

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

CRL.REV.P. 592/2016, Crl.M.A. No.13742/2016 (Stay) and
Crl.M.A. No.13744/2016 (Condonation of delay)

Reserved on : 23.08.2019

Date of Decision : 27.08.2019

IN THE MATTER OF:

STATE (GOVT OF NCT OF DELHI) Petitioner
Through: Ms. Radhika Kolluru, APP for the
State with SI Kirpal Singh, PS Madhu Vihar.
versus

ANOOP BALUNI Respondent
Through: Mr. Deepak Kumar, Advocate.

CORAM:
HON'BLE MR. JUSTICE MANOJ KUMAR OHRI

1. The present revision petition is filed on behalf of the State challenging the order on charge dated 03.05.2016 passed by the ASJ-01 & Spl. Judge (NDPS) Shahdara, Delhi in FIR No.1472/2014 registered under Section 354-B/506/509/34 IPC & 8 POCSO Act at P.S. Madhu Vihar, Delhi.

2. I have heard learned APP for the State as well as learned counsel for the respondent and have gone through the lower court records.

3. The FIR, in the present case, was registered on 08.12.2014 at the instance of the complainant, who was aged about 17 years. The complainant stated that earlier she had lodged a complaint on 05.11.2014 against one Vipin Khanduri, pursuant to which, a case was registered and Vipin Khanduri was arrested. After being released on bail, Vipin

Khanduri started roaming around her house in an inebriated condition and used to threaten her with an acid attack.

4. On 08.12.2014, the complainant had gone with her mother, Suman Bhadola to *Shree Ram Chowk Sabzi Mandi* to buy vegetables where the said Vipin Khanduri along with the present respondent came on the motorcycle. At *Shree Ram Chowk*, the complainant was intentionally hit with the motorcycle and when the complainant protested, the said Vipin Khanduri tried to pull her shawl and tear her clothes. In the scuffle, the strap of her bra was broken. Vipin khanduri not only abused her but also threatened to disrobe her on the road as well as threatened her that he would throw acid on her face. He also pulled her hair. The present respondent also abused the complainant in filthy language. In her statement recorded under Section 164 CrPC, the complainant supported her allegations against the said Vipin Khanduri as well as the present respondent. It was stated that the motorcycle was driven by the present respondent and Vipin Khanduri was sitting on the back seat.

5. During the investigation, the statement of the mother of the complainant was also recorded on 08.12.2014 where she had supported the allegations made by her daughter against the respondent and Vipin Khanduri.

6. In terms of the statement of the complainant recorded under Section 164, it has been specifically stated that the present respondent while driving the motorcycle hit the complainant. The respondent has been named in the FIR and a specific role has been assigned to the respondent. After the investigation, a charge-sheet was filed against the respondent as well as Vipin Khanduri.

7. The scope of power of the Court under Sections 227 & 228 CrPC has been defined time and again. The Court while framing charge has the power to sift and weigh the evidence for the limited purpose to find out whether a prima facie case is made out against the accused. The test to be applied at this stage is that of “grave suspicion.

8. The law on the subject is encapsulated in the decision rendered in the case of Sajjan Kumar Vs. CBI reported as (2010) 9 SCC 368:-

“21) Exercise of jurisdiction under Sections 227 & 228 of Cr.P.C.

On consideration of the authorities about the scope of Section 227 and 228 of the Code, the following principles emerge:-

(i) The Judge while considering the question of framing the charges under Section 227 of the Cr.P.C. 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 discloses 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.”*

9. The law on the subject was reiterated by Supreme Court in Dipakbhai Jagdishchandra Patel vs. State of Gujarat and Ors. reported as **2019 SCC OnLine SC 588**, where it was held as under:

“23. At the stage of framing the charge in accordance with the principles which have been laid down by this Court, what the Court is expected to do is, it does not act as a mere post office. The Court must indeed sift the material before it. The material to be sifted would be the material which is produced and relied upon by the prosecution. The sifting is not to be meticulous in the sense that the Court dons the mantle of the Trial Judge

hearing arguments after the entire evidence has been adduced after a full-fledged trial and the question is not whether the prosecution has made out the case for the conviction of the accused. All that is required is, the Court must be satisfied that with the materials available, a case is made out for the accused to stand trial. A strong suspicion suffices. However, a strong suspicion must be founded on some material. The material must be such as can be translated into evidence at the stage of trial. The strong suspicion cannot be the pure subjective satisfaction based on the moral notions of the Judge that here is a case where it is possible that accused has committed the offence. Strong suspicion must be the suspicion which is premised on some material which commends itself to the court as sufficient to entertain the prima facie view that the accused has committed the offence.”

10. Recently, in Vikram Johar vs. State of Uttar Pradesh and Another reported as **2019 SCC OnLine SC 609** it was held:

“19. It is, thus, clear that while considering the discharge application, the Court is to exercise its judicial mind to determine whether a case for trial has been made out or not. It is true that in such proceedings, the Court is not to hold the mini trial by marshalling the evidence.”

11. In view of the settled law, the statement of the complainant recorded under Section 161 & Section 164 CrPC as well as the statement of the mother of the complainant, a prima facie case against the respondent is made out. The complainant as well as her mother stated that the respondent not only intentionally hit the complainant on her legs with the motorcycle which he was riding at that time but also hurled abuses at her while he was accompanying Vipin Khanduri.

12. The impugned order is set aside. The trial court is directed to frame the appropriate charge against the respondent and proceed in accordance with law.

13. A copy of this order be sent to the concerned trial court for information.

(MANOJ KUMAR OHRI)
JUDGE

AUGUST 27th, 2019
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