

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

Judgment delivered on : April 26, 2017

+ **CRL.M.C. 530/2017**

SANDEEP SHARMA

..... Petitioner

Through: Mr.Kirti Uppal, Senior Advocate with
Mr.Sumit Bansal, Ms.Richa Oberoi &
Mr.Harsh Kumar, Advocates

versus

STATE THR.NCT OF DELHI & ANR.

..... Respondents

Through: Mr.Panna Lal Sharma, Additional
Public Prosecutor for the State

CORAM:

HON'BLE MR. JUSTICE P.S.TEJI

JUDGMENT

P.S.TEJI, J.

1. By this petition filed under Section 482 of Cr. P.C. the petitioner seeks for quashing of the FIR No. 213/13 dated 20.05.2013, under Section 323/342/506/376 of IPC registered at Police Station Gazipur, Delhi.

2. It is informed that the charge sheet in this case has been filed and the learned Additional Sessions Judge (Special Fast Track Court), East District, Karkardooma Courts, Delhi, has passed an order dated 03.10.2016 in S.C. No. 392/2016 (S.C. No.95/2015) whereby the petitioner has been charged for the offences punishable under Sections

376/376(2)(n)/377 of IPC. The petitioner has separately challenged the said order by way of Crl. Rev. P. No.821/2016 and on the basis of the similar grounds the petitioner has prayed for quashing of the FIR in this case.

3. In nutshell, the facts of the case are that respondent No. 2 came in contact with the petitioner Sandeep Sharma in January 2003, through Yahoo Messenger and thereafter, friendship developed between them. The petitioner made physical advances to her which she resisted. However, as per complaint of respondent No. 2 the petitioner made physical relations with her in natural and unnatural manner without her consent. It is further alleged that on 04.06.2012, the petitioner befooled the respondent No. 2 into some ceremony pretending to be married with her. Thereafter, the petitioner started ignoring respondent No. 2 and on 18.05.2013 when respondent No. 2 went to the house of the petitioner, family members of the petitioner i.e., Mani Ram Sharma (Father), Nirmala Sharma (Mother) and Hemant Sharma (Brother) locked her in a room and gave beatings to her. It is further alleged that brother of the petitioner - Hemant Sharma misbehaved with her and outraged her modesty. They also threatened the prosecutrix that they will kill her. She got medically examined at LBS Hospital on 21.05.2013. Her MLC records showed that she was having multiple contused abrasions over forearms, face, back and thigh. There were also some tenderness at some places.

4. In the statement under Section 164 of Cr.P.C., the prosecutrix

reiterated the allegations as made in her complaint. After completion of investigation the prosecution had filed charge sheet in court and the petitioner – Sandeep Sharma was charge-sheeted for the offence under Section 376(1) of IPC.

5. Learned Senior Advocate appearing on behalf of the petitioner contended that the present case is registered on the complaint dated 20.05.2013 made against the petitioner by respondent No. 2 for the offence under Section 376(1) of IPC. It is further contended that in her statement recorded under Section 161 Cr.P.C., on 20.05.2013 respondent No. 2 had stated that the petitioner indulged in oral sex several times with her and on 11.02.2011, the petitioner was alleged to have oral sex with her in a car standing outside his house. It is further contended that it is submission of the prosecutrix that when the petitioner asked to have anal sex to which she had refused and called the police and with the interference of the police the matter was sorted out after which the petitioner agreed to marry her. On 21.05.2013, respondent No. 2 was taken to Lal Bahadur Shastri Hospital Gynecological Department, but in front of the doctors, she refused to undergo medical examination on the pretext that she was unwell.

6. Learned senior counsel for the petitioner further contended that in the statement of respondent No. 2 under Section 164 of Cr. P.C. before the learned Metropolitan Magistrate that it is the submission of the prosecutrix that her marriage with the petitioner was performed at a temple in Sector 11, Rohini according to the Hindu Rites and Rituals

and after marriage, the petitioner took her to Meerut home where he forced her to have unnatural sex where she refused to have complete physical relationship till the registration of marriage. The counsel further urged that in the same statement, the prosecutrix had categorically stated that she put forward her desire to have baby to which the petitioner replied that they can have a baby later. It is further contended that even the material evidences collected by the police authorities during the course of investigation was that of the marriage between the prosecutrix and the petitioner have solemnized and confirmed the marriage between the two. Despite the fact that the prosecutrix herself had stated to be married to the petitioner, in such a situation, the charge under Section 376, 376(1)/376(2)(n) and 377 of IPC could not have been framed against the petitioner. It is further contended on behalf of the petitioner that no allegation of sexual intercourse if alleged by the prosecutrix, rather the prosecutrix in her complaint as well as in her statement under Section 161 Cr.P.C. and 164 Cr.P.C. had taken a stand that she is married to the petitioner as per Hindu Rites and the dispute between the two was over registration of marriage only and a mere refusal of registration of marriage cannot form the basis of allegations under Section 376 of IPC.

7. It is further contended on behalf of the petitioner that the allegations made by the prosecutrix in her complaint were before the amendment to the IPC, which came into effect since 03.02.2013 and there are no allegation whatsoever on behalf of the petitioner against the petitioner post 03.02.2013, therefore the impugned order thereby

framing charge against him is liable to be set aside. The learned senior counsel for the petitioner also raised a ground of contradiction in the statement of the prosecutrix. It is submitted that in the statement recorded under Section 164 Cr.P.C., before the learned Metropolitan Magistrate, it was clearly mentioned by the prosecutrix that she resisted to have complete sexual relationship till the registration of the marriage whereas, the prosecutrix in her complaint dated 20.05.2013 stated that the petitioner met the prosecutrix and though have contacts and the petitioner forced her to indulge into intercourse forcefully without getting married. In such situation, no reliance can be placed on the statement of the prosecutrix. Moreover, it is contended that the allegation against the petitioner in the complaint are after marriage and that too in relation to the unnatural sex therefore, the impugned order is liable to be set aside on this ground as well. It is further contended that the prosecutrix had nowhere made any allegation of sexual intercourse against the petitioner and relied on the order dated 07.06.2013 passed by the learned trial court wherein it was noted that the only material collected was that of marriage and consequently the bail was granted to the petitioner and no charge under Section 376(2)(n) could have been framed.

8. Learned Additional Public Prosecutor appears on behalf of the State and referred the Final Report in which the complainant has categorically stated that the petitioner committed to marry her and on the pretext of marriage, the petitioner had intimated relationship with her. The complainant has also stated in his complaint that on

04.06.2012 the petitioner befooled her that he is getting married with her. On her asking to get their marriage registered, he tried to befooled her and continued to have oral sex. When she visited the petitioner's parents to take their support, they locked her in a room and gave beatings to her mercilessly and threatened her to keep her mouth shut, otherwise they will kill her. The prosecutrix further specifically alleged that brother of the petitioner had misbehaved with her and accordingly he was additionally charged with Section 354 of IPC. Learned Additional Public Prosecutor further contended that the victim had also reiterated the aforesaid contentions in her statement under Section 161 of Cr. P.C. as well as in her statement under Section 164 of Cr. P.C. recorded before the court. In such like cases, only the statement of the victim is sufficient to held the accused guilty for the offences with which the petitioner is charged. Since, the victim remained consistent in her complaint as well as in statement, therefore, the impugned order dated 03.10.2016, thereby framing of charge under Section 376/376(2)(n)/377 of IPC against the petitioner is well reasoned order and does not call for any interference from this Hon'ble Court.

9. I have heard the submission made by learned Additional Public Prosecutor for the State and have also gone through the impugned orders passed by the learned Additional Session Judge framing charges against the petitioner for the offence under Sections 376/376(2)(n)/377 of IPC.

10. Upon perusal of the impugned order dated 03.10.2016, in the considered opinion of this court, it cannot be said that the learned Additional Session Judge has not passed a reasoned order. The learned Additional Session Judge has dealt with the cases relied on by the petitioner in Union of India vs. Prafulla Kumar Samal & Anr., (1979) 3 SCC 4; Dilawar Balu Kurane vs. State of Maharashtra, (2002) 2 SCC 135; P. Vijayan vs. State of Kerala and Anr., AIR 2010, SC 663 and Yogesh alias Sachin Jagdish Joshi vs. State of Maharashtra, (2008) 10 SCC 394 and found the sufficient material on record which raised grave suspicion against the petitioner of committing an offence punishable under Section 376/376(2)(n)/377 of IPC and accordingly, the petitioner had been charged with those offences.

11. In view of the aforesaid facts and circumstances of the present case, this court observes that the petitioner has filed the present petition for quashing the FIR under Section 376/376(2)(n)/377 of IPC, on the grounds already taken in his revision petition (Crl. Rev. P. No.821/2016) against the order of framing of charge dated 03.10.2016, wherein this court while dealing with the settled principles of law on the point of framing of charge, has upheld the order dated 03.10.2016 passed by learned Additional Sessions Judge thereby framing of charge under Section 376/376(2)(n)/377 of IPC against the petitioner.

12. After going through the contents of the petition as well as material placed on record, this court is of the considered opinion that

the responsibility of framing the charges is that of the Court and it has to judicially consider the question of doing so and this court does not find any illegality or infirmity in the order dated 03.10.2016 passed by the learned Trial Court. Therefore, in these circumstances, the present petition filed by the petitioner is liable to be rejected. However, the petitioner shall have every opportunity to submit and prove his contentions by leading the cogent evidence before the Trial Court and it is the prerogative of the Trial Court to consider all the material evidence placed before it and to pass the appropriate order.

13. Finding no merit in the present petition the same is hereby dismissed.

APRIL 26, 2017
pkb

(P.S.TEJI)
JUDGE