

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

+ **Crl. Revision Petition No.92/2017**

Date of Decision: 21st July, 2017

VARUN SURI

..... Appellant

Through Mr.G.P. Thareja, Mr.Satyam Thareja,
Ms.Shradha Karol, Mr.Sushant
Sharma, Advocates.

versus

STATE NCT OF DELHI

..... Respondent

Through Mr.Panna Lal Sharma, APP for the
State with Inspector Anil Malik,
Police Station Greater Kailash, Delhi

Mr.Yashvir Sethi, Mr.Abhishek
Paruthi and Mr.Deepak Mittal,
Advocates for the complainant.

CORAM:
HON'BLE MR. JUSTICE P.S.TEJI

P.S.TEJI, J.

1. The present revision petition has been filed under Section 397 of Cr.P.C. read with Section 482 of Cr.P.C. against order on charge dated 08.11.2016 whereby the learned Addl. Sessions Judge has framed charge against the petitioner

under Section 328 read with Section 376 IPC.

2. The facts of the case, as per the case of the prosecution, in a nutshell are that the complainant was married to Gaurav Sethi on 27.02.2014. The complainant did not have cordial relations with her husband as her husband was heavy drinker and was not responsible towards his work. During this time, the complainant was working with ERD group as HR manager in which company the petitioner joined on the post of Deputy Manager in March, 2014. The petitioner advised complainant to take time off from work and spend more time at home or else, take divorce from her husband. Pursuant to this advice, the complainant resigned from ERD group in August, 2014. On the very next day, the petitioner asked complainant to meet him in Greater Kailash. The complainant went there to meet him. The complainant asked petitioner to have coffee. However, the petitioner asked her to take a drive in the car during which petitioner offered her coke (cold drink) and muffin. After drinking coke, the complainant became semi-conscious. Upon regaining consciousness, the complainant

found that she had been raped by the petitioner. Upon raising enquiry on the conduct of the petitioner, the petitioner informed her that he loves and apologized for the act. Thereafter, petitioner gave complainant false promises of marriage and took her to Park Plaza Hotel Faridabad and Corporate Suite Hotel Sector 62 Noida where he established physical relations with her many times. The complainant also gave her money after taking from her husband. However, the behavior of the petitioner totally changed and petitioner started blackmailing her on the basis of her videos and photographs and threatened that he would get her indulged in prostitution and flesh trade. He also threatened to kill her.

3. Vide order dated 06.09.1999, charge was framed against the accused under Secitons 307/324 IPC to which he pleaded not guilty and claimed trial.

4. In support of the revision petition, the petitioner has taken the grounds that the learned Addl. Sessions Judge has wrongly sifted the facts of the present case while noting that *in the car he offered her coke. After drinking she became semi conscious.*

She found that she was raped by the accused. When enquired from him, he told her that he loves her'. It is clarified that at no point of time, the prosecutrix has stated that she was raped in the car on the next day of tendering her resignation. Neither the FIR nor the statement of prosecutrix under Section 164 Cr.P.C. records that she was raped in the car by the petitioner. The learned Addl.Sessions Judge has failed to appreciate that there is neither medical evidence nor physical evidence to support the allegations of the prosecutrix relating to alleged intoxication. The learned Addl.Sessions Judge has contradicted himself in para 12 and 20 of the impugned order by placing reliance on alleged assurances of marriage to justify delay in registering FIR for the alleged 'rape in car' incident, that the learned Addl.Sessions Judge has erred in not appreciating that the prosecutrix continued to live with her husband in spite of getting into alleged relationship with the petitioner. The credibility of the statement of the prosecutrix and her own conduct is doubtful in view of the allegations made by the prosecutrix against her lawyer Sh.Randhir, Adv. and the record of messages which

Sh.Randhir obtained by FSL from her phone; that the learned Addl.Sessions Judge has erred in not appreciating that there has to be a grave suspicion and not a mere suspicion to frame charge against an accused.

5. Per contra, learned Additional Public Prosecutor for the State has vehemently opposed the aforesaid contentions raised on behalf of the appellant and submitted that the judgment of conviction and order on sentence as passed by learned Additional Sessions Judge do not suffer from any irregularity or illegalities and is passed with a reasoned order, therefore, the same is not liable to be interfered with.

6. Arguments advanced by the learned counsel for the appellant as well as learned APP for the State were heard.

7. At the stage of framing of charge, the court is required to judicially consider whether on consideration of the material on record, it can be said that accused has been reasonably connected with the alleged offence and on the basis of the said material, there is reasonable probabilities and chance of the accused being found guilty of the alleged offence. The court is

required to pursue the evidence on record without going into the deep probative value and conclude that there exists a ground for presuming that offence has been committed or not. Section 227 of the Cr.P.C. provides for the eventuality when the accused shall be discharged. If not discharged, the charge against the accused is required to be framed under Section 228 of Cr.P.C.

8. In this case, the petitioner/accused was a co-employee with the complainant. When the complainant was in depression, the petitioner advised her not resign from the job to devote more time at home as husband was a heavy drinker and was not a responsible person and the relations between them were not cordial. Taking this advice, the complainant resigned from the job on the very next date when the petitioner called her to meet at Greater Kailash. When she reached there, he asked her to take a drive in the car where he offered a drink which was containing intoxicating substance. Thus after consuming the same, she became unconscious and taking advantage of that, the petitioner raped her. After which she lodged a complainant on 08.12.2014. She was medically examined on 08.12.2014 wherein the history

narrated to the doctor, she reiterated that the petitioner sexually assaulted and forcibly committed sexual intercourse with her. The records from the hotels also show the stay of the petitioner with the prosecutrix.

9. Her statement under section 164 Cr.P.C was recorded on 09.12.2014, wherein also she reiterated the allegations which she alleged in her complaint made to the police.

10. The veracity of the allegations is to be tested at the trial stage and the present case is one where the charge has rightly been framed against the accused for the offence punishable under Section 328 read with Section 376 IPC. 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.

11. So far as the contentions raised by the petitioner to the effect that no rape was committed upon the prosecutrix and all the allegations are false, are matter of trial and same cannot be adjudged at this stage as the trial is still going on and

prosecution witnesses are yet to be examined. The petitioner would be at liberty to raise all these pleas before the Trial Court at the time of passing judgment after conclusion of evidence and may adduce defence evidence in support thereof. There are consistence cases cited by our Apex Court where it has been held that the court does not have to rely on the allegations, but has to form an opinion whether there is strong suspicion that the accused has committed an offence.

12. Reliance in this regard may be placed on the judgment of the Hon'ble Supreme Court in the case titled, ***State of Bihar Versus Ramesh Singh*** (reported in AIR 1977 SC 2018), where it has been observed that *at the stage of charge, standard of proof is quite different from the standard of proof at the stage of final judgment. It is the duty of the Court to see that on the allegation and evidence on record, whether there is suspicion that accused might have committed the offence, then Court has to frame the charges and proceed with the trial. Whereas standard of the proof at the time of judgment is that whether guilt of the accused has been proved beyond reasonable doubt*

and hypothesis of guilt is contrary to his innocence. 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. At that stage, 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.

13. Further strength in this regard could be drawn from the judgment of Hon'ble Apex Court in case of **Sajjan Kumar vs. Central Bureau of Investigation** (2010) 9 SCC 368 in which it was further held that 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.

14. Also, in **P. Vijayan v. State of Kerala and Anr;** AIR 2010 SC 663, it was held as under:

“14. In a recent decision, in the case of **Soma Chakravarty v.State through CBI** (2007) 5 SCC 403 this Court has held that the settled

legal position is that if on the basis of material on record the Court could form an opinion that the accused might have committed offence it can frame the charge, though for conviction the conclusion is required to be proved beyond reasonable doubt that the accused has committed the offence. At the time of framing of the charges 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. Before framing a charge the court must apply its judicial mind on the material placed on record and must be satisfied that the commission of offence by the accused was possible. Whether, in fact, the accused committed the offence, can only be decided in the trial. Charge may although be directed to be framed when there exists a strong suspicion but it is also trite that the Court must come to a prima facie finding that there exist some materials there for. Suspicion alone, without anything more, cannot form the basis there for or held to be sufficient for framing charge.”

15. In a recent judgment, the Hon’ble Apex Court in **State of Rajasthan v. Fateh Karan Mehdu AIR 2017 SC 796**, observed as under:

The scope of interference and exercise of jurisdiction Under Section 397 of Code of Criminal Procedure has been time and again explained by this Court. Further, the scope of interference Under Section 397 Code of

Criminal Procedure at a stage, when charge had been framed, is also well settled. At the stage of framing of a charge, the court is concerned not with the proof of the allegation rather it has to focus on the material and form an opinion whether there is strong suspicion that the accused has committed an offence, which if put to trial, could prove his guilt. The framing of charge is not a stage, at which stage final test of guilt is to be applied. Thus, to hold that at the stage of framing the charge, the court should form an opinion that the accused is certainly guilty of committing an offence, is to hold something which is neither permissible nor is in consonance with scheme of Code of Criminal Procedure.

16. In view of the above discussion, this court does not find any illegality or infirmity or irregularity in the order on charge and the charge framed against the petitioner by the Trial Court. The petitioner has failed to make out its case to show that the Trial Court has exceeded its jurisdiction or failed to exercise the jurisdiction vested in it.

17. Consequently, the present revision petition is hereby dismissed.

**(P.S.TEJI)
JUDGE**

**JULY 21, 2017
dd**