

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

Reserved on: May 09, 2019

Pronounced on: July 16, 2019

+ **CRL.REV.P. 1168/2018 & CRL.M.As. 50351-50352/2018**

VISHAL CHAWLA

..... Petitioner

Through: Mr. N. Hariharan, Senior Advocate
with Mr. Pramod Kr. Dubey,
Mr. Mrinal Bharti, Mr. Arham,
Mr. Siddharth Bajpai,
Mr. Kushank Sindhu & Ms. Pinky
Dubey, Advocates

Versus

STATE

..... Respondent

Through: Mr. M.S. Oberoi, Additional
Public Prosecutor for State with
WSI Manisha
Mr. Santosh Kumar, Advocate for
Respondent No. 2

CORAM:

HON'BLE MR. JUSTICE SUNIL GAUR

ORDER

Vide impugned order of 30th November, 2018, petitioner has been put on trial on the charge which reads as under:-

“That on the intervening night of 28/29.09.2017 at your house bearing no. B-20, 1st Floor, Maharani Bagh, NFC, New Delhi within the jurisdiction of P.S. New Friends Colony, you had committed rape upon victim Ms. MD, W/O Sh. RKD, aged about 32 years (particulars withheld as per law but

explained to the accused as per details mentioned in the charge sheet) and you thereby committed an offence punishable u/s 376 of the I.P.C., 1860 and within my cognizance.”

The facts giving rise to this petition, as noticed by the trial court in the impugned order, are as under:-

“Coming to the facts of this case, FIR No. 308/17 was registered on 29.9.2017 at PS New Friends Colony on the written complaint of the prosecutrix/ Ms. ‘MD’ and she has stated that the accused had picked her from Surya Hotel and they had gone to accused’s house and after consuming whisky/ liquor she was feeling dizzy and the accused, Vishal Chawla had caught her hand and persuaded her to have a look at his house and he pushed her on the bed and removed her undergarments and forcefully raped her. The victim/ prosecutrix had again reiterated the same facts when her statement was recorded by the IO/W/SI Seema on 29.09.2017. However, during her statement recorded by the Ld. MM u/s 164 Cr.P.C., the prosecutrix had stated that when the accused was showing his bedroom then he closed the door from inside and tightly held her and gave bite on her neck and he pushed her on the bed and pressed her body here and there and as she was feeling dizzy and weak and did not know what to do. She also stated that the accused was also lying on the bed and condition of her clothes was not proper.”

Quashing of impugned order is sought by learned senior counsel for petitioner who submitted that the first information of this incident given to the police was of prosecutrix being teased and as per prosecution case, FIR of this case has been registered on the basis of a statement written by husband of prosecutrix in which allegations of rape have been levelled against petitioner. Learned senior counsel for petitioner vehemently contended that the aforesaid version stands contradicted by

the statement of the prosecutrix recorded under Section 164 Cr.P.C. in which she has not levelled any allegation of rape against petitioner. It is contended that the medical evidence belies the allegations of rape levelled against petitioner.

Reliance was placed by learned senior counsel for petitioner upon decisions in *Bhagwanti vs. State* 2001 (60) DRJ 603; *Vipin Kaushik @ Vicky & Ors. Vs. The State of NCT of Delhi* 2018 SCC OnLine Del 9648; *R.Palanisamy Vs. State By Inspector of Police* 2013 (2) MWN (Cr.) 525 (DB); *Prashant Bharti Vs. State (NCT of Delhi)* (2013) 9 SCC 293; *Priya Sharan Maharaj @ Yadavendra Parashar and others Vs. State of Maharashtra* 1995 SCC OnLine Bom 414; *Union of India Vs. Prafulla Kumar Samal & Anr.* (1979) 3 SCC 4; *Dilawar Balu Kurane Vs. State of Maharashtra* (2002) 2 SCC 135 and *P.Vijayan Vs. State of Kerala and Another* (2010) 2 SCC 398 to submit that initial version of prosecutrix stands contradicted by her statement under Section 164 Cr.P.C. and so, trial of petitioner for the offence of rape would be an abuse of process of the Court. Thus, quashing of the impugned order is sought.

On the contrary, learned Additional Public Prosecutor for respondent-State as well as learned counsel for the complainant/prosecutrix supported the impugned order and submitted that the statement of prosecutrix under Section 164 Cr.P.C. is required to be put to the prosecutrix in evidence and the initial version given by her needs no corroboration, as the prosecutrix is not to be treated as an accomplice. To submit so, reliance was placed upon Supreme Court's decision in *Om Prakash Vs. State of Uttar Pradesh* AIR 2006 SC 2214. Reliance was

also placed upon Supreme Court's decision in *Sajjan Kumar Vs. Central Bureau of Investigation* (2010) 9 SCC 368 and *Ramprasad Vs. State of Maharashtra* 1999 Cri.L.J 2889 to submit that it is within the domain of the trial court to consider the evidentiary value of the statement of prosecutrix and at this stage, it cannot be said that there are not sufficient grounds to proceed against petitioner. So, it was submitted that the impugned order does not suffer from any infirmity and this petition deserves rejection.

Submissions advanced by both the sides and impugned order as well as decisions cited, have been duly considered.

The legal position emerging from the decisions cited is that a Judge is not mere post office to frame the charge at the behest of the prosecution but has to exercise his judicial mind to the facts of the case in order to determine whether a case for trial has been made out by the prosecution. In assessing this, it is not necessary for the court to enter into pros and cons of the matter or to weigh and balance the evidence and probabilities. In *Prashant Bharti (Supra)*, charge under Section 376 etc. had been framed and Supreme Court had brought to an end the criminal proceedings while reiterating the parameters which govern the exercise of power of the court under Section 482 Cr.P.C. at the charge stage. The four tests highlighted in the aforesaid decision are as under:-

“30. Based on the factors canvassed in the foregoing paragraphs, we would delineate the following steps to determine the veracity of a prayer for quashing raised by an accused by invoking the power vested in the High Court under Section 482 CrPC:

30.1. Step one: whether the material relied upon by the accused is sound, reasonable, and indubitable i.e. the material is of sterling and impeccable quality?

30.2. Step two: whether the material relied upon by the accused would rule out the assertions contained in the charges levelled against the accused i.e. the material is sufficient to reject and overrule the factual assertions contained in the complaint i.e. the material is such as would persuade a reasonable person to dismiss and condemn the factual basis of the accusations as false?

30.3. Step three: whether the material relied upon by the accused has not been refuted by the prosecution/complainant; and/or the material is such that it cannot be justifiably refuted by the prosecution/complainant?

30.4. Step four: whether proceeding with the trial would result in an abuse of process of the court, and would not serve the ends of justice?

30.5. If the answer to all the steps is in the affirmative, judicial conscience of the High Court should persuade it to quash such criminal proceedings in exercise of power vested in it under Section 482 CrPC. Such exercise of power, besides doing justice to the accused, would save precious court time, which would otherwise be wasted in holding such a trial (as well as proceedings arising therefrom) specially when it is clear that the same would not conclude in the conviction of the accused.”

Upon testing the instant case on the aforesaid parameters, this Court finds that trial court in the impugned order has come to the conclusion that there are no categorical allegations of rape against petitioner in the statement of the prosecutrix recorded under Section 164 Cr.P.C. but has chosen to put petitioner on trial for a serious offence under Section 376 IPC by merely observing that the stand taken by

petitioner needs to be tested at trial. Such an approach does not commend to reason, particularly when the prosecution case stands demolished in view of the stand taken by the prosecutrix under Section 164 Cr.P.C. Pertinently, even the FSL report does not incriminate the petitioner.

Supreme Court in *P.Vijayan (Supra)* has emphatically reiterated that if two views are possible, then the one which gives rise to suspicion only, as distinguished from grave suspicion, will empower the trial judge to discharge the accused.

In the considered opinion of this Court, the material on record does not give rise to any suspicion, what to talk of grave suspicion, to justify trial of petitioner for the serious offence under Section 376 IPC. If the impugned order is allowed to stand, it will defeat the ends of justice.

Consequently, I have no hesitation to conclude that continuance of proceedings arising out of FIR in question would be an exercise in futility. Accordingly, the impugned order is hereby quashed.

This petition and applications are accordingly disposed of.

Dasti.

भारतमेव जयते

(SUNIL GAUR)
JUDGE

JULY 16, 2019

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