

**IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

CRM-M-40949-2017

Date of decision: 30.04.2018

Gagandeep Malik

...Petitioner

Versus

State of Haryana and another

...Respondents

CORAM: HON'BLE MS. JUSTICE JAISHREE THAKUR

Present: Mr. Sushil Jain, Advocate,
for the petitioner.

Mr. P.P. Chahar, DAG, Haryana.

Mr. Gaurav Singla, Advocate,
for respondent No.2.

JAISHREE THAKUR, J.

1. The instant petition has been instituted under sections 482 Cr. P.C. praying for quashing of the impugned FIR No. 152 dated and 23.10.2016 (Annexure P-1) initially registered under sections 354-A (1), 451, 506 IPC, and subsequently added sections 376, 511 IPC at Police Station Sector 16 Faridabad and the impugned order dated 19.09.2017 (Annexure P-10), whereby application filed by the petitioner under Section 227 of Cr.P.C seeking discharge has been dismissed.

2. In brief, the facts are that the FIR was registered on the statement of the complainant Rubeena Malik under sections 354-A (1), 451, 506 IPC, with subsequent additions of Sections 376 & 511 IPC at

Police Station Sector 16, Faridabad against Gagandeep Malik the petitioner herein and Rajpal Malik. The complainant is the daughter-in-law of Rajpal Malik and sister-in-law of Gagandeep, the petitioner herein. In the FIR, it is alleged that the complainant is a resident of house number B-110, 1st floor, Green Field Colony, Faridabad. On 12.10.2016 at about 8:30 PM after finishing her kitchen work she was going to her room when her father-in-law who was drunk accosted her and caught hold of her hand and pulled her inside his room. He pushed her on to the bed and tried to outrage her modesty. On the hearing her shouting, her brother Akashdeep came into the room and upon seeing her brother, she was left alone. Thereafter, her father-in-law started abusing her brother and the complainant by using filthy language and threatened to kill her, in case, the incident was narrated to someone else. After gap of 15-20 minutes a phone call was received from her brother-in-law Gagandeep Malik telling her to ask her brother to leave the house, otherwise she would be taught a lesson. She was also told to obey the dictates of his father, as this house belonged to his father. After investigation, a report was submitted under sections 173 Cr.P.C. and thereafter, an application was preferred under Section 227 Cr.P.C seeking discharge before the Additional Session Judge, Faridabad. After going through the evidence available, the Additional Session Judge, Faridabad came to the conclusion that there is nothing on the record in the statement of the prosecutrix to establish that the accused Rajpal made an attempt to commit rape and at best it is a case of indecent assault upon a woman, and held that Rajpal is guilty of having committed an offence under Sections

354, 451 and 506 IPC and for the petitioner Gagandeep, it was held that there was sufficient material available to frame a charge under section 506 IPC against him, holding the said offences triable by JMIC. The parties were directed to appear before the CJM, Faridabad on 26.09.2017. Aggrieved against the order dated 19.09.2017, passed by the Additional Sessions Judge, Faridabad dismissing the application of the petitioner under Section 227 of the Cr.P.C, as well as was praying for quashing the FIR, the instant petition has been filed.

3. Learned Counsel appearing on behalf of the petitioner contends that the entire dispute is in fact on the basis of trumped up allegations in the FIR, since no such incident took place. It is argued that the petitioner herein is running a non-government organisation which works in areas of the De-addiction and is residing separately from the complainant and his father. Moreover, there is a family dispute regarding property pending between his father and him and against the complainant and her husband. A flat had been purchased by Rajpal Malik in which the complainant was residing in fact, all expenses relating to the education of the complainants minor son was borne by the father-in-law Rajpal Malik. In the year 2010, father of the petitioner applied for a plot of 385 Sq. Yard in residential Seector-2, HUDA, Bahadurgarh and the application form was submitted in the name of the complainant. Plot was allotted to the complainant and all installments towards the plot were paid by the father of the petitioner, since the complainant had no independent source of income. It is only when the complainant was asked to transfer the said plot that a dispute arose, and

false allegations have been leveled. It is also submitted that a civil suit has been filed before the Civil Judge (Jr.Divn.), Bhadurgarh which would substantiate the claim that the instant FIR arises on account of a civil dispute.

4. Per contra, learned counsel appearing on behalf of the respondents urge that the allegations of criminal intimidation are made out against the petitioner as would be evident from a bare reading of the FIR.

5. I have heard the counsel for the parties and have also perused the pleadings.

6. The allegations as set out in the FIR are that the father in law of the petitioner tried to rape the complainant and thereafter she received a phone call from the petitioner Gagandeep Malik telling her to ask her brother to leave the house, otherwise she would be taught a lesson. She was also told to obey the dictates of his father, as this house belonged to his father.

7. Section 227 deals with Discharge and it reads as follows:

"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."

As per the aforesaid provision, upon consideration of the records of the case and the documents submitted before him and after hearing the submissions

of the party accused and the prosecution, if the Judge is of the opinion that no sufficient ground is made out to proceed against the accused, he is required to discharge the accused and record his reasons for doing so.

8. The duty of the Magistrate/ Sessions Court at the time of framing charges is to consider the report and documents sent with it under Section 173 Cr.P.C. and if he thinks it necessary, give an opportunity to the prosecution and the accused of being heard and thereafter conclude whether there are sufficient grounds for presuming that the accused has committed the offences triable by him or to frame charges. In a judgment rendered by the Supreme Court in ***Smt. Rumi Dhar versus State of Bengal and another, (2009) 6 SCC 364*** it was held;

“While considering an application for discharge filed in terms of section 239 of the court, it was for the learned judge to go into the details of the allegations made against each of the accused persons so as to form an opinion as to whether any case at all has been made out or not as a strong suspicion in regard thereto shall sub serve requirements of law...”

9. The litmus test pertaining to discharge of an accused has been set out by the Supreme Court in ***Union Of India Versus Prafulla Kumar Samal AIR 1979 Supreme Court 366 :-***

“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 his function 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. 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.”

10. Similarly in ***P. Vijayyan vs. State of Kerala (2010) 2 SCC 398*** it has been held as :-

“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. A bare reading of the FIR would reflect that the complainant received a phone call from the petitioner herein within 15-20 minutes, after the alleged incident of the father in-law allegedly pulling her into his room and throwing her on to his bed and assaulting her. There is evidence to the effect that the petitioner did call the complainant from his mobile on the alleged day of occurrence. There are specific allegations against the petitioner herein as well as against the father in-law, and whether or not these allegations are true, is a matter of trial which cannot be determined at this stage. The Court has to proceed with an assumption that the allegations and material brought on record are true. As held in **P. Vijayan** case (supra) 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. The Court must apply its judicial

mind on the material placed on record and pass a speaking order to that effect while framing charges.

12. Therefore, in the totality of the circumstances in the instant case, when there are specific allegations, both in the complaint as well as in the statements recorded, there is no infirmity in the order passed by the Additional Sessions Judge, Faridabad, which is a well reasoned and a speaking order.

13. Consequently the Criminal Miscellaneous Petition stands dismissed.

30.04.2018

Satyawan

**(JAISHREE THAKUR)
JUDGE**

Whether speaking/reasoned
Whether reportable

Yes.
No.