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

+ CRL.REV.P. 339/2017

STATE (GNCT OF DELHI)

..... Petitioner

Through: Mr. Rajesh Mahajan, ASC.
SI Manju Chahar, P.S. Dwarka North.

versus

JAWED

..... Respondent

Through: None.

CORAM:

HON'BLE MR. JUSTICE ASHUTOSH KUMAR

ORDER

% **08.05.2017**

Crl.M.A. /2017 (to be numbered)

Exemption allowed, subject to all just exceptions.

Application is disposed of.

Crl.M.A.7595/2017

For the reasons stated in the application, the delay of 20 days in filing the revision petition is condoned.

Application is allowed.

CRL.REV.P.339/2017

Jawed, the respondent has been discharged for the offences under sections 376/328 and 506 of the IPC which was lodged against him in FIR No.456/2016 dated 09.10.2016 (P.S. Dwarka North), by order dated 06.12.2016 passed by Additional Sessions Judge (SFTC), Dwarka Courts, New Delhi in Sessions Case No.441488/16.

The respondent is the elder brother of the husband of the prosecutrix who has been alleged to have committed rape on the prosecutrix on some day in the month of June, 2016 after administering the prosecutrix with some stupefying substance and on many other occasions thereafter.

A report was lodged on 09.10.2016 leading to the registration of the FIR No.456/2016 in the Dwarka North police station.

During the course of investigation, the prosecutrix was subjected to medical examination and her statement was also recorded under section 164 of the Code of Criminal Procedure. The stomach wash of the prosecutrix was not taken or sent to forensic examination. Thus no evidence of administration of stupefying substance could be brought on record. In her statement under section 164 Cr.P.C., the prosecutrix has stated about her having been raped on some day in June, 2016 and thereafter only on 08.09.2016. No such date has been given in the FIR. Even in the FIR, no specific date, time and place has been mentioned. In the First Information Report, there is no reference of the respondent having given an intoxicated cold drink to the prosecutrix.

The prosecutrix has, therefore, approached the police after a lapse of approximately about three months. The explanation which has been offered is that the petitioner being her elder brother-in-law, threatened her of serious consequences in case she reported the matter and that her mother-in-law also did not take the allegation seriously and prevented her from approaching the police.

The Trial Court, therefore, was of the view that from the materials placed on record, though some suspicion arose but it was not so grave as to put the respondent on trial. With such conflicting statements in the FIR and

the 164 statement, two views could be taken and, therefore, taking the view which favoured the respondent, he was discharged of the offences.

The provisions of Sections 227 and 228 of the Code of Criminal Procedure read as hereunder:-

“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.

228. Framing of charge.

(1) If, after such consideration and hearing as aforesaid, the Judge is of opinion that there is ground for presuming that the accused has committed an offence which-

(a) is not exclusively triable by the Court of Session, he may, frame a charge against the accused and, by order, transfer the case for trial to the Chief Judicial Magistrate, and thereupon the Chief Judicial Magistrate shall try the offence in accordance with the procedure for the trial of warrant- cases instituted on a police report;

(b) is exclusively triable by the Court, he shall frame in writing a charge against the accused.

(2) Where the Judge frames any charge under clause (b) of sub- section (1), the charge shall be read and explained to the accused and the accused shall be asked whether he pleads guilty of the offence charged or claims to be tried.”

The scope of Section 227 of the Code was considered by the Supreme Court in **State of Bihar vs. Ramesh Singh**, (1977) 4 SCC 39 wherein the Supreme Court observed as follows:-

“4. ... 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. The presumption of the guilt of the accused which is to be drawn at the initial stage is not in the sense of the law governing the trial of criminal cases in France where the accused is presumed to be guilty unless the contrary is proved. But it is only for the purpose of deciding prima facie whether the court should proceed with the trial or not. If the evidence which the prosecutor proposes to adduce to prove the guilt of the accused even if fully accepted before it is challenged in 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.”

In a subsequent decision in **Union of India vs. Prafulla Kumar Samal**, (1979) 3 SCC 4, the Supreme Court listed the following principles for the exercise of powers under Section 227 of the Code of Criminal Procedure:-

“(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 court 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, 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.”

The ambit and scope of the aforesaid sections were again considered in **Niranjan Singh Karam Singh Punjabi v. Jitendra Bhimraj Bijjaya**, (1990) 4 SCC 76 as follows:-

“6. ... 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 State of Bihar v. Ramesh Singh [(1977) 4 SCC 39 : 1977 SCC (Cri) 533] 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. In Union of India v. Prafulla Kumar Samal [(1979) 3 SCC 4 : 1979 SCC (Cri) 609] this Court after considering the scope of Section 227 observed that the words ‘not sufficient ground for proceeding against the accused’ clearly show that the Judge is not merely a post office to frame charge at the behest of the prosecution but he has to exercise his judicial mind to the facts of the case in order to determine that 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 weighing and balancing of evidence and probabilities but it may evaluate the material to find out if the facts emerging therefrom taken at their face value establish the ingredients constituting the said offence.”

In a recent decision in **Soma Chakravarty v. State**, (2007) 5 SCC 403, the Supreme 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 the 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.”

Thus a charge against a person can only be framed if there exists a strong suspicion but nothing less than that.

The Trial Court has assigned good reasons for discharging the respondent.

No interference of this Court is required.

Leave declined.

The petition is rejected.

ASHUTOSH KUMAR, J

MAY 08, 2017

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