

IN THE HIGH COURT OF BOMBAY AT GOA

CRIMINAL REVISION APPLICATION NO. 60 OF 2017

Tarun Jit Tejpal ...Applicant
Son of late Sri Inder Jit Tejpal
Aged about 54 years, Indian,
Resident of M 130, Greater Kailash2,
New Delhi – 110 048

Versus

1. State of Goa
Through the CID, CB,
North Goa.
2. The Public Prosecutor, ...Respondents
Panaji, Goa.

Shri Aman Lekhi, Senior Advocate with Shri Pramod Kumar Dubey, Shri Raunaq Rao, Shri Nishaank Mattoo and Ms. Shivika Singh, Advocates for the Applicant.

Shri S.D. Lotlikar, Special Public Prosecutor with Shri F. N. Tavora and Ms. Cyndiana Silva, Advocates the Respondents.

CORAM: NUTAN D. SARDESSAI, J.

Reserved on : 12th December 2017

Pronounced on : 20th December 2017

JUDGMENT:-

1. Heard Shri A. Lekhi, learned Senior Counsel appearing on behalf of the Applicant and Shri S.D. Lotlikar, learned Special Public Prosecutor on behalf of the Respondents. By the present Application filed under Section 397 r/w 401 of the Code of Criminal

Procedure, 1973 (Cr.P.C., for short), the Applicant against whom charge has been framed by the learned Additional Sessions Judge, Mapusa vide her order dated 07/09/2017 is challenging the same pursuant to which the learned Additional Sessions Judge ordered charge to be framed against him under Sections 354, 354A, 354B, 341, 342, 376 (2)(f) and 376 (2)(k) I.P.C.

2. Heard Shri A. Lekhi, learned Senior Counsel for the Applicant who briefly alluded to the backdrop of the case and on advertizing to the impugned order submitted that the CCTV footage which was the best evidence was not considered by the learned Additional Sessions Judge while passing the impugned order. The CCTV footage was relevant and material to understand whether the offence of wrongful restraint and wrongful confinement was attracted to the case. The learned Judge duly considered the factors relevant for framing the charge as laid down by the Hon'ble Apex Court but erred in recording an affirmative answer that there was material to frame charge against the Applicant. It was his contention while advertizing to the CCTV footage that the statement of the prosecutrix (victim) was belied by the CCTV footage which was contradicted by her own conduct. He relied on **Ram Kishan Singh v/s. Hermit Kaur and another** [AIR 1972 SC 468] to

buttress his case that the statement under Section 164 Cr.P.C. was not substantive evidence and that in **Ram Charan and others v/s. State of U.P.** [(1968) 3 SCR 354]. He next adverted to the e-mail sent by the victim to one Nikhil on 8th and yet the investigating agency had not examined the said Nikhil despite being an important witness. There was no attachment of the mobile phone of the victim nor of her laptop.

3. Shri A. Lekhi, learned Senior Counsel on behalf of the Applicant relied in **Anvar P.V. V/s. P.K. Basheer and others** [(2014) 10 SCC 473]. He next submitted that there had to be due compliance with the mandate of Section 65B of the Evidence Act and in the absence thereof, none of these documents could be looked into on which reliance was placed by the prosecution against the Applicant. The server was not sealed nor the computer and the laptop too were seized. There was a reference to the apologies in the e-mail which could not have been considered in the absence of compliance with Section 65B of the Evidence Act. He next referred to paragraph 40 of the impugned order which referred to the informal and formal apology tendered by the Applicant and submitted that these were inconsistent with the ingredients of the offence particularly under Section 354 and 376 I.P.C. and by no

stretch of the imagination could they be considered as an admission of the guilt of the Applicant. The formal apology was tendered by the Applicant on the demand of the victim and there was no element of willingness. The e-mail sent by the victim to one Shoma clearly indicated that she had made a demand on the Applicant for an apology and had indulged in falsity apparent in her statement recorded under Section 164 Cr.P.C. and which was negated by the CCTV footage on her conduct. The Trial Court therefore could not have relied on both apologies to hold that there was a case to frame charge and proceed with the Trial.

4. Shri A. Lekhi, learned Senior Counsel for the Applicant further raised doubts on the role of the Investigating Officer who had withheld the CCTV footage from the Applicant over a considerable length of time and which came to be issued to him only pursuant to the directions of the Apex Court. No proper questions were formulated to the CFSL for submitting its report. The statement of material witness was not recorded nor was there a seizure of the laptop of the victim. Besides, there was a destruction of the Applicant's phone by the Investigating Officer. No questions were also put to the victim about her sexual encounter with Robert De Niro on the intervening night of 7th and 8th November 2013. A

conversation with Ria clearly indicated the strategy adopted by the victim to implicate the Applicant. The learned Trial Court did not consider that the investigation in the case was vitiated and yet proceeded to order charge to be framed against the Applicant. He relied in **Union of India v/s. Prafulla Kumar Samal and another** [(1979) 3 SCC 4] and **Niranjan Singh Karam Singh Punjabi v/s. Jitendra Bhimraj Bijjaya and others** [(1990) 4 SCC 76] indicating the parameters spelt by the Apex Court in the matter of discharge in terms of Section 227 Cr. P.C. There was enough jurisdiction in this Court to question the correctness, propriety and legality of the order passed by the learned Additional Sessions Judge and therefore the impugned order was liable to be quashed and set aside.

5. Shri S.D. Lotlikar, learned Special Public Prosecutor opened his case contending that the learned Additional Sessions Judge had rightly considered the law in the matter of discharge and adverted to paragraph 30 of the impugned order in that context. The statement on oath recorded of the victim under Section 164 Cr.P.C. was more than adequate for framing of charge and the arguments to the contrary canvassed by the Applicant was untenable. He relied in **Om Wati and another v/s. State, Through Delhi**

Admn. and others[(2001) 4 SCC 333] in support of his case and contended further that comparing the conduct of the victim viz a viz the CCTV footage was open for consideration on a full dress trial and not at the stage of considering the discharge of the Applicant from the case. There were limitations in the exercise of revisional jurisdiction by this Court and that in view thereof there was no justification for interference with the impugned order either on the ground of correctness, legality or propriety. The aspect of Section 65B of the Evidence Act to consider the evidentiary value of the documents would be appropriate for consideration at the Trial and at this prima facie stage the learned Trial Court had properly appreciated the material on record and arrived at a finding to frame charge which did not justify any interference in revision. He placed reliance in **State of Karnataka by Nonavinakere Police v/s. Shivanna @ Tarkari Shivanna** [2014 (8) SCC 913] to canvas a point that the Hon'ble Apex Court had even gone to the extent of suggesting an amendment whereby the statement under Section 164 Cr.P.C could be directly admitted in evidence and the victim be submitted to cross-examination based thereon but it had not got the approval of the Parliament for want of an amendment in the law. No case whatsoever was made out for interference with the

impugned order and hence the revision petition had to be dismissed.

6. Shri A. Lekhi, learned Senior Counsel in reply contended that Section 53A of the Evidence Act was not at all attracted to the case nor was a reference thereto justified on behalf of the Special Public Prosecutor when there was no aspersion cast on the victim or her character. The prosecutions case was inherently contradictory and on that basis itself the Applicant was entitled for a discharge from the proceedings and he was not required to go through a full dress trial. Section 227 Cr.P.C. in the statute book was intended to give benefit to a person accused of a crime. It was in consonance with his right to liberty enshrined in Article 21 of the Constitution of India. The learned Trial Court had not considered the material facts, the legality in terms of Section 227 Cr. P.C. nor had it considered the impropriety of the Investigating Officer and therefore on all these counts it was a fit case to invoke the jurisdiction of this Court in terms of Section 397 Cr. P.C. and quash the order.

7. i will first deal with the contention of Shri A. Lekhi, learned Senior Counsel that the learned Additional Sessions Judge was in error in not considering the CCTV footage i.e. leaving out the best

evidence while considering the point on the framing of charge against the accused. An endeavour was made on behalf of the Applicant to show the video clips on the laptop relating to the CCTV footage captured on 7th and 8th November 2013 purportedly while the Applicant was in the company of the victim and moving in and out of the elevator. It must be said at this juncture that the said CCTV footage does not capture the facial expression of the victim but only shows the movement in and out of the elevator which may have a bearing on her conduct, post the alleged incident particularly of 7th November 2013. No doubt it is borne out from the impugned order as canvassed by Shri Lekhi, learned Senior Counsel that the learned Additional Sessions Judge did not assess the CCTV footage but that by itself cannot be a circumstance to conclude hastily at that, that the learned Trial Court had not considered all other material while passing the impugned order.

8. Even otherwise, there appears much force in the contention of Shri S.D. Lotlikar, learned Special Public Prosecutor that comparing the conduct of the victim as demonstrated from the CCTV footage vis a vis her statement to the police and that recorded under Section 164 Cr.P.C. would best be appreciated when she enters the witness box during the course of the trial and when

the Applicant as an accused would have ample opportunity to test the credibility of her statement on the touchstone of cross-examination. As earlier observed and at the cost of repetition, the CCTV footages as shown on the laptop do not at all indicate the facial expressions of the victim either to convey that she was humiliated, traumatized or adversely impacted by the alleged misconduct of the Applicant while in the elevator with him or conversely that she was unaffected by what transpired between them while she was in the elevator with him. Therefore, the exercise undertaken on behalf of the Applicant to make a graphic analysis of her statement vis a vis the CCTV footages would not advance the case of the Applicant at this stage to press for his discharge from the proceedings.

9. A reference was made to the e-mail sent by the victim to her friend indicating that her friend Nikhil was in close proximity and to whom she had disclosed about the inappropriate behaviour of the Applicant and how being a material witness his statement was not recorded by the Police. It may be a material lapse of the Investigation Officer not to do so of which the Applicant can take benefit but definitely not a ground to seek for his discharge.

10. In **Ram Kishan Singh** (supra), the Apex Court held that the statement under Section 164 Cr.P.C. was not substantive evidence and it could be used only to corroborate the statement of the witness or to contradict a witness while deciding an appeal by special leave against the Judgment of the High Court of Punjab and Haryana setting aside the acquittal of the appellant. In **Ram Charan** (supra), the Apex Court again while dealing with an appeal by special leave challenging the judgment of the Allahabad High Court confirming the conviction under Section 302 r/w. 34 I.P.C. concurred with the observations of Subba Rao, C.J. following observations of the Nagpur High Court in **Parmanand vs. Emperor** (AIR 1940 Nag 340) that "if a statement of a witness is previously recorded under Section 164 of the Cr.P.C., it leads to an inference that there was a time when the police thought the witness may change but if the witness sticks to the statement made by him throughout, the mere fact that his statement was previously recorded under Section 164 will not be sufficient to discard it. The Court, however ought to receive it with caution and if there are other circumstances on record which lend support to the truth of the evidence of such witness, it can be acted upon" and dismissed the appeal. These judgments in particular do not reinforce the case

of the Petitioner, any which way, which were otherwise rendered on the merits of the case.

11. In **Anvar P.V.** (supra), the Apex Court observed that notwithstanding anything contained in the Evidence Act, any information contained in an electronic record which was printed on a paper, stored, recorded or copied in optical or magnetic media produced by a computer deemed to be also a document only if the conditions mentioned in sub-section 2 of Section 65B are satisfied, without further proof or production of the original. The very admissibility of such a document i.e. electronic record which is called as a computer output, depends on the satisfaction of the four conditions under Section 65B(2) of the Evidence Act. It was further observed that the certificate must furnish the particulars of the device involved in the production of that record and only if the electronic record was duly produced in terms of Section 65B of the Evidence Act, the question would arise as to the genuineness thereof and in that situation, resort can be made to Section 45A – opinion of examiner of electronic evidence.

12. The contention of Shri Lekhi, learned Senior Counsel that the apologies in the e-mail could not have been considered by the

learned Additional Sessions Judge in the absence of compliance with Section 65B of the Evidence Act cannot stand the test of scrutiny when at the prima facie stage the learned Judge is required to assess the material not meticulously but on prima facie consideration. Section 227 Cr. P.C itself provides on its bare reading that upon upon consideration of the records 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 no sufficient ground for proceeding against the accused, he shall discharge the accused and record his reasons for so doing. The learned Judge on a consideration of the statement of the victim recorded under Section 161 and 164 Cr.P.C. on material aspects and very particularly reproduced in paragraphs 31 and 33 of the impugned order has assessed this material amongst other statements and on prima facie consideration come to a finding that there is material to frame charge against the accused for the offences under Sections 341, 342, 354, 354A, 354B, 376 (2) (f) and 376(2)(k) I.P.C. The law of discharge clearly provides that on the basis of assessment of the material that if the Trial Judge holds a view giving rise to a grave suspicion, the Judge would be empowered not to discharge the accused and proceed with the trial

without examining at that stage whether the trial will end in conviction or acquittal.

13. It needs reckoning that the so called informal apology tendered by the Applicant was on 19/11/2013 while the formal apology followed soon thereafter but materially both prior to the registration of the offence against him almost a week later. Hence, unlike the contention on behalf of the Petitioner, there was no element coercion insofar as the Applicant was concerned more particularly qua the formal apology purportedly dictated at the instance of the the victim. At that stage, there was no offence registered against him and there was plausibly no reason why at all such an apology flowed from the Applicant but for his act of contrition or atonement of what he had purportedly done to the victim and as alleged by her in no uncertain terms in her statement recorded under Section 161 and 164 Cr. P.C. and reproduced by the learned Judge in the order under challenge.

14. A reading of the apology of the Applicant with the statement of the victim on prima facie consideration would reveal that the Applicant was feeling contrition in the context of the statement made by the victim and her expression to him conveying her

disapproval of his conduct and therefore there is no force in the contention of Shri Lekhi, learned Senior Counsel that the informal apology was not consistent with the ingredients of the offence particularly under Section 354 and 376 I.P.C. amongst others or that the formal apology was not an admission of his guilt qua the allegations made against him by the victim in her statement under Section 161 and 164 Cr.P.C. In that backdrop too his contention does not stand the test of scrutiny that the e-mail of the victim to her senior Shoma was a demand made on the Applicant inasmuch as her reaction was normal for a person feeling outrage at the lowering of her esteem and dignity by a person whom she had held in trust and who held authority over her.

15. A passing reference was made by Shri Lekhi, learned Senior Counsel to the conversation entered into by the victim with Ria to highlight the conduct of the victim being to strategize her course of action against the Applicant and that it was not an act simplicitor of voicing her anguish and distraught feeling on the conduct of the Applicant. One stray conversation cannot override the other material and statements on record which at the prima facie stage reveal that the victim had reposed confidence in her confidantes and revealed what she had been subjected to by the Applicant who

was in a position of control or dominance over her by virtue of his position in the establishment where she had barely managed to carve a niche for herself.

16. In **Prafulla Kumar Samal** (supra), the Hon'ble Apex Court held at paragraph 10 that 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 Judge cannot act merely as a Post office or a mouth-piece 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.

This Judgment would rather support the case of the Respondent- State.

17. In **Niranjan Singh** (supra), the Apex Court while dealing with the appellants reasoning about all the charges levelled by the police against the five petitioners observed at paragraph 6 as under :

"The next question is what is the scope and ambit of the 'consideration' by the trial Court at that stage. Can he marshal the evidence found on the record of the case and in the documents placed before him as he would do on the conclusion of the evidence adduced by the prosecution after the charge is framed? It is obvious that since he is at the stage of deciding whether or not there

exists sufficient grounds for framing the charge, his enquiry must necessarily be limited to deciding if the facts emerging from the record and documents constitute the offence with which the accused is charged. At that stage he may sift the evidence for that limited purpose but he is not required to marshal the evidence with a view to separating the grain from the chaff. All that he is called upon to consider is whether there is sufficient ground to frame the charge and for this limited purpose he must weigh the material on record as well as the documents relied on by the prosecution. In the State of Bihar v. Ramesh Singh, [(1978) 1 SCR 257] this Court observed that at the initial stage of the framing of a charge if there is a strong suspicion-evidence which leads the Court to think that there is ground for presuming that the accused has committed an offence then it is not open to the Court to say that there is no sufficient ground for proceeding against the accused. If the evidence which the prosecutor proposes to adduce to prove the guilt of the accused, even if fully accepted before it is challenged by cross-examination or rebutted by the defence evidence, if any, cannot show that the accused committed the offence, then there will be no sufficient ground for proceeding with the trial."

It further reiterated the scope of Section 227 Cr.P.C. so laid down by the Apex Court in **Prafulla Kumar Samal** (supra) and on the basis of the discussion held that it was well-settled that at the

Section 227 and 228 Cr.P.C. stage the Court is required to evaluate the material and documents on record with a view to finding out if the facts emerging therefrom taken at their face-value disclose the existence of all the ingredients constituting the alleged offence. The Court may for this limited purpose sift the evidence as it cannot be expected even at that initial stage to accept all that the prosecution states as gospel truth even if it is opposed to common sense or the broad probabilities of the case. This judgment laying down the guiding principles of the scope and ambit of the consideration of the Trial Court at the stage of framing charge had reiterated the principles laid down in that regard in **Prafulla Kumar Samal** (supra). This judgment with respect even of the subsequent observation is taken into account does not buttress the proposition of Shri Lekhi, learned Senior Counsel that there is no material prima facie to frame charge against the accused.

18. In **Om Wati** (supra), the Apex Court held while considering the scope and ambit of Sections 227 and 228 of Cr. P. C. that the Court is required to record its reasons only if it decides to discharge the accused but it is not required to do so if it is to frame charge against the accused. However, the Court had merely to peruse the evidence in order to find out whether or not there is a

sufficient ground so that the case is made out to proceed against the accused. It is only in a case where it is shown that the evidence which the prosecution proposes to adduce, no case is made out against the accused, the Court can discharge him. It also reiterated that the High Court should not ordinarily interfere with trial Court's order for framing of charge unless there is glaring injustice. Rather the High Court's interference at that stage may encourage unscrupulous persons to protract trial and prevent culmination of criminal case which would amount to an abuse of the process of the Court. Where trial Court by a well-reasoned order directed framing of charges for murder, held, High Court in revision was not justified in quashing that order by a cryptic non-speaking order.

This Judgment too substantiates the case of the prosecution as canvassed by Shri S.D. Lotlikar, learned Special Public Prosecutor that the reasons assigned by the learned Judge were adequate to frame charge against the accused based on the material on record and prima facie consideration thereof and that there was no case for interference with the impugned order on the premise of correctness, propriety and legality thereof.

19. Shivanna (supra), relied upon by the learned Special Public Prosecutor too emphasised the view of the Apex Court in the matter of rape and gang rape and of the suggestion made by it to record the statement of the victim preferably before a lady Magistrate under Section 164 Cr.P.C. and the same be treated as evidence at the stage of trial which may be put to a test by subjecting it to cross-examination. Since however nothing is done on the recommendations of the Apex Court on this point despite notice to the Union of India and the Law Commission eliciting their views on the subject, the submission of the learned Special Public Prosecutor in that regard remains purely academic and the Judgment does not further his case that the Apex Court had gone on to observe that the statement of the victim recorded under 164 Cr. P.C should be treated as evidence and should be directly tested on the touchstone of cross-examination.

20. In State of Maharashtra v/s. Som Nath Thapa [AIR 1996 SC 1744], the Apex Court held that a prima facie case must be made out before charge can be framed against the accused and there must exist grounds for framing the charge that the accused has committed the offence. Furthermore, probative value of the

statement of witness cannot be gone into at the stage of framing of charge which would be decided at the close of the trial.

21. In **State of Bihar v/s. Ramesh Singh** [AIR 1977 Supreme Court 2018], the Apex Court on a reading of Section 227 and 228 Cr. P.C. in juxtaposition further observed that the veracity and effect of the evidence which the Prosecutor proposes to adduce are not to be meticulously judged nor is any weight to be attached to the probable defence of the accused. It is not obligatory for the Judge at that stage of the trial to consider in any detail and weigh in a sensitive balance whether the facts, if proved, would be incompatible with the innocence of the accused or not. The standard of test and judgment which is to be finally applied before recording a finding regarding the guilt or otherwise of the accused is not exactly to be applied at the stage of deciding the matter under Section 227 or Section 228 of the Code. At that stage the Court is not to see whether there is sufficient ground for conviction of the accused or whether the trial is sure to end in his conviction. Strong suspicion against the accused, if the matter remains in the region of suspicion, cannot take the place of proof of his guilt at the conclusion of the trial. But at the initial stage if there is a strong suspicion which leads the Court to think that there is ground for

presuming that the accused has committed an offence, then it is not open to the Court to say that there is no sufficient ground for proceeding against the accused.

22. The learned Single Judge of this Court in **Ramdas Kachru Wadkar v/s. State of Maharashtra** [2006 Cri.L.J.1156] held that the guiding principles in deciding the discharge application should be whether the material on record is sufficient for proceeding against the accused. The appreciation of evidence on record at this stage, is unnecessary and statements made should be accepted as they are while dealing with the application challenging the Order of the Adhoc Additional Sessions Judge dismissing the application for discharge of the accused. In **Yogesh@ Sachin Jagdish Joshi V/s. State of Maharashtra** [AIR 2008 SC 2991], the Apex Court held that the expression "not sufficient ground for proceeding against the accused" in Section 227 of Cr.P.C. postulate the exercise of a judicial mind of Judge. At this stage, he is not required to see as to whether trial will end in conviction or not. However, in assessing this fact, the Judge has the power to sift and weigh the material for the limited purpose of finding out whether or not a prima facie case against the accused has been made out. The test to determine a prima facie case depends upon the facts of each case and it was

neither feasible nor desirable 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 gives rise to suspicion only as distinguished from grave suspicion, he will be fully within his right to discharge the accused. At this stage, he is not to see as to whether the trial will end in conviction or not. The broad test to be applied is whether the material on record, if unrebutted, makes a conviction reasonably possible while relying in **Prafulla Kumar Samal** (supra).

23. In **Ravi Shankar Mishra v/s. State of U.P.** [1991 Cri.L.J. 213], the learned Single Judge of the Allahabad High Court held that at the stage of framing of charge, meticulous consideration is not required. What is relevant at that stage is only the sufficiency of ground for proceeding against the accused and not whether the material on record are sufficient and adequate for a conviction.

24. In **Noorul Huda Maqbool Ahmed v/s. The State of Maharashtra** [Criminal Revision Application No. 357 of 2003] the learned Single Judge of this Court considered the Judgment of the Apex Court in **Som Nath Thapa** (supra) amongst others and held that at the stage of entertaining the application for discharge under

Section 227 of the Cr.P.C. the Court cannot analyse or dissect the evidence of the prosecution and defence or the points of possible cross-examination of the defence. The case of the prosecution presented before the Court is to be accepted as it is and reiterating the law laid down by the Apex Court in **State of Maharashtra v/s. Priya Sharan Maharaj and others** [AIR 1997 SC 20141) which in turn referred to **Niranjan Singh Punjabi** (supra).

25. In **Onkar Nath Mishra and another v/s. State (NCT of Delhi) and another** [(2008) 2 SCC 561], the Apex Court held that at the stage of framing of charge the Court is not expected to go deep into the probative value of the material on record. The Court is to form a presumptive opinion as to the existence of the factual ingredients constituting the offence alleged.

26. In the backdrop of the Judgments relied upon by Shri Lekhi, learned Senior Counsel and Shri S.D. Lotlikar, learned Special Public Prosecutor for the applicant and the respondent respectively and the law on the point relating to discharge contained in Section 227 Cr.P.C. qua the material on record, there is no basis in the contention of Shri Lekhi, learned Senior Counsel for the Applicant that the prosecution case is inherently contradictory and/or that

there is no need for trial making out a case for discharge of the accused. There is also no force in his contention looking to the impugned order that the learned judge had not duly considered the material facts on the record, the import and legislative intent of 227 Cr.P.C. and came to prima facie finding thereon that there is adequate material to frame charge against the accused. Such findings of the learned Judge do not warrant any interference in revision on the premise that the order is either incorrect, illegal or lacking in propriety as to exercise the powers vested in this Court under Section 397 r/w. 401 Cr.P.C.

27. The learned Judge had considered the case as set out by the prosecution against the accused, duly considered the contentions raised on behalf of the learned Special Public Prosecutor and the learned defence Counsel, the law in the matter of discharge/framing of charge and ultimately satisfied itself with the principles of law laid down by the Apex Court in the matter of appreciating the evidence at the stage of framing of charge and held that there was sufficient material on record to frame charge against the accused. At the cost of repetition, the learned Judge

had reproduced the version of the victim in her statement recorded under 161 and 164 Cr.P.C., that she had interacted with her peers and friends disclosing her anguish at the conduct of the Applicant both in respect of the incident on the night of 7 and 8th November 2013 apart from the apology tendered by the Applicant and ultimately come to a finding that charge had to be framed against the Applicant for the stated offences. The learned Judge for that matter had even considered the contentions on behalf of the Applicant which as canvassed before this Court was to point out the alleged inconsistencies in the version of the victim and the other witnesses and observed that it was not the appropriate stage to do so at the stage of framing of charge against him. The learned Judge for that matter had even considered the contention on behalf of the Applicant on the dual role of the Investigating Officer also being the complainant in the case and in the ultimate held against him. On a proper appreciation of the material at large, the findings rendered by the learned Judge and the various judgments on the point, the impugned Order cannot be attacked on the ground of illegality, correctness or perversity. In view thereof, no case

whatsoever is made out for interference therewith and hence, the revision Petition is dismissed.

NUTAN D. SARDESSAI, J.

mv