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IN THE HIGH COURT OF DELHI AT NEW DELHI

Decided on:- 8th March, 2019

+ CRL.M.C.2926/2016

GURPREET SINGH RAKHI @ MICHAL Petitioner

Through: Mr. Anil Misra & Mr. Anant
Misra, Advs.

versus

STATE (NCT OF DELHI) & ANR. Respondents

Through: Mr. K.S. Ahuja, APP for the
State.
Mr. Anupam S. Sharma & Mr.
Prakash Airan, Advs. for R-2.

CORAM:

HON'BLE MR. JUSTICE R.K.GAUBA

ORDER (ORAL)

1. The petitioner is facing trial as accused in sessions case (SC no. 58925/2016) in the court of Additional Sessions Judge on the charge for offences punishable under Sections 376/313/506 of Indian Penal Code, 1860 (IPC), the same having been framed on 23.05.2016 on the basis of evidence which was presented with the report (charge-sheet) under Section 173 of the Code of Criminal Procedure, 1973 (Cr.P.C.), upon conclusion of investigation into first information report (FIR) no. 759/2015 of police station KN Katju Marg.

2. This petition under Section 482 Cr.P.C. was submitted with the following prayers:-

(a) Quash FIR bearing no. 759/2015, P.S. K.N. Katju Marg, New Delhi under Section 313/376/506 IPC

(b) Quash chargesheet filed in February 2016 in above matter;

(c) Quash all subsequent proceedings in New S.C. No. 58925/2016

(d) Call for record in New S.C. No. 58925/2016

(e) Pass any other orders as it may deem fit”.

3. The prosecutrix (second respondent) of the case is married woman with children. While lodging the FIR on 25.07.2015 she had, *inter alia*, alleged that she had come to be acquainted with the petitioner (the accused) for about two years, he having been introduced to her by a friend and at the instance of such friend she having arranged engagement of her younger sister with him, the said engagement having been later cancelled. She alleged that after the engagement of her sister had been broken, the petitioner started pursuing and stalking her. He would often visit her house during the absence of her husband, who would ordinarily be away in connection with his work. She alleged that the petitioner had extended threats to her and suggested that she should give up on her husband by threatening to kill her family and eventually persuaded her to abide by his wishes. It is alleged by her that, over the period, the petitioner engaged her in sexual intimacy as a result of which she had even conceived. She claimed that she had been subjected by the petitioner to physical assaults on several occasions and having arranged for the pregnancy to be aborted at a nursing home on 24.07.2015. According to her version in the FIR, her husband had come to see her in the

company of the petitioner at the time of her visit to the nursing home for abortion and it is then that she revealed the background facts to him.

4. In her statement under Section 164 Cr.P.C. recorded by Metropolitan Magistrate on 27.07.2015, the prosecutrix reiterated the background facts elaborating further on some aspects, stating on oath, *inter alia*, that she had been raped by the petitioner multiple times, he having used fire arm or knife to intimidate her also making an attempt to throw acid at her sister. She further stated that the petitioner had arranged some medicinal tablets to induce abortion but since the same did not bear the result, he had arranged abortion to be carried out at the nursing home by making a call pretending to be her husband. While the medical doctor who runs the nursing home, on being examined during investigation, has confirmed that there was a request made for aborting the pregnancy, a call having been received by her on phone from a person who had introduced himself as the husband, she has denied having met any person by such description as that of the petitioner.

5. The petitioner's plea primarily is that it is a case of false implication. He places reliance, *inter alia*, on certain social media chat to claim that the prosecutrix had been in consensual relationship with him.

6. The petitioner places reliance on *The State of Punjab v. Gurmeet Singh* (1996) (2) SCC 384; *Prashant Bharti vs. State (NCT of Delhi)* (2013) (9) SCC 293; *Deepak Gulati vs. State of Haryana*

(2013) (7) SCC 675; *Chittranjan Das v. State of West Bengal* (1964) 3 SCR 237; *Kamil vs. State of Uttar Pradesh* MANU/SC/1245/2018 and *Sham Singh vs. State of Haryana* MANU/SC/1888/2018.

7. It is noted that while resisting the framing of charge the petitioner had argued before the court of Sessions at the stage of consideration of charge that the sexual intercourse was “*with the consent of the complainant*”. The learned additional sessions judge declined to enter into detailed scrutiny of the statement of various witnesses observing that at the stage of charge, the court was not expected to sift so minutely the evidence, the obligation being only to find out whether a *prima facie* case stood established from the evidence that had been presented.

8. Given the fact that the case has travelled much beyond the registration of FIR, investigation having been completed, charge-sheet filed, cognizance taken thereupon, the case after committal to court of Sessions by the Jurisdictional Magistrate having resulted in trial which has commenced, the charge having been framed, the prayer clauses (a) and (b) quoted earlier cannot be entertained. The case requires limited scrutiny from the perspective of the issue as to whether charge is made out or not.

9. On the issue of consideration of a criminal case for framing of charge, the principles to be followed have been summarized by the Supreme court in *Sajjan Kumar vs. Central Bureau of Investigation* (2010) 9 SCC 368 as follows:-

“21. On consideration of the authorities about the scope of Sections 227 and 228 of the Code, the following principles emerge:

(i) The Judge while considering the question of framing the charges under Section 227 CrPC has the undoubted power to sift and weigh the evidence for the limited purpose of finding out whether or not a prima facie case against the accused has been made out. The test to determine prima facie case would depend upon the facts of each case.

(ii) Where the materials placed before the court disclose grave suspicion against the accused which has not been properly explained, the court will be fully justified in framing a charge and proceeding with the trial.

(iii) The court cannot act merely as a post office or a mouthpiece of the prosecution but has to consider the broad probabilities of the case, the total effect of the evidence and the documents produced before the court, any basic infirmities, etc. However, at this stage, there cannot be a roving enquiry into the pros and cons of the matter and weigh the evidence as if he was conducting a trial.

(iv) If on the basis of the material on record, the court could form an opinion that the accused might have committed offence, it can frame the charge, though for conviction the conclusion is required to be proved beyond reasonable doubt that the accused has committed the offence.

(v) 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.

(vi) At the stage of Sections 227 and 228, the court is required to evaluate the material and documents on record with a view to find out if the facts emerging therefrom taken at their face value disclose the existence of all the ingredients constituting the alleged offence. For this limited purpose, sift the evidence as it cannot be expected even at that initial stage to accept all that the prosecution states as gospel truth even if it is opposed to common sense or the broad probabilities of the case.

(vii) 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.

(emphasis supplied)

10. In view of the submissions made before the trial court at the time of consideration of charge, as noted in the order dated 23.05.2018 and the contentions raised before this Court in these proceedings, it not being disputed that the petitioner and the prosecutrix had had sexual intimacy, the core issue which would require adjudication is as to whether such sexual relationship was consensual as is the defence plea or under duress which is the case alleged by the prosecution.

11. It does appear that the petitioner seeks to place reliance on certain material including social media chat in support of his claim of consent for sexual relationship. But then, that is a matter of defence, the material or documents requiring to be authenticated or proved in accordance with law. The statement of the prosecutrix alleging

criminal intimidation of various kinds at different points of time cannot be disbelieved at this stage. When the case is for consideration of charge, it is not proper to ask for a scrutiny of the evidence in the manner it would require to be done at the stage of final analysis.

12. It does appear that in the first head of charge on the allegations concerning the offence under Section 376 IPC, no specific dates have been indicated. But it has to be remembered that the version of the prosecutrix is that she had been raped multiple times over the period which, given the plea of the petitioner himself, might run into more than two years, may be for almost five years. If the prosecutrix has not remembered the specific dates on which she was raped, the charge cannot mention the specific dates. It will be for the petitioner to bring out necessary facts, if possible, during the cross-examination. There is, thus, no error or defect or deficiency in the charge which has been framed for the said offence on 23.05.2016.

13. This court, however, finds merit in the contention that there being no allegation that the petitioner himself had induced “miscarriage”, the accusations in the second head of charge under Section 313 IPC, as framed on 23.05.2016, may not have been so stated. The formulation of the second head of the charge would consequently need modification.

14. For the foregoing reasons, this court finds no ground to order discharge. The prayer for quashing of the criminal case is, thus, declined.

15. It is however, directed that the trial Judge will re-frame the second head of the charge for offence under Section 313 IPC stating the particulars correctly and, in accord with the evidence which has been presented by the police with the charge-sheet, bringing about necessary modification which, when effected, will be followed by further compliances required to be made in accordance with law.

16. The petition and the application filed therewith are disposed of with above observations and directions.

R.K.GAUBA, J.

MARCH 08, 2019

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