

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

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Reserved on: 8th December, 2016

Decided on: 24th March, 2017

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CRL.REV.P. 593/2016 & CrI.M.A. 13756/2016 (stay)

SANJEEV

..... Petitioner

Represented by: Mr. Rohit Agarwal and
Mr.Sanjay Kumar, Advocates.

versus

STATE OF NCT OF DELHI

..... Respondent

Represented by: Mr. Ashok Kumar Garg, APP
for the State with SI
Vishvendra, PS Seema Puri.

CORAM:

HON'BLE MS. JUSTICE MUKTA GUPTA

1. FIR No.894/2014 was registered on the typed complaint of the prosecutrix dated 16th June, 2014 wherein the prosecutrix alleged that in September, 2013 the petitioner made a phone call on her mobile phone and inquired about her address. The prosecutrix intimated her address to the petitioner and same day the petitioner came to her house when she was alone. The petitioner asked for water from the prosecutrix. As she served water to the petitioner he pushed her on the sofa and forcibly raped her. He also threatened the prosecutrix of killing her and her son if any complaint was filed against him. The prosecutrix got frightened as her husband was in jail at that time. It is further alleged that on 11th June, 2014 when the prosecutrix went to Ranchi, the petitioner asked her to come to him for a night and he would get the case against her husband disposed of. When the

prosecutrix refused he pressed her breast and threatened her by saying that he was related to certain senior police officials at Ranchi.

2. During the course of investigation statement of the prosecutrix was recorded under Section 164 Cr.P.C. wherein she stated as under:

“In September, 2013 one day at about 12-01.00 P.M. a person named Sanjeev came. At that time my husband was in jail and I was alone at home. Sanjeev said he knows my husband and he can help me. Because of this I made him sit inside the House. He asked for water and when I went to get water from the fridge, by that time he had closed the door of the room and held me from behind and gave 2-4 slaps and threw me on the sofa and committed “galat kaam” with me. He committed such act as is done between Husband-wife, without my consent. He threatened me that if I told this to anyone, then he would kill me and my son. After that he called me and further threatened me.

On 11.6.14 I went to Ranchi. Outside the Court I met Sanjeev and with the excuse of settling the case he made me sit in a white car and took me far away, where 2 men, Sanjay and Jitesh were standing. He made those 2 persons also sit in the car and said that Jitesh was the person who had made the complaint against my husband and Sanjay is the advocate, who will get the case quashed. Then both of them (Jitesh and Sanjay) came and sat on the back seat of the car where I was sitting. Sanjay, asked me “Have you brought ₹2 lakh?” To that I replied “I have got it but I will give it in Court.” After that Jitesh held my chest and Sanjay took out ₹2 lakh from my purse. After that both Sanjay and Jitesh started touching my private parts, when I opposed, then Jitesh called a person namely Pandey, and Pandey came & sat on the front seat of the car. I pushed Sanjay & then both he and Jitesh got out of the car and Pandey came to the back seat of the car and said to me “I have been waiting for you and your husband for many days.” He also touched my private parts and after 5 minutes got down from the car. Sanjeev threatened me that they have

connections with Naxalites and threatened to kill me and my husband. Then, Sanjeev said that he will get me a settlement receipt of ₹2 lakh. Then he took me to one room in Ranchi Court. In that room Sanjay, Jitesh, Pandey and another person, who they were calling Anil were there. Anil held my hand and said, “when money was given to your husband did he give any receiving that I should give you?.” Sanjay refused to give any receipt and said that he will adjust this money in another case of ₹18 lakhs. To this Anil made me sit there and started misbehaving with me and touched my back. He got my signature on one blank paper and one written paper on which it was written that I will return my husband’s loan amount. He threatened me not to tell anyone. After coming here for some days I did not tell this thing to anyone out of fear.”

3. Pursuant to the filing of the charge sheet, charge for offence punishable under Sections 376/506 IPC was directed to be framed against the petitioner vide impugned order dated 13th July, 2016 for the incident at Delhi and the learned Trial Court came to the conclusion that no charge is required to be framed in respect of the alleged incident dated 11th June, 2014 as there was no evidence to show that the prosecutrix visited Ranchi on the said date. Thus the present petition against the order directing framing of the charge under Sections 376/506 IPC in relation to the alleged incident of September, 2013.

4. Learned counsel for the petitioner contends that the allegations of the prosecutrix were in respect of two incidents one in the month of September, 2013 at Delhi and other on 11th June, 2014 at Ranchi, Jharkhand. In respect of the second alleged incident, the petitioner has already been discharged however, while directing framing of charge the learned Trial Court failed to take into consideration the investigation carried out and the documents along

with it. The case of the prosecutrix in her statement recorded under Section 161 Cr.P.C. is that after 15-20 days of the arrest of her husband, that is, on 2nd September, 2013 the petitioner had called her on her mobile phone No.9873197283 from his mobile phone No.8871706675. The call details of the petitioner's mobile phone were duly collected by the Investigating Officer and made part of the charge sheet which reflects that no call was made by the petitioner to the prosecutrix. Further the location of the petitioner was at Bihar at the relevant time. Hence the allegations of rape were not substantiated even as per the documents collected by the investigating agency. The learned Trial Court failed to notice that on the complaint of the mother of the petitioner, husband of the prosecutrix was taken into custody on 2nd September, 2013 and hence the FIR by the prosecutrix was only a counter blast to pressurize the petitioner and his mother to withdraw the case against her husband.

5. The law in respect of consideration at the stage of framing of charge is well settled. Supreme Court in the decision reported as AIR 1979 SC 366 Union of India vs. Prafulla Kumar Samal & Anr. held:

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."

6. Further Supreme Court in the decision reported as AIR 2010 SC 663 P. Vijayan vs. State of Kerala & Anr. held:

10. If two views are possible and one of them gives rise to suspicion only, as distinguished from grave suspicion, the Trial Judge will be empowered to discharge the accused and at this stage he is not to see whether the trial will end in conviction or acquittal. Further, the words "not sufficient ground for proceeding against the accused" clearly show that the Judge is not a mere Post Office to frame the charge at the behest of the prosecution, but has to exercise his judicial mind to the facts of the case in order to determine whether 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 a weighing and balancing of evidence and probabilities which is really the function of the Court, after the trial starts. At the stage of Section 227, the Judge has merely to sift the evidence in order to find out

whether or not there is sufficient ground for proceeding against the accused. In other words, the sufficiency of ground would take within its fold the nature of the evidence recorded by the police or the documents produced before the Court which ex facie disclose that there are suspicious circumstances against the accused so as to frame a charge against him.

11. The scope of Section 227 of the Code was considered by this Court in the case of State of Bihar v. Ramesh Singh (1977) 4 SCC 39 wherein this Court observed as follows:

...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....

This Court has thus held that whereas strong suspicion may not take the place of the proof at the trial stage, yet it may be sufficient for the satisfaction of the Trial Judge in order to frame a charge against the accused.

7. In the decision reported as (2013) 3 SCC 330 Rajiv Thapar & Ors. Vs. Madan Lal Kapoor Supreme Court delineated the steps to determine the veracity of prayer for quashment raised by an accused by invoking the power vested in the High Court under Section 482 Cr.P.C. at the stage of issuance of process or framing of charge which are stages prior to commencement of the actual trial as under:

“29. The issue being examined in the instant case is the jurisdiction of the High Court under Section 482 CrPC, if it chooses to quash the initiation of the prosecution against an accused at the stage of issuing process, or at the stage of committal, or even at the stage of framing of charges. These are all stages before the commencement of the actual trial. The same parameters would naturally be available for later stages as well. The power vested in the High Court under Section 482 CrPC, at the stages referred to hereinabove, would have far-reaching consequences inasmuch as it would negate the prosecution's/complainant's case without allowing the prosecution/complainant to lead evidence. Such a determination must always be rendered with caution, care and circumspection. To invoke its inherent jurisdiction under Section 482 CrPC the High Court has to be fully satisfied that the material produced by the accused is such that would lead to the conclusion that his/their defence is based on sound, reasonable, and indubitable facts; the material produced is such as would rule out and displace the assertions contained in the charges levelled against the accused; and the material produced is such as would clearly reject and overrule the veracity of the allegations contained in the accusations levelled by the prosecution/complainant. It should be sufficient to rule out, reject and discard the accusations levelled by the prosecution/complainant, without the necessity of recording any evidence. For this the material relied upon by the defence should not have been refuted, or alternatively, cannot be justifiably refuted, being material of sterling and impeccable quality. The material relied upon by the accused should be such

as would persuade a reasonable person to dismiss and condemn the actual basis of the accusations as false. In such a situation, the judicial conscience of the High Court would persuade it to exercise its power under Section 482 CrPC to quash such criminal proceedings, for that would prevent abuse of process of the court, and secure the ends of justice.

30. Based on the factors canvassed in the foregoing paragraphs, we would delineate the following steps to determine the veracity of a prayer for quashment raised by an accused by invoking the power vested in the High Court under Section 482 CrPC:

30.1. Step one: whether the material relied upon by the accused is sound, reasonable, and indubitable i.e. the material is of sterling and impeccable quality?

30.2. Step two: whether the material relied upon by the accused would rule out the assertions contained in the charges levelled against the accused i.e. the material is sufficient to reject and overrule the factual assertions contained in the complaint i.e. the material is such as would persuade a reasonable person to dismiss and condemn the factual basis of the accusations as false?

30.3. Step three: whether the material relied upon by the accused has not been refuted by the prosecution/complainant; and/or the material is such that it cannot be justifiably refuted by the prosecution/complainant?

30.4. Step four: whether proceeding with the trial would result in an abuse of process of the court, and would not serve the ends of justice?

30.5. If the answer to all the steps is in the affirmative, the judicial conscience of the High Court should persuade it to quash such criminal proceedings in exercise of power vested in it under Section 482 CrPC. Such exercise of power, besides doing justice to the accused, would save precious court time, which would otherwise be wasted in holding such a trial (as well as proceedings arising therefrom) specially when it is clear

that the same would not conclude in the conviction of the accused.”

8. It is the admitted case of the prosecutrix that her husband had been arrested and was in custody and during the course of investigation documents were collected which showed that on the complaint of the mother of the petitioner alleging that on the pretext of getting admission of the petitioner, husband of the prosecutrix received ₹20 lakhs, in lieu whereof he issued five cheques for a sum of ₹16.57 lakhs which on presentation bounced in which respect the husband of the complainant was in custody.

9. In the present case this Court is not even required to look into the defence of the petitioner for the reason the material relied upon by the petitioner forms part of the charge-sheet. Thus on the basis of material collected during investigation following facts emerge:

“i) Charge has been directed to be framed against the petitioner for offences punishable under Section 376/506 IPC for the alleged incident in September 2013.

ii) As regards the incident of 11th June, 2014 allegedly committed at Ranchi complaint has been referred to SSP Ranchi.

iii) It is the specific case of the prosecutrix that on 2nd September, 2013 the petitioner called her from his mobile No. 8871706675 on her mobile No. 9873197283.

iv) As per the call record of the two mobile phones connected, no phone call was made from mobile No. 8871706675 to the complainant on her mobile Phone No. 9873197283. Further as per the call record of mobile No. 8871706675 of the petitioner, the petitioner was not in Delhi in September, 2013.

v) Admittedly, the husband of the prosecutrix was in custody and as per the evidence collected by the investigating agency he was in custody at the time of registration of FIR on

the complaint of the mother of the petitioner in relation to the cheating and bouncing of the cheques.

vi) Admittedly, the complaint was filed after nine months of the alleged incident only after the husband of the prosecutrix was summoned and sent to custody on the complaint of the mother of the petitioner.”

10. The impeccable evidence on record collected during the investigation by the Investigating Agency, ought to have been looked into by the learned Trial Court. If the said material improbabilises the statement of the prosecutrix and does not raise a strong suspicion against the petitioner of having committed the offences, the Court was duty bound to discharge the petitioner. In view of the facts noted above the impugned order dated 13th July, 2016 is set aside. Petitioner is discharged for the offences punishable under Sections 376/506 IPC pursuant to FIR No.894/2014 registered at PS Seema Puri.

11. Petition and application are disposed of.

(MUKTA GUPTA)
JUDGE

MARCH 24, 2017
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