

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

Judgment delivered on : April 25, 2017

+ **CRL.REV.P. 821/2016**
SANDEEP SHARMA

..... Petitioner

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

versus

STATE

..... Respondent

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 revision petition filed under Section 397 read with Section 401 of Cr. P.C. the petitioner seeks for setting aside the order dated 03.10.2016 passed by the learned Additional Session Judge, (Special Fast Track Court), East District, Karkardooma Courts, Delhi, 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.

2. In nutshell, the facts of the case as mentioned in the impugned order on charge are that the prosecutrix came in contact with the appellant Sandeep Sharma in January 2003, through Yahoo Messenger

and thereafter, friendship developed between them. The accused made physical advances to her which she resisted. However, the accused made physical relations with her in natural and unnatural manner without her consent. On 04.06.2012, the accused befooled the prosecutrix into some ceremony pretending to be married with her. It is also the case of the prosecution that the accused started ignoring the prosecutrix and on 18.05.2013 the prosecutrix went to the house of the accused persons but the other accused persons Mani Ram Sharma (Father), Nirmala Sharma (Mother) and Hemant Sharma (Brother) of accused Sandeep Sharma locked her in a room and beat her. The accused Hemant Sharma misbehaved with her and outraged her modesty. They also threatened the prosecutrix that they will kill her. It is further the case of prosecution that the prosecutrix 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.

3. 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 charged for the offence under Section 376(1) of IPC. However, the other accused Mani Ram and Nirmala Sharma were charged for offence under Sections 323/342/506/34 of IPC and accused Hemant Sharma was chargesheeted for the offence under Section 323/342/354/506/34 of IPC. Consequently, the accused persons were charged accordingly.

Aggrieved by the said order, the petitioner – Sandeep Sharma has approached this court by way of the present revision petition.

4. Learned Senior Advocate appearing on behalf of the petitioner contended that the present case is registered on the complaint made against the petitioner by prosecutrix for the offence under Section 376(1) of IPC. It is further contended that in her statement under Section 161 Cr.P.C., the prosecutrix 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. However, the prosecutrix refused to undergo medical examination on the pretext that she was unwell. Learned senior counsel for the petitioner vehemently urged 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 but 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 a baby to which the petitioner replied that they can have a baby later. It is further contended that even the material 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 merely refusal of registration of marriage cannot form the basis of allegations under Section 376 of IPC.

5. 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 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 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 bail was granted to the petitioner and no charge under Section 376(2)(n) could have been framed.

6. 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 befool her and continued to have oral sex. When she visited the petitioner's parents to support her, they locked her in a room and beat 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.

7. 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.

8. 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 has been charged with those offences.

9. The law on the point of framing of charge is succinctly stated by the Hon'ble Supreme Court in *Sajjan Kumar v. CBI*, (2010) 9 SCC 368 wherein after referring to *Union of India v. Prafulla Kumar Samal* (1979) 3 SCC 4 and *Dilawar Balu Kurane v. State of Maharashtra*, (2002) 2 SCC 135 this Court observed in para 19 thus:

“It is clear that 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 only for the purpose of deciding prima facie whether the Court should proceed with the trial or not. If the evidence which the prosecution proposes to adduce 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.”

10. Now advertent back to the facts of the present case, the petitioner allegedly made physical relations with the prosecutrix based on false promise of marriage and without consent of the prosecutrix. The prosecutrix, in fact, alleged that the petitioner made the prosecutrix indulge in sexual intercourse. Though the prosecutrix

alleged in her complaint that she was befooled by the petitioner that on 4th June 2012, he is getting married to her and the petitioner 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, but it is not pleaded on behalf of the petitioner that he accepts the marriage ceremony allegedly held on 14.06.2012 as a valid marriage between him and the prosecutrix. Therefore, the judgment so relied upon by the petitioner cannot be of any help at this stage.

11. At this stage, the court is to see whether on the basis of the material on record, the petitioner has committed any offence or not. In the facts of this case, since the petitioner had nowhere admitted the marriage with the prosecutrix therefore, in the considered opinion of this court, it cannot be held that framing of charge under Section 376/376(2)(n)/377 of IPC is unjustified at this stage. This court is of the considered opinion that at the time of framing of the charges, the probative value of the material on record cannot be gone into but 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.

12. In the light of the aforesaid discussion of facts and circumstances of the case, this court finds that the order dated 03.10.2016 passed by the learned Additional Sessions Judge thereby framing charge under Sections 376/376(2)(n)/377 of IPC does not

suffer from any serious legal infirmity and rather it was eminently a just and fair order and this Court finds no reason to take a different view from the said order.

13. Resultantly, the present petition filed on behalf of the petitioner is dismissed and the order dated 03.10.2016 passed by the learned Additional Session Judge thereby framing charge under Section 376/376(2)(n)/377 of IPC is upheld. However, the petitioner shall have every opportunity to submit and prove his contentions by leading the cogent evidence and it is the prerogative of the Trial Court to consider all the material evidence placed before it and to pass the appropriate order. Accordingly, the petitioner is directed to appear before the Trial Court and to take appropriate legal remedies as available under the law.

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

(P.S.TEJI)
JUDGE

APRIL 25, 2017
pkb