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**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION**

REVISION APPLICATION NO. 270 OF 2019

Vijay Ramchandra Gupta .

Vs

The State of Maharashtra & Anr

..Applicant

..Respondents

Mr. Madan Gupta for the Applicant.

Mr. R.M. Pethe, APP State/Respondent No.1.

CORAM : A.S.GADKARI, J.

DATE : 21st August 2019.

P.C.:

1] By the present Revision Application under Section 397 of the Code of Criminal Procedure, the applicant has questioned the correctness, legality and propriety of Order dated 21st February 2019 passed below Exh.3 in Sessions Case No.366 of 2017 by the learned Additional Sessions Judge, Borivali Division, Dindoshi, rejecing the application filed by the applicant under section 227 of Cr.P.C. for discharge.

2] Heard the learned counsel for the applicant and the learned APP for the Respondent No.1/State. Perused the chargesheet.

3] The applicant is accused in CR No.316 of 2017 dated 14.6.2017

registered with Juhu Police Station, Mumbai for the offences punishable under sections 376, 384, 506 of the Indian Penal Code and under section 65(e) of the Information Technology Act.

4] The prosecution case in nutshell is that, the applicant who was residing in the vicinity of the prosecutrix stealthily took video shooting when the prosecutrix was bathing and changing her clothes. The applicant thereafter by extending threats to the prosecutrix that, he will circulate the said video clip on social media, committed forcible intercourse with her. It is alleged that, the applicant also demanded ransom from the prosecutrix in that behalf. In the premise, the prosecutrix herself lodged the first information report. The police after completion of investigation, submitted chargesheet.

The applicant thereafter preferred an application below Exh.2 under section 227 of Cr. P.C. for his discharge from the case, which has been rejected by the impugned Order.

5] Learned counsel for the applicant submitted that, on the alleged date of incident, the prosecutrix was not present in Mumbai and she was out of State of Maharashtra. He submitted that, with a view to settle her score against the family members of the applicant who are accused in a

case filed by the relative of prosecutrix, his client has been falsely implicated in the present crime. He further submitted that, the statement of the mother of the prosecutrix does not corroborate prosecutrix's version. He submitted that, the applicant had filed an application under section 227 of Cr. P.C. for discharge from the said case. however, the Trial Court erred in scrutinizing the evidence on record at the time of hearing of discharge application and passed impugned Order dated 21st February 2019 rejecting the said application. He therefore submitted that, taking into consideration these aspects, the present Revision may be allowed by setting aside the impugned Order dated 21st February 2019.

6] A perusal of the first information report lodged by the prosecutrix would prima facie indicate that, it is self-eloquent, reliable and trustworthy. The prosecutrix in detail has narrated the said incident and there is no reason to disbelieve her statement at this stage.

It is well settled position of law as has been enumerated by the Hon'ble Supreme Court in the case of *Aman Kumar And Anr Vs. State Of Haryana [AIR 2004 SC 1497]*, that the prosecutrix complaining of having been a victim of the offence of rape is not an accomplice after the crime. That there is no rule of law that her testimony cannot be acted without

corroboration in material particulars. She stands at a higher pedestal than an injured witness. That in the later case, there is injury on the physical form, while in the former it is both physical as well as psychological and emotional. The same view is further expressed by the Supreme Court in the case of *State of Himachal Pradesh Vs. Shree Kant Shekari* [AIR 2004 SC 4404].

7] The Supreme Court in the case of *R.S. Nayak vs. A.R. Antulay and Anr.* Reported in AIR 1986 SC 2045, while dealing with the provisions of Sections 227, 239 and 245 of Cr.P.C., in unequivocal terms in Para 44 has held as under:-

"The Code contemplates discharge of the accused by the Court of Sessions under Section 227 in a case triable by it; cases instituted upon a police report are covered by Section 239 and cases instituted otherwise than on police report are dealt with in Section 245. The three sections contain some what different provisions in regard to discharge of the accused. Under Section 227, the trial Judge is required to discharge the accused if he 'considers that there is not sufficient ground for proceeding against the accused.' Obligation to discharge the accused under Section 239 arises when 'the Magistrate considers the charge against the accused to be groundless.' The power to discharge is exercisable under Section 245(1) when 'the Magistrate considers, for reasons to be recorded, that no case against the accused has been made out which, if unrebutted, would warrant his conviction....' It is a fact that Sections 227 and 239 provide for discharge being ordered before the recording of evidence and the consideration as to whether charge has to be framed or not is required to be made on

the basis of the record of the case, including documents and oral hearing of the accused and the prosecution or the police report, the documents sent along with it and examination of the accused and after affording an opportunity to the two parties to be heard. The stage for discharge under Section 245, on the other hand, is reached only after the evidence referred to in Section 244 has been taken. Notwithstanding this difference in the position there is no scope for doubt that the stage at which the Magistrate is required to consider the question of framing of charge under Section 245(1) is a preliminary one and the test of "prima facie" case has to be applied. In spite of the difference in the language of the three sections, the legal position is that if the trial Court is satisfied that a prima facie case is made out, charge has to be framed."

8] A further reliance can also usefully be placed on the decision of the Supreme Court in the case of *State of Maharashtra Vs. Soma Nath Thapa* reported in (1996) 4 SCC 659 wherein, the Supreme Court has held that, if there is ground for presuming that the accused has committed the offence, it can be said that, a prima facie case has been made out against the accused. It has been further held that even if the Court finds that the accused might have committed an offence, it can frame charge. The Supreme Court has further clarified in the said case that at the stage of framing of charge probative value of the statements cannot be gone into.

9] The Supreme Court in the case of *Palvinder Singh Vs. Balwinder Singh and others* reported in (2008) 14 SCC 504 while dealing with the provisions of Section 227 of Cr.P.C., in para 13 has held that, the charges

can also be framed on the basis of strong suspicion. That marshaling and appreciation of evidence is not in the domain of the Court at that point of time.

Thus, it is clear that the Supreme Court in its various decisions has held that while considering the application for discharge the Court has to take into consideration the *prima facie* case as made out by the Complainant/prosecution.

10] After taking into consideration the ratio laid down by the Honourable Supreme Court in the aforesaid decisions and after perusing the chargesheet, this Court is of the considered view that, there is more than sufficient material available on record to proceed to frame charge against the applicant under the offences levelled against them.

I find no merits in the present Revision and is accordingly rejected.

(A.S.GADKARI, J.)