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

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Date of Decision: August 31, 2017

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CRL.REV.P. 289/2017

STATE

..... Petitioner

Through: Ms.Kusum Dhalla, APP for the
State with SI C.B.Sharma, PS
New Usmanpur.

Versus

OM PRAKASH ETC.

...Respondents

Through : Mr.Deepak Kumar Gupta,
Advocate.

PRATIBHA RANI, J. (Oral)

1. Feeling aggrieved by the order dated 22nd November, 2016 whereby respondents/accused persons have been discharged for committing the offence punishable under Section 12 of POCSO Act in case FIR No.540/13, PS New Usmanpur, the State has invoked the revisional jurisdiction of this Court with a prayer to set aside the order on discharge.

2. Case FIR No.540/2013, under Section 354/354B/354D/451/323/509/34 IPC was registered at PS New Usmanpur on the basis of the complaint lodged by Praveen Kumar Rana against his neighbour and other family members in respect of the incident dated 12th December, 2013. When his wife Bharti Rana and daughter were produced before the learned Magistrate for getting their statement recorded under Section 164 Cr.P.C., while reiterating the statement

recorded under Section 161 Cr.P.C., his daughter Priyanka Rana further added that modesty of her younger sister who was minor at the time of incident was also outraged by the accused persons. Accordingly, Section 12 POCSO Act was also invoked and the child victim was also produced for getting her statement recorded under Section 164 Cr.P.C.

3. The charge-sheet was filed against all the six accused persons for committing offence punishable under Section 354/354B/354D/451/323/ 509/34 IPC and Section 12 of the POCSO Act.

4. After hearing the parties on the point of charge, the learned Addl Sessions Judge has discharged the accused persons for the offence punishable under Section 12 POCSO Act for the following reasons:

6. *The main grievance of the Ld. Defence Counsel was to the invoking of Section 12 of the POCSO Act in this case. He submitted that the victim SR was never present at the spot at the time of the alleged incident and only to invoke the provisions of the POCSO Act, she was introduced later on into the incident and her statements were manipulated.*

7. *I find force in the argument of Ld. Counsel. The initial complaint was lodged by complainant Praveen Kumar Rana , the father of the victim dt.12.12.2013, which form the basis of the present FIR. In that statement, the presence of the victim (SR) is conspicuously absent. There are no allegations in the FIR that any of the accused committed*

any incident with the said victim. On the same day, i.e. 12.12.2013, statements of the wife of the complainant namely Bharti Rana and her daughter Priyanka Rana were recorded U/S 161 Cr. PC. However, they both also did not allege anything in respect of the victim (SR). Infact, in their entire statement, the presence of the victim cannot be found.

8. It was only on 03.1.2014 when the statement of Bharti Rana and Priyanka Rana were recorded U/s 164 Cr. PC that they made allegations of molesting the victim. There are further contradictions in their statements inter-se. Bharti Rana stated that accused Vishal tore the clothes of the victim while Priyanka Rana stated that Vishal lifted his hand upon the victim and tried to commit indecent act (badtamiji) with her. Statement of the victim was also recorded U/S 161 Cr. PC, however, the same is undated, though all other statements U/S 161 Cr. PC bear the date under the signatures of the IO. In the said statement, the victim stated to the IO that Beer Singh entered their SC No. 88/2016 FIR No. 540/2013 PS New Usmanpur 3 of 5 house forcibly and caught hold the hand of her sister and also did indecent act (badtamiji) with her, while Vishal tore her clothes. Her statement U/S 164 Cr. PC was recorded on 23.1.2014. In that statement, she stated that when she went downstairs, she was also caught and the accused persons, without naming anyone, tore her tshirt.

9. There is no explanation as to why the statement of the victim (SR) was not recorded on 12.12.2013 if she was present and was available to the IO for recording of her statement, when the statements of all other family members were recorded. It is also to be noted with concern that the statement of Bharti and Priyanka Rana

U/S 164 Cr. PC were recorded on 03.1.2014, i.e. after about 22 days of the incident while the statement of the victim U/S 164 Cr. PC was recorded on 23.1.2014 i.e. after about 42 days of the incident. There is no explanation for this inordinate delay in recording of the said statements which only point out to one conclusion that these statements are an afterthought and manipulated. It can further be easily gathered that the victim (SR) was not present at the spot at the time of incident and she was later on introduced only to invoke the provisions of the POCSO Act. Even the allegations appearing against the accused in respect of the victim (SR) in the statement of all the concerned witnesses, as mentioned above, are vague and contradictory.

9. Hence, in my opinion, considering the entire facts and circumstances and the evidence which has come on record, no charge for the offence U/S 12 of the POCSO Act can be framed against any of the accused. Accordingly, all the accused are discharged from the said offence.'

5. The issue before this Court is whether on the basis of not mentioning the name of the child victim at the time of registration of FIR which subsequently surfaced at the stage of recording the statement under Section 164 Cr.P.C. of the daughter of the complainant could have been a ground for discharge of the accused persons for the offence punishable under Section 12 of POCSO Act. It is trite law that at the stage of charge, the Court is required to peruse the entire material placed by the prosecution. For the purpose of considering whether the charge can be framed against the accused persons, the Court can sift the material placed before it.

6. In the decision reported as *Union of India vs. Union of India v. Prafulla Kumar Samal and Anr.* (1979) 3 SCC 4, where the Supreme Court while examining a similar question in the context of Section 227 of the Code of Criminal Procedure, the legal position was summed up as under:

“10. Thus, on a consideration of the authorities mentioned above, 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.”

7. In the report Sheoraj Singh Ahlawat & Ors. vs. State of U.P. & Anr. 2013 CrL.L.J. 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. While 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.”

8. It is a matter of record that after registration of FIR No. 540/2013 under Section 354/354B/354D/451/323/509/34 IPC and recording of statement under Section 161 Cr.P.C. of all the witnesses thereafter, incident pertaining to the younger sister of Priyanka Rana surfaced only during her statement under Section 164 Cr.P.C. recorded on 3rd January, 2014. The question about delay in making statement to the above effect could not have been considered at the stage of

framing of the charge. The charge-sheet filed in this case reveals that the material was sufficient to invoke the provisions of Section 12 POCSO Act on the basis of the statement made by the daughters of the complainant. Learned Trial Court was not required to conduct an elaborate inquiry and delve deep into various aspects, like the effect of non-mentioning of the name of the younger daughter by the complainant while lodging the FIR or delay in mentioning her name to be the victim whose modesty was allegedly outraged during the incident. The learned Trial Court was only required to examine the material produced by the prosecution whether it was sufficient for putting the accused persons on trial.

9. It is settled legal proposition that FIR is not an encyclopedia of the entire case. It may not and need not contain all the details. Naming of the accused therein may be important but not naming of the accused in FIR may not be a ground to doubt the contents thereof in case the statement of the witness is found to be trustworthy. The court has to determine after examining the entire factual scenario whether a person has participated in the crime or has falsely been implicated. The informant fully acquainted with the facts may lack necessary skill or ability to reproduce details of the entire incident without anything missing from this. Some people may miss even the most important details in narration. Therefore, in case the informant fails to name a particular accused in the FIR, this ground alone cannot tilt the balance of the case in favour of the accused. (Vide: Rohtash v. State of Rajasthan (2006) 12 SCC 64; and Ranjit Singh and Ors. v. State of Madhya Pradesh JT 2010 12 SC 167).

10. In my considered view, the entire approach of the learned Trial Court is erroneous. The learned Trial Court was only required to consider whether a prima facie case for framing a charge under Section 12 of POCSO Act is made out and not to appreciate the evidence as if arriving at the conclusion as to whether the material placed was sufficient to base the conviction.

11. As the impugned order dated 22nd November, 2016 has been passed against the settled legal position, the same is set aside to the extent of discharging the respondents/accused persons for committing the offence punishable under Section 12 of POCSO Act. The respondents/accused persons shall face trial for all the offences complained of.

12. It is informed that after the learned Additional Sessions Judge sent the case to the Court of Magistrate for trial in respect of the offences punishable under Sections 354/354B/354D/451/323/509/34 IPC, the case is listed before the Court of Magistrate on 21st December, 2017.

13. A copy of this order be sent to the learned Sessions Judge, North-East District, Karkardooma Court as well as the concerned Court of Magistrate.

14. Learned Sessions Judge, North-East District, Karkardooma Court is directed to withdraw the case FIR No.540/2013, under Section 354/354B/354D/451/323/509/34 IPC and Section 12 of POCSO Act, PS New Usmanpur from the Court of Magistrate and try the same himself or assign the same to Addl. Sessions Judge having jurisdiction to try the same.

15. Parties are directed to appear before the Court of learned Sessions Judge, North-East District, Karkardooma Court on 15th September, 2017.

16. Revision petition allowed in above terms.

As prayed, copy of the order be given *dasti* to learned counsel for the parties.

PRATIBHA RANI, J.

AUGUST 31, 2017
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