

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

% **Reserved on : 17.10.2019**
Pronounced on : 28.11.2019

+ **CRL.REV.P. 234/2019 and CRL.M.A. 4573/2019**

SUSHILA @ ANR.

..... Petitioners

Through **Mr. Aditya Aggarwal, Mr. Ankit
Mutreja, Mr. Amit Rana, Ms.
Ruchika, Advocates**

versus

STATE GOVT OF NCT OF DELHI & ANR. Respondents

Through **Mr. M.P. Singh, APP for the State
with ASI Ashmita, PS Najafgarh.
Mr. Rambir Singh, Advocate for
respondent no.2.**

CORAM:

HON'BLE MR. JUSTICE RAJNISH BHATNAGAR

JUDGMENT

1. The present revision petition has been preferred by the revisionists challenging the impugned order dated 19.01.2019 passed by the Ld. Trial Court whereby the following charge was framed against both the revisionists:

“That on 01.05.2018 at 11:15 AM at house no. 46 P-3 Block,
Gali no.-10, New Roshanpura, Najafgarh, New Delhi within the
Crl. Rev. 234/2019

jurisdiction of PS Najafgarh you both in furtherance of your common intention voluntarily caused miscarriage to Mrs. Neelam who was having 2-3 months pregnancy by giving her beating with kick and push, thereby both of you committed an offence punishable u/s 313/34 IPC and within the cognizance of this court.

And I hereby direct that both of you be tried by this court on aforesaid charge.”

2. Further a separate charge was also framed against revisionist No. 2 Anand Kumar Thakur which reads as follows :

“That on 01.05.2018 at 11:15 AM at house no. 46 P-3 Block, Gali no.-10, New Roshanpura, Najafgarh, New Delhi within the jurisdiction of PS Najafgarh you assaulted or used criminal force against Smt. Neelam w/o Sh. Deepak Yadav, intending to outrage her modesty and thereby committed an offence u/s 354 and within the cognizance of this court.

And I hereby direct that both of you be tried by this court on aforesaid charge.”

3. In brief, the facts of the case of the prosecution are that on 01.05.2018 at about 7:15 PM, complainant Neelam w/o Shri Deepak Yadav came to police station Najafgarh along with her husband and gave her statement in which she stated that seven years ago her father sold his ancestral land in village. One person namely Shekhar Kumar was her father’s friend, so her father had shared this deal with him. After some time Shekhar Kumar asked her father to purchase property bearing No. 46, P-3 Block, Gali No.10 New Roshanpura, New Delhi. So her father handed over

Rs. 22 Lakh to Shekhar Kumar to purchase the said property, but he fraudulently purchased the said property in his own name and whenever they used to talk about Rs.22 Lakh to Shekhar Kumar, he usually used to switch off his mobile phone.

4. She further stated that as her father is suffering from various ailments and is unable to walk, talk and understand, so on 01.05.2018 at about 9:00 a.m., she along with her husband went to Shekhar Kumar's home to discuss the issue of Rs.22 lakh. Shekhar Kumar was present in his house but he went away from there on the pretext of some work and said that he would come shortly. Since the wife of Shekhar Kumar (revisionist No. 1 herein) was also present in the house, so the complainant sat there waiting for Shekhar Kumar. At about 11 a.m., son of Shekhar Kumar namely Anand Kumar (revisionist No. 2 herein) came aggressively and asked the complainant about her presence and work in the house and directed her to go out from his house as they have some important work to do. Complainant told him that she would leave the house only after talking with his father Shekhar Kumar. On this Anand Kumar (revisionist No. 2) said that she would not go like this and he then pressed her breast, scuffled and teased her and pushed her, due to which she fell down. After hearing her cries, her husband came there and picked her up. Since she was having pregnancy of two months, she started experiencing stomach pain, her husband took her home for taking rest and she informed her mother telephonically. Thereafter her father and mother directly went to Shekhar Kumar's house with Nitish

(brother-in-law of the complainant). She and her husband also reached there and then police arrived, but her health got worse.

5. On this statement of complainant, a case vide FIR No. 109 dated 01.05.2018 u/s 354/323/34 IPC was registered at Police Station Najafgarh and investigation was taken up by W/ASI Asmita. During the investigation, the complainant's supplementary statement was recorded in which she stated that Shekhar Kumar used to visit her family since 2001 for the treatment of her father. Shekhar Kumar introduced himself as a doctor and used to give medicines to her father. She further stated that Shekhar Kumar also used to visit her native village and perform tantra mantra and worship for the treatment of her father. Complainant further stated that she also visited Shekhar Kumar's house 2-3 times to discuss the matter of plot in question but neither he returned their money nor gave plot's documents.

6. The complainant further stated in her supplementary statement that on 01.05.2018, she alongwith her husband went to the house of Shekar Kumar and when they reached Shekhar Kumar's house, he left the house on some pretext but his wife (revisionist No. 1) was there. When his son Anand (revisionist No. 2) saw them at his house, he enquired from them the purpose of their visit to his house. He told them that they had to go for some important work and asked them to go out of his house. At that time complainant told revisionist No. 1 in the presence of revisionist No. 2 that she is pregnant and cannot come again and again. And told the revisionist No. 2 that she would not go without talking to Shekhar Kumar. Thereafter,

revisionist No. 2 molested her and pushed her and his mother revisionist No. 1 Susheela kicked her in her stomach because of which she got sick.

7. During the investigation, medical opinion of the doctor was also obtained on the condition of the complainant, who opined that in the present case, *"assault as a cause for miscarriage of the complainant cannot be ruled out."* So, on the basis of doctor's opinion section 313 IPC was added in the case on 19.05.2018.

8. Arguments heard. Record perused.

9. It is urged by the Ld. counsel for the revisionists that the present FIR is false and fabricated and has been registered only with a purpose to create pressure against the revisionists as a civil dispute is pending between the complainant and the revisionists. It is further urged that both the revisionists were not aware about the pregnancy of the complainant. It is further urged that there are contradictions in the statements of the complainant in regard to the presence of the revisionist No. 2 Anand Kumar Thakur, when the complainant was talking to revisionist No. 1 Sushila about her pregnancy. It is argued that revisionist No. 2 Anand Kumar Thakur was not aware about the fact of pregnancy of the complainant but later on in her supplementary statement complainant has alleged that revisionist No. 2 Anand Kumar Thakur knew about her pregnancy. He further argued that the MLC of the complainant does not indicate that the pregnancy was terminated due to the acts of the revisionists. Ld. counsel for the revisionists has relied upon : ***Yogesh @ Sachin Jagdish Joshi Vs. State of Maharashtra, MANU/SC/7528/2008 and Khopri Modi & others Vs. State of Bihar &***

Anr. (Criminal Appeal (SJ) No. 21 of 1994) decided by the Patna High Court on 20 May, 2011.

10. The state has filed the status report and it is argued by the Ld. APP that as per the statement of the complainant recorded U/s 161 Cr.P.C and U/s 164 Cr.P.C revisionist No. 1 Susheela gave kick blow on the stomach of the complainant and thereafter revisionist No. 2 Anand Kumar Thakur pushed the complainant as a result of which she fell down and this they did despite having the knowledge that the complainant was pregnant. It is further argued by the Ld. APP that because of the injuries caused by the revisionists, the pregnancy of the complainant got terminated after 5 days of the incident which is evident from her medical certificate.

11. It is well settled law that at the stage of framing of charge, the court has power to shift and weigh the evidence for the limited purpose of finding out whether or not a prima-facie case against accused has been made out. When the material placed before the court discloses great suspicion against the accused which has not been properly explained, the court will be justified in framing charge. No roving inquiry into the pros and cons of the matter and evidence is not to be weighed as if a trial was being conducted. If on the basis of materials on record a court could come to the conclusion that commission of the offence is a probable consequence, a case of framing of charge exists.

12. To put it differently, if the courts were to think that the accused might have committed the offence it can frame a charge, though for conviction the conclusion is required to be that accused has committed the offence. At the

stage of framing of a charge, probative value of the materials on records cannot be gone into, the material brought on record by the prosecution has to be accepted as true at that stage. The truth, veracity and effect of the evidence which the prosecutor proposes to adduce are not to be meticulously judged, nor any weight is to be attached to the probable defence of the accused. It is not obligatory for the judge at that stage of the trial to consider in any detail and weigh in a sensitive balance whether the facts, if proved, would be incompatible with the innocence of the accused or not.

13. The standard of test and judgment which is to be finally applied before recording a finding regarding the guilt or otherwise of the accused is not exactly to be applied at this stage of deciding the matter under Section 227 or under Section 228 of the Code. 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. While deciding the question of framing of charge in a criminal case, the court is not to apply exactly the standard and test which it finally applies for determining the guilt or otherwise.

14. What is required to be seen is whether there is strong suspicion which may lead to the court to think that there is ground for presuming that the accused has committed an offence. The above proposition is supported with law laid down by the Hon'ble Apex Court and Hon'ble High Court reported as "*Union of India vs Prafulla Kumar*", AIR 1979 Supreme Court 366,

“State of Maharashtra and others vs Som Nath Thapa and other” JT 1996 (4) SC 615, *“State of Bihar vs Ramesh Singh”*, AIR 1997 SC 2018: (1997 CRI LJ 1606), *“Umar Amdula Sakoor Sorathia vs. Intelligence Officer Narcotic Control Bureau”* JT 1999 (5) SC 394, *“Kalu Mal Gupta vs. State”* 2000 I AD Delhi 107.

15. The complainant Neelam had made a statement U/s 161 Cr.P.C on 01.05.2018 and on the same very date she made supplementary statement. Her statement U/s 164 Cr.P.C was recorded on 23.05.2018.

16. In her statements the complainant has clearly alleged that the revisionists were aware that she was pregnant. Though, it has been vehemently argued by the Ld. counsel for the revisionists that revisionist No. 2 Anand Kumar Thakur was not aware about the pregnancy of the complainant.

17. But the perusal of the statements of the complainant shows that she has clearly alleged that the revisionists were having the knowledge of her pregnancy and it was in the presence of both the revisionists, she had disclosed about her pregnancy. I have also perused the medical report of the complainant in which it has been opined that in the present case, *"assault as a cause for miscarriage of the complainant cannot be ruled out."* The arguments of the counsel for the revisionists that the revisionist No. 2 Anand Kumar Thakur was not having the knowledge about the pregnancy of the complainant is a matter of evidence which can only be determined during the trial. There is no dispute with regard to the propositions of law laid down in the judgments relied upon by the Ld. counsel for the revisionists but

with due regards to the same, the same are not applicable to the facts of the present case.

18. As far as the charge U/s 354 IPC is concerned, there are clear cut allegations against the revisionist No. 2 Anand Kumar Thakur in this regard. The revisionist has categorically stated that revisionist No. 2 pressed her breast by putting his hand inside her suit with wrong intent, scuffled and teased her in order to outrage her modesty and also pushed her.

19. Therefore, in view of the discussions mentioned hereinabove, I find no infirmity in the impugned order dated 19.01.2019 passed by the Ld. Trial Court, the same is, therefore, upheld. Consequently the revision petition is dismissed and the Crl. M.A. 4573/2019 is also disposed of accordingly.

20. Nothing stated hereinabove shall tantamount to the expression of any opinion on the merits of this case.

RAJNISH BHATNAGAR, J

NOVEMBER 28, 2019

Sumant