

\$~4

*

IN THE HIGH COURT OF DELHI AT NEW DELHI

%

Date of Decision: October 09, 2017

+

CRL.REV.P. 557/2017

STATE

..... Petitioner

Through: Ms.Kusum Dhalla, APP for the
State with SI Manju, PS JANAK
Puri.

versus

VARUN VERMA

...Respondent

Through : Ms.Yashima Sharma,
Advocate.

PRATIBHA RANI, J. (Oral)

1. Feeling aggrieved by the order dated 20th March, 2017 whereby respondent/accused person has been discharged in case FIR No.1622/2015 under Section 376/328/323/506 IPC, PS Janak Puri, the State has invoked the revisional jurisdiction of this Court with a prayer to set aside the order on discharge.

2. Before the learned Trial Court, the respondent/accused sought his discharge on the grounds which are recorded in para 5 of the impugned order as under:-

'5. Ld. Counsel for the accused has contended that accused has been falsely implicated in this case. She withdrew her complaint on 6.12.2015 and also refused to undergo her internal medical examination when she was taken to hospital on 6.12.2015. According to him, if a grown up girl has consented to sexual intercourse with a person who held out false promise to marry her, it would not amount to consenting under any

misconception of fact u/s 90 IPC and, as such, no offence of rape can be said to have been committed. According to him, no prima facie case for the alleged offences is made out against the accused and he is liable to be discharged.'

3. Vide impugned order dated 20th March, 2017, the learned Addl Sessions Judge has discharged the accused/respondent for the following reasons:

'16. After examining the documentary as well as oral evidence which the prosecution proposes to adduce to prove the guilt of the accused, even if fully accepted, before it is challenged by cross-examination or rebutted by defence evidence, if any, is not showing that accused committed the alleged offences for which they are being prosecuted because of following reasons:

(a) No complaint was lodged by the prosecutrix till December 2015 though she was allegedly raped by the accused since June 2012. There is no valid justification for delay in lodging the FIR.

(b) The evidentiary value of the medical evidence is zero.

(c) The prosecutrix withdrew her complaint on 6.12.2015 specifically mentioning that allegations of rape were made by her on some misunderstanding. Assuming for the sake of argument that her consent was obtained on pretext of marriage, the consent cannot be said to result from misconception of fact in the facts and circumstances of this case.

(d) In view of the judgment - Sanjay Singh (supra) ingredients of Section 328 IPC are not

attracted to the present case.

(e) No obscene photographs/video were recovered during investigation.

17. Considering the facts and circumstances of this case, after sifting and weighing the evidence for the limited purpose of finding out whether or not a prima facie case is made out against the accused, I am of the opinion that the materials placed before the Court do not disclose the grave suspicion against the accused for framing a charge against him for committing offences punishable under Sections 376/328/323/506 IPC. Accordingly, accused in the present case is discharged for the offences punishable u/ss. 376/328/323/506 IPC. His personal bond is cancelled and surety is discharged. In terms of Section 437(A) Cr.P.C., accused is directed to furnish personal bond in the sum of Rs.25,000/- with one surety in the like amount for a period of six months for his appearance before the High Court of Delhi in the event the prosecution wishes to challenge the present order by filing the appropriate petition in the High Court. Ahlmad is directed to page and bookmark the file so as to enable the digitisation of the entire record. File be consigned to Record Room.'

4. I have heard learned APP for the State as well as learned counsel for the respondent and carefully gone through the record.

5. FIR No.1622/2015 under Section 376/328/323/506 IPC, PS Janak Puri has been registered on the basis of complaint made by the prosecutrix 'P' (name withheld to conceal her identity) wherein she has stated about the rape being committed on her in June, 2012 when the respondent/accused called her to his house on the pretext that his mother was calling her. When she visited his house, mother of the

accused left for the market. The accused served her a cold drink and after having the cold drink she became unconscious. When she regained her consciousness, she found herself with no clothes on her body and realized that she had been raped. When she started weeping, accused informed that he had already made a film of her in nude condition and would put the same on social media and kill her if she disclose about the incident to anyone. Due to the threat being extended by the accused, she did not inform anyone. Thereafter the accused started visiting her house and also promised to marry her after the marriage of the brother. On 14th February, 2013 on Valentine Day he promised to marry her and also to destroy all her videos and photos. In March, 2013, the respondent/accused talked to her mother and brother about the marriage proposal. Thereafter they had physical relations on his promise to marry her. He also used to compel her to have liquor and on her refusal, he used to say that unless she consume liquor, he would not marry her and after forcing her to consume liquor he used to commit rape on her. There are other instances also mentioned in the FIR about having physical relations with her without her consent.

6. In her statement under Section 164 CrPC also, she has specifically narrated about the first incident in June, 2012 which was without her consent. The promise to marry was stated to be made at a much later stage.

7. The learned ASJ while passing the order on discharge has relied upon Gaurav Maggo vs. State in CrI.A. No.369/2014 decided on 29th May, 2015 without noticing that in the said case, the accused was

convicted after conclusion of trial and when he preferred an appeal against his conviction, he was acquitted and has no applicability at the stage of charge.

8. The learned Trial Court failed to take note of the facts of the instant case wherein at the time of she being allegedly raped in June, 2012, there was neither any consent nor consent being obtained under the misconception of fact i.e. promise to marry. The incident has allegedly happened when the prosecutrix allegedly visited the house of the accused to meet his mother and after the mother of the accused left for market, she was served with a cold drink by the accused which she consumed and became unconscious. When she regained her consciousness, she found herself with no clothes on her body and realized that she had been raped. When she started weeping, accused informed that he had already made a film of her in nude condition and would put the same on social media and kill her if she disclose about the incident to anyone. Due to the threat being extended by the accused, she did not inform anyone. Thereafter the accused started visiting her house and also promised to marry her after the marriage of younger brother. On 14th February, 2013 on Valentine Day he promised to marry her and also to destroy all her videos and photos. In March, 2013, the respondent/accused talked to her mother and brother about the marriage proposal. Thereafter they had physical relations on his promise to marry her. He also used to compel her to have liquor and on her refusal, he used to say that unless she consume liquor, he would not marry her and after forcing her to consume liquor he used to commit rape on her.

9. The effect of delay in lodging the FIR or refusal to undergo internal medical examination could not have been made a ground for discharge by the learned Trial Court especially when in the FIR and in her statement under Section 164 CrPC, there are specific allegation of being raped without her consent when she allegedly fell unconscious under the influence of cold drink served to her by the accused.

10. 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.

11. In the report Sheoraj Singh Ahlawat & Ors. vs. State of U.P. & Anr. 2013 CrL.L.J. 331 the Apex Court in a matrimonial dispute 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.”

12. 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 Sections 376/328/323/506 IPC is made out against the respondent and not to appreciate the evidence as if arriving at the conclusion as to whether the material placed was sufficient to base the conviction.

13. As the impugned order dated 20th March, 2017 discharging the accused has been passed against the settled legal position, the same is set aside. The respondent/accused shall face trial for the offences which are prima facie made out against him.

14. Parties are directed to appear before the Court of learned Sessions Judge, Dwarka Court, Delhi on 30th October, 2017.

15. A copy of this order be sent to the learned Sessions Judge, West District, Tis Hazari Court who may try the case himself or assign the same to Addl. Sessions Judge having jurisdiction to try the same.

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.

OCTOBER 09, 2017

‘st’