

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

% Judgment delivered on: 04th July, 2019

+ CRL.REV.P. 125/2017

RUKMA SINGH

..... Petitioner

versus

STATE (GOVT NCT OF DELHI)

..... Respondent

Advocates who appeared in this case:

For the Petitioner : Mr. Amandeep Singh with Mr. Pradeep Derodya,
Advocates.

For the Respondent : Ms. Meenakshi Dahiya, APP for the State.

CORAM:-

HON'BLE MR JUSTICE SANJEEV SACHDEVA

JUDGMENT

SANJEEV SACHDEVA, J

1. Petitioner impugns order on charge dated 18.11.2016, whereby the trial court has held that charges are liable to be framed against the petitioner under section 370/34 IPC and section 23 of Juvenile Justice Act (hereinafter referred to as the JJ Act).

2. The case of the prosecution is that the prosecutrix, who was a minor girl, was brought from Assam by one Raj Kumar Thakur alluring her to get her a job and kept her in his house where he sexually assaulted her. It is alleged that later one Raju chaudhary,

friend of Raj Kumar Thakur got her a job as a domestic help in the house of the petitioner.

3. It is alleged the prosecutrix in her statement under section 164 stated that the petitioner who was her employer used to beat her and not provide her food properly.

4. The trial court observed that the petitioner along with Raj Kumar and Raju in furtherance of common intention kept the petitioner as domestic help in the house of the petitioner where she was beaten up and not provided food. It was further noted that the wage of the prosecutrix was given by the petitioner to Raj Kumar and Raju and they did not give the same to her.

5. Learned counsel for the petitioner submits that the petitioner has been falsely implicated and that there is no material on record to even prima facie raise a doubt that the petitioner has committed an offence punishable under section 370 IPC and section 23 of JJ Act.

6. The prosecutrix in her complaint, based on which the FIR was registered, has stated that she is aged 17 years and she was brought by Mr. Raj Kumar Thakur in February, 2013 for getting her a job. He kept her in a house in West Punjabi Bagh for 2 – 3 days. One day, when she was alone in her room, Raj Kumar caught hold of her and started pressing her chest. When she started shouting he left her. It is alleged that one day she left the said house to go to her village, she was caught by Raj Kumar and he beat her. Later his friend Raju got

her a job in Gurgaon. She worked there for two years. They used to come and collect her wages. It was alleged that they had not paid her the money collected for her job. She be got her money from them.

7. In her subsequent statement given on 12.04.2016, under Section 164 Cr.P.C. she has made an improvement in her version and has in addition stated that when she used to work in Gurgaon, the employer would not give her food properly and would beat her and would not let her go out.

8. In the Charge Sheet that was filed after investigation, it is reported that no evidence was found against the petitioner and accordingly she was named in column 11 but without arrest.

9. Trial Court has held that charge is liable to be framed against all the three accused (including the petitioner) for the offence under section 370/34 IPC and section 23 JJ Act against the Petitioner. Trial Court has observed that since, prosecutrix is a minor girl and was trafficked from Assam by accused Raj Kumar Thakur & accused Raju Chaudhary & Raj Kumar Thakur had kept her in the house of the petitioner and she was exploited and not served proper food and was also beaten & her wages were also given by accused Rukma Devi to accused Raj Kumar Thakur & Raju Chaudhary, and thus, the prosecutrix has been trafficked & she was kept in starvation & she was also financially exploited & she is a minor girl, so, prima face case u/s 370/34 IPC is made out against all trio accused.

10. Section 370 IPC reads as under :

“370. Trafficking of person.—(1) Whoever, for the purpose of exploitation, (a) recruits, (b) transports, (c) harbours, (d) transfers, or (e) receives, a person or persons, by—

First.— using threats, or

Secondly.— using force, or any other form of coercion, or

Thirdly.— by abduction, or

Fourthly.— by practising fraud, or deception, or

Fifthly.— by abuse of power, or

Sixthly.— by inducement, including the giving or receiving of payments or benefits, in order to achieve the consent of any person having control over the person recruited, transported, harboured, transferred or received,

commits the offence of trafficking.

Explanation 1.—The expression “exploitation” shall include any act of physical exploitation or any form of sexual exploitation, slavery or practices similar to slavery, servitude, or the forced removal of organs.

Explanation 2.—The consent of the victim is immaterial in determination of the offence of trafficking.

(2) Whoever commits the offence of trafficking shall be punished with rigorous imprisonment for a term which shall not be less than seven years, but which may extend to ten years, and shall also be liable to fine.

(3) Where the offence involves the trafficking of more than one person, it shall be punishable with rigorous

imprisonment for a term which shall not be less than ten years but which may extend to imprisonment for life, and shall also be liable to fine.

(4) Where the offence involves the trafficking of a minor, it shall be punishable with rigorous imprisonment for a term which shall not be less than ten years, but which may extend to imprisonment for life, and shall also be liable to fine.

(5) Where the offence involves the trafficking of more than one minor, it shall be punishable with rigorous imprisonment for a term which shall not be less than fourteen years, but which may extend to imprisonment for life, and shall also be liable to fine.

(6) If a person is convicted of the offence of trafficking of minor on more than one occasion, then such person shall be punished with imprisonment for life, which shall mean imprisonment for the remainder of that person's natural life, and shall also be liable to fine.

(7) When a public servant or a police officer is involved in the trafficking of any person then, such public servant or police officer shall be punished with imprisonment for life, which shall mean imprisonment for the remainder of that person's natural life, and shall also be liable to fine.”

11. In so far as the present petitioner, Rukma Devi is concerned, there is no allegation that she was in any manner involved in recruiting, transporting, harbouring, transferring or receiving the prosecutrix by using threats or force or coercion or by abduction or by practising fraud or deception or by abuse of power or by inducement.

Even at the time of filing of the final report, the Prosecution had reported that no evidence was found against her.

12. The allegation against her is that she would not give her food properly and would beat her and would not let her go out. Said allegations do not satisfy the requirement of section 370 IPC. Further, there is no material to show that there was any common intention between the petitioner and the other accused so as to attract section 34 IPC *qua* the petitioner.

13. Section 23 of JJ Act reads as under :

“23. Punishment for cruelty to juvenile or child.— Whoever, having the actual charge of or control over, a juvenile or the child, assaults, abandons, exposes or wilfully neglects the juvenile or causes or procures him to be assaulted, abandoned, exposed or neglected in a manner likely to cause such juvenile or the child unnecessary mental or physical suffering shall be punishable with imprisonment for a term which may extend to six months, or fine, or with both.”

14. It may be noted that in the initial complaint given to the Police, there was no allegation against the Petitioner. In her subsequent statements she has alleged that she was not properly given food and she was beaten and not permitted to go out.

15. It may be seen that even the said allegations against the petitioner are vague and non specific. There is no medical evidence to support the allegation that the prosecutrix was beaten or maltreated. The allegation that she was not properly given food is completely

vague. There is no allegation that she was starved or deprived of food in any manner. There are no specifics given. There is no allegation of any mental or physical suffering.

16. Further, during investigation, prosecution had collected evidence in the form of photographs which showed that the prosecutrix was taken, by the petitioner, to social events and get together and was taking food along with other guests. Even the Prosecution in the charge sheet had stated that no evidence had been found against her.

17. The Supreme Court in *Union of India v. Prafulla. Kumar Samal*, (1979) 3 SCC 4 has held that at the stage of framing of charge the Trial Court has the power to sift and weigh evidence though for a limited purpose and finding out whether or not a prima facie case against the accused has been made out.

18. Further, the Supreme Court in *State Vs. Arun Kumar & Anr.* 2014 SCC Online SC 1018 has held that even at the stage of charge, if two views are possible and one of the views gives rise to suspicion only as distinct, from grave suspicion, the Court would be empowered to discharge accused at that stage.

19. Reference may also be had to the judgment of the Supreme Court in *George & Ors. vs. State of Kerala & Anr.*: (1998) 4 SCC 605, wherein, the Supreme Court has held that the statement of the witnesses recorded under Section 164 Cr.P.C cannot be used as

substantive evidence and can be used for the purposes of contradicting or corroborating such witness.

20. Facts as noticed above, in my view, do not give rise to grave suspicion against the petitioner of having committed the offences under section 370/34 IPC or section 23 JJ Act. The Trial Court has by the impugned order acted in a mechanical manner and has not correctly appreciated the facts of the case. The reasoning of the trial court appears to have been clouded by the allegations against the other co-accused.

21. In view of the above, the impugned order on charge dated 18.11.2016 and the consequent charge framed on 19.11.2016 *qua* the petitioner is set aside. Petitioner is discharged.

22. Petition is allowed in the above terms.

23. Order *Dasti* under signatures of Court Master.

SANJEEV SACHDEVA, J

JULY 04, 2019

HJ