable punishment. (Emphasis supplied)*

22. *In the case of P. Vijayan v. State of Kerala, (2010) 2 SCC 298 : (2010) 1 SCC (Cri) 1488, the Hon’ble Supreme Court was pleased to observe as under:*

*10. Before considering the merits of the claim of both the parties, it is useful to refer to Section 227 of the Code of Criminal Procedure, 1973, which reads as under:*

*“227. Discharge.—If, upon consideration of the record of the case and the documents submitted therewith, and after hearing the submissions of the accused and the prosecution in this behalf, the Judge considers that there is not sufficient ground for proceeding against the accused, he*

*shall discharge the accused and record his reasons for so doing.”*

*If two views are possible and one of them gives rise to suspicion only, as distinguished from grave suspicion, the trial Judge will be empowered to discharge the accused and at this stage he is not to see whether the trial will end in conviction or acquittal. Further, the words “not sufficient ground for proceeding against the accused” clearly show that the Judge is not a mere post office to frame the charge at the behest of the prosecution, but has to exercise his judicial mind to the facts of the case in order to determine whether a case for trial has been made out by the prosecution. In assessing this fact, it is not necessary for the court to enter into the pros and cons of the matter or into a weighing and balancing of evidence and probabilities which is really the function of the court, after the trial starts.*

*11. At the stage of Section 227, the Judge has merely to sift the evidence in order to find out whether or not there is sufficient ground for proceeding against the accused. In other words, 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 suspicious circumstances against the accused so as to frame a charge against him. (Emphasis supplied)*

*23. It is thus settled law that once a matter is brought before a Court, its duty to sift through the material to ascertain whether a prima facie case has been established which would justify and merit the prosecution of a person. Further, if the material placed gave rise to two possible views, and one of them gives rise to suspicion only as distinguished from grave suspicion, the Court is empowered to discharge the accused.*

*24. The facts of the present make it clear that there are two views possible, one in favour of the accused and the*

*other which leads only to suspicion but not grave suspicion”.*

8. The submission of learned counsel for the petitioner is that the prosecutrix had stated in her initial complaint, which led to the registration of the FIR, that the accused had stated that he could not marry the prosecutrix on account of the fact that she was a dalit. Learned counsel submits that this, by itself, is sufficient to constitute the offence punishable u/s 3(1)(x) and 3(1)(xii) of the SC/ST Act. The submission of counsel for the petitioner is that the relationship between the prosecutrix and the accused was a matter of common knowledge at JNU. The accused had exploited the petitioner on the premise of marriage and on that pretext he had established physical relationship with the prosecutrix. She even became pregnant and the pregnancy was terminated at the instance of the accused. Learned counsel submits that the supplementary charge-sheet was filed premised on statement of two eye witnesses, as the accused had made the caste specific derogatory remarks after registration of the original case.

9. Having heard learned counsel for the petitioner and perused the impugned order, I find absolutely no merit in the present petition. The facts taken note of herein above clearly show that the allegations which could constitute an offence u/s 3(1)(x) and 3(1)(xii) of the SC/ST Act were levelled for the first time in the supplementary statement dated 02.12.2015 of the prosecutrix.

10. The said alleged statements even according to the prosecutrix were made after the accused was released on interim bail between 08.05.2014 and 24.05.2014. There is an unexplained delay of about eighteen months in the petitioner making the said allegations.



11. The learned ASJ has scrutinised the factual background of the case minutely. It is the case of the prosecutrix that the said statement was made at Kalkaji temple, when the accused was granted interim bail between 08.05.2014 to 24.05.2014 to marry the prosecutrix. The learned ASJ has observed that the interim bail application was thereafter listed on 31.05.2014, when the accused submitted that the complainant was not ready to get married the accused. Even on the said date, no such allegation was made by the prosecutrix and, as noticed above, it was the prosecutrix who allegedly refused to get married the accused.

12. As correctly observed by the learned ASJ, the statement made by the prosecutrix with regard to allegations constituting offence u/s 3(1)(x) and 3(1)(xii) of the SC/ST Act are vague with no specific date, month or year of the alleged incident, in which the accused uttered specific derogatory remarks. Even the two witnesses Uma Ratudi and Manju Singh did not give any specific date, month or year when the alleged incident took place. They have merely stated that the incident happened about 1 ½ - 2 years ago, when the statement was recorded in December 2015.

13. It is well settled that the accused shall be discharged when the court considers that there is no sufficient ground for proceeding against him. The 'ground' in the context is not a ground for conviction but a ground for putting the accused on trial. The court is obliged to sift through the material to ascertain whether a prima facie case has been established which would justify and merit the prosecution of a person. It is also well settled that if two views are possible and one of them gives rise to suspicion only, as distinguished from grave suspicion, the trial judge would be empowered to discharge the accused and at that stage, the trial judge has not to see whether

the trial will end in conviction or acquittal. The trial judge has to exercise his judicial mind to the facts of the case in order to determine whether a case for trial has been made out by the prosecution. The vagueness of the allegations is with respect to the date and time when the caste specific derogatory statements were alleged made by the accused in public view. There is serious doubt in the case of the prosecution. Coupled with this is the factor that the prosecution despite having ample opportunity to make the allegations constituting an offence under Section 3(1)(x) and 3(1)(xii) of the SC/ST Act, did not level such allegations before the trial court; before the SC/ST Commission; and even before the police, even though, she did make complaints to the SC/ST Commission and the police on 26.05.2014 and even though the marriage between the prosecutrix and the accused did not take place between 8<sup>th</sup> and 24<sup>th</sup> May, 2015 and the case was taken up by the trial court on 31.05.2014. Prima facie, it shows that the prosecutrix, as an after-thought, has levelled the allegations so as to rope the respondent accused in offences under Sections 3(1)(x) and 3(1)(xii) of the SC/ST Act.

14. Section 3(1)(x) and 3(1)(xii) of the SC/ST Act , insofar it is relevant (prior to the amendment by Act 1/2016) read as follows:

*“3(1) Whoever, not being a member of a Scheduled Caste or a Scheduled Tribe, -*

*.... .*

*.... .*

*.... .*

*(x) intentionally insults or intimidates with intent to humiliate a member of Scheduled Caste or a Scheduled Tribe in any place within public view;*

*.... .*

*(xii) being in a position to dominate the will of a woman belonging to a Scheduled Caste or a Scheduled Tribe and uses that position to exploit her sexually to which she would not have otherwise agreed;”*

15. I also find that the allegations made against the accused in the FIR as well as in the supplementary statement of the prosecutrix on 02.12.2015 do not constitute the offence under Section 3(1)(xii), which requires that the accused being in a position to dominate the will of a woman belonging to a Scheduled Caste or a Scheduled Tribe and uses that position to exploit her sexually to which she would not have otherwise agreed. It is not even the case of the prosecutrix that she was sexually exploited by the accused on account of her belonging to the Scheduled Caste by using his dominating position and that she would not have otherwise agreed to her sexual exploitation by the accused. In fact, the case of the prosecution is that the accused had promised to marry the prosecutrix and on that basis, he established physical relations with her. Pertinently, both the prosecutrix and the accused were studying Post Graduate Course at JNU and both were residing in the hostels within the JNU campus.

16. Learned counsel for the petitioner has submitted that offence u/s 3(2)(v) of the SC/ST was also made out in the present case, inasmuch, as, the accused had committed an offence under the IPC punishable with imprisonment for a term of ten years or more.

17. I do not find merit in the aforesaid submission of the petitioner/prosecutrix. Section 3(2)(v), insofar as it is relevant, reads as follows:

***“Whoever, not being a member of the Scheduled Caste or***

***Scheduled Tribe-***

*(v) commits any offence under the Indian Penal Code (45 of 1860) punishable with imprisonment for a term of ten years or more against a person or property on the ground that such person is a member of a Scheduled Caste or a Scheduled Tribe or such property belongs to such member, shall be punishable with imprisonment for life and with fine.*

18. Pertinently, in the FIR, the prosecutrix has not alleged that the alleged offence under Section 376(2)(n)/328/506 IPC were committed by the accused with the knowledge and on account of the fact that the prosecutrix belonged to the Scheduled Caste. In any event, Section 3(2)(v), does not *per se* create a separate offence and it only prescribes a higher punishment in case an offence punishable with imprisonment for a term of 10 years or more is committed against a person or property of a person belonging to the Scheduled Caste or Scheduled Tribe. Thus, in case the accused is convicted of the offence under Section 376(2)(n)/328/506 IPC, at the stage of sentencing, the Court shall take into consideration the aspect whether Section 3(2)(v) is attracted.

19. For all the aforesaid reasons, I find absolutely no merit in the present application and the same is dismissed.

**VIPIN SANGHI, J**

**DECEMBER 20, 2016**

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