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IN THE HIGH COURT OF DELHI AT NEW DELHI

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Date of Decision: July 14, 2017

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CRL.REV.P. 124/2017

MOHSIN KHAN

..... Petitioner

Through: Mr.M.A.Hasan, Advocate

versus

STATE (NCT OF DELHI)

..... Respondent

Through: Ms.Kusum Dhalla, APP for the
State with ASI Om Pakash, PS
Hauz Khas

PRATIBHA RANI, J. (Oral)

CRL.REV.P. 124/2017

1. By filing this revision petition under Section 397/401 read with Section 482 of the Code of Criminal Procedure, the petitioner Mohsin Khan is questioning the legality of the order on charge dated 6th January, 2017 whereby he has been ordered to be charged for committing the offence punishable under Section 376/506/384 IPC.

2. Mr.M.A.Hasan, learned counsel for the petitioner has submitted that in the FIR no allegation of rape was levelled against the petitioner. It was only at the stage of recording of statement under Section 164 Cr.P.C. that such allegations were levelled about the incident which has allegedly taken place about 8-10 years ago that too without mentioning the place, date, time, month or year of the alleged offence. Thus the charge under Section 376/506/384 IPC could

not have been framed against the petitioner.

3. FIR No.457/2016 has been registered against the petitioner on the basis of complaint made by Smt. 'K' (name withheld to conceal her identity) wherein she has stated that during the period 2007-2009 she was having an affair with the petitioner. However, the petitioner started blackmailing her for money and harassing her. On being fed up with this conduct of the petitioner, she left for Kerala and got married there in the year 2009. The Complainant also mentioned that during the period she was having affair with the petitioner, he had her objectionable photographs and video recording. After staying in Kerala for about three years, she returned to Delhi alongwith her husband. The petitioner again started contacting her through facebook and compelled her to meet him, therefore, she blocked him on the facebook. Thereafter the petitioner starting meeting her near her office. He had shown to her the objectionable photographs. Then she starting behaving normally with him so that she could get the photographs deleted due to her soft behaviour. Once the photographs were deleted, she started ignoring him and then the petitioner again openly threatened her that he had some objectionable video of her before her marriage and if she refuse to continue the relationship, it will be shown to her husband. The petitioner even threatened to kill her husband on her refusal to keep the relations with him. As per the FIR, the petitioner was working at the shop of Sh.Jitender Shukla, who is friend of husband of the complainant and the petitioner had also shown her objectionable videos to Jitender Shukla and his staff to blackmail her.

4. In her statement under Section 164 Cr.P.C., the complainant has levelled the allegations against the petitioner of rape being committed about 8-10 years ago stating that she was not familiar with the area where she was taken by the petitioner on his motorcycle but it was in some street near Golcha Cinema.

5. The order on charge dated 16th January, 2017 has been sought to be quashed mainly on the ground that anticipatory bail has been granted to the petitioner observing that date, month or the year when the rape was committed has not been mentioned and no reason has been explained as to why the complaint has not been lodged against the petitioner after the crime was committed as well referring the text messages exchanged between the complainant and the petitioner.

6. So far as this contention of the petitioner is concerned, any observation made while granting anticipatory bail, cannot be termed as a finding by the Court declaring the accused/petitioner to be innocent.

7. It is also relevant to mention here that in the statement under Section 164 Cr.P.C., the complainant has also mentioned that the petitioner has been chatting with her with a fake identity and printout of the snapshot of that chat has also been produced by her.

8. In the revision petition in para No.'J', the petitioner has referred to the decision of the Supreme Court in the case Dilawar Balu Kurane vs. State of Maharashtra 2002 SCC (Cri) 310 in support of his contention that at the time of framing of charges where there are two views possible then the view which favours the revisionist is to be taken into account.

9. In the decision relied upon by the learned counsel for the

petition in Dilawar Balu Kurane vs. State of Maharashtra (Supra), the Supreme Court while observing that the Court has the limited power to sift and weigh the evidence, held as under:-

'In exercising powers under Section 227 of the Code of Criminal Procedure, the settled position of law is that the Judge while considering the question of framing the charges under the said section 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; 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; by and large 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 justified to discharge the accused, and in exercising jurisdiction under Section 227 of the Code of Criminal Procedure, the Judge 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 but should not make a roving enquiry into the pros and cons of the matter and weigh the evidence as if he was conducting a trial.'

10. At the stage of framing of charge, the learned ASJ while exercising power under Section 227 Cr.P.C. has to consider whether on the basis of material on record adduced by the prosecution prima facie disclosing the constituents of the offence for which he is charged. The Apex Court in Palwinder Singh vs. Balwinder Singh and

others (2009) 2 SCC 850 held that the jurisdiction of the learned Sessions Judge while exercising power under Section 227 Cr.P.C. is limited. Charges can also be framed on the basis of strong suspicion. Marshalling and appreciation of evidence is not in the domain of the Court at that point of time.

11. There cannot be any quarrel about the legal proposition enumerated in the decision relied upon by ld. counsel for the petitioner but what he has contended in para J of the revision petition and referred to above in para 8, is not in consonance with the decision of the Hon'ble Supreme Court in the case of Dilawar Balu Kurane vs. State of Maharashtra (Supra). The facts of the present case are to be looked into to ascertain whether it is a case wherein charge has been framed with no material available against the petitioner or the material only gave rise to grave suspicion.

12. It is settled law that at the time of framing of charge the court is not required to make a roving enquiry into the pros and cons of the matter and weigh evidence as if it is conducting a trial. It is also well settled that where the material placed before the Court discloses grave suspicion against the accused which has not been properly explained, the Court will be fully justified in framing charge. (*Union of India Vs. Prafulla Kumar*, AIR 1979 SC 366).

13. In the report ***Sheoraj Singh Ahlawat & Ors. vs. State of U.P. & Anr. 2013 Cri.LJ 331***, the Apex Court had an occasion to deliberate upon the scope of the power of the Court at the stage of charge in warrant trial cases and also in the context of Sessions trial cases. After summarizing the legal position on the subject, the Apex Court held

that whether or not the allegations are true, is a matter which cannot be determined at the stage of framing of charge. Any such determination can take place only at the conclusion of the trial. While answering the contention of the petitioner that Section 498A IPC is a much abused provision and declining the prayer for discharge, it was observed as under:-

“Whether or not those allegations are true is a matter which cannot be determined at the stage of framing of charges. Any such determination can take place only at the conclusion of the trial. This may at times put an innocent party, falsely accused of commission of an offence to avoidable harassment but so long as the legal requirement and the settled principles do not permit a discharge the Court would find it difficult to do much, conceding that legal process at times is abused by unscrupulous litigants especially in matrimonial cases where the tendency has been to involve as many members of the family of the opposite party as possible. While such tendency needs to be curbed, the Court will not be able to speculate whether the allegations made against the accused are true or false at the preliminary stage to be able to direct a discharge.”

14. Reverting to the case of the petitioner, there are specific allegations levelled by the complainant against the petitioner while lodging FIR as well while making statement under Section 164 Cr.P.C. On the basis of material collected by the prosecution it cannot be said that the charge has been framed by the learned ASJ without there being any material against the petitioner. Since the petitioner has failed to point out any error of law or jurisdictional error while passing

the order impugned directing for framing of charge against the petitioner, the impugned order does not require any interference by this Court in exercise of revisional jurisdiction.

15. The petition is dismissed.

Crl. M.A.2357/2017

Dismissed as infructuous.

PRATIBHA RANI, J.

JULY 14, 2017

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