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

CRL.M.C. 281/2020 and CRL.M.A. 1218/2020

Date of Decision : 27.08.2021

IN THE MATTER OF :

TUSHAR MITTAL Petitioner

Through: Mr. Setu Niket, Advocate.

Versus

STATE (NCT OF DELHI) & ANR. Respondents

Through: Mr. Hirein Sharma, APP for State.

AND

CRL.M.C. 283/2020 and CRL.M.A. 1225/2020

TUSHAR MITTAL Petitioner

Through: Mr. Setu Niket, Advocate.

Versus

STATE (NCT OF DELHI) Respondent

Through: Mr. Hirein Sharma, APP for State.

CORAM:

**HON'BLE MR. JUSTICE MANOJ KUMAR OHRI
(VIA VIDEO CONFERENCING)**

MANOJ KUMAR OHRI, J. (ORAL)

1. The captioned petitions have been filed under Section 482 Cr.P.C. on behalf of the petitioner seeking setting aside of the common order dated 04.11.2019, whereby the learned Addl. Sessions Judge-02, District East,

Karkardooma Courts, Delhi has disposed of revision petitions filed by the State and the complainant/respondent No. 2. Both the revision petitions were filed against the order dated 10.04.2019 passed by the learned MM, Mahila Court-01, East District, Karkardooma Courts, Delhi, whereby the present petitioner/accused was discharged for the offences punishable under Sections 354/354A/354D IPC in FIR No. 227/2017 registered at P.S. Preet Vihar, Delhi lodged at the instance of respondent No. 2.

2. The brief facts of the case, as illustrated by the Sessions Court in the impugned order (the name of the victim has been redacted) are as under:

“2. Briefly stated the facts of the case are that the present case was registered on the statement of complainant ‘R’ who has alleged in her complaint that she was working at Batra’s Homeopathy Clinic as a City Trainer ever since 13th Dec. 2013 till 22nd Sept., 2017. She had lodged a written complaint against Dr. Tushar Mittal, the City Head of Dr. Batra’s Clinic on 28th Sept., 2017. Based on the complaint, a FIR was formally lodged on 08.10.2018. She has leveled allegations of sexual harassment and molestation against the accused. She has in her complaint stated that for the last 7-8 months prior to her lodging the complaint, the accused had been torturing her and troubling her over trivial, innocuous issues. She has alleged that the accused would come to her room/cabin on some or the other pretext and would do ‘galat harkat’ (wrong deeds) with her and would touch her inappropriately. As alleged, the accused would also tell her that if she acceded to his demands, she would be benefited. The accused would give her monetary allurements such as a pay hike etc. in lieu of her acceding to his demands. The accused was peeved and started harassing her. The complainant stated that she had a fear of losing her job if she tells anyone about the deeds of the accused and for this reason, she kept quiet and didn’t share her ordeal with anyone. The complainant stated in her complaint that to minimize any kind of interaction with the accused, she

stopped having lunch with her colleagues and would remain cooped up in her cabin all day long. She further stated that to avoid any unwanted meeting with the accused, she would go for the meetings when specifically called for the same. The complainant further stated that she made concerted efforts to convince the accused to stay away from her. However, the accused didn't relent and continued to mentally harass her in all possible ways. The complainant stated in her complaint that when she could not bear the mental torture any further, she shared her psychological ordeal with her family members and after that her 'bhaisahab' would at times come to pick her from her workplace. The complainant further alleged that the accused in order to torment her colluded with one Ms. Aditi, HR Head and got a show cause notice served on her. The grounds mentioned in the show cause notice were frivolous just to harass her. She was called at the office branch at South Extension on 22.09.2017 and asked to tender her resignation. When the complainant refused to resign, she was handed over a service termination letter. She then, lodged the complaint against the accused. After FIR was registered, investigation was conducted and statement of the complainant u/s 164 Cr.P.C was recorded in which the complainant reiterated the allegations made in her complaint. After completion of the investigation, charge-sheet was filed u/s 354/354A/354D IPC."

3. The Trial Court while passing the aforesaid order of discharge compared the two statements of the complainant recorded under Sections 161 and 164 Cr.P.C. and opined that the statements were inconsistent. While passing the aforesaid order, the Trial Court also opined that the allegations of molestation and demand of sexual favours by the petitioner were quite general, omnibus and vague as they did not reveal any date, time or occasion when such misdeeds were actually committed by the petitioner. The Trial Court has also opined that in her initial statement, the complainant had

stated that she had informed her family members about the incident, however, at the time of filing the charge sheet, none of her family members were made a witness. It was also opined that filing of complaint within two weeks of termination of her service could be seen as a handiwork of a disgruntled employee. It was also observed that the complainant did not furnish any messages/emails from the petitioner where sexual favours were sought from her.

4. As noted earlier, both the complainant and the State preferred revision petitions against the order passed by the learned Magistrate. The Sessions Court, vide the impugned order, allowed the revision petitions and directed the Trial Court to frame charges against the petitioner under Sections 354/354A/354D IPC.

5. Mr. Setu Niket, learned counsel for the petitioner, has contended that the Trial Court had rightly discharged the petitioner by appreciating the inconsistencies between the two statements of the complainant. He submitted that at the stage of framing of charge, the trial Court is obligated to appreciate all the material on record and their evidentiary value.

6. I have heard learned counsel for the petitioner and also gone through the Trial Court Record placed on record.

7. The scope of judicial scrutiny at the stage of framing of charge is limited and well defined. At this stage, while considering the material filed along with the charge sheet, the Trial Court will not act as a post office or mouth piece of the prosecution and 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. But at the same time, the Court is not to carry out a meticulous examination or a full-fledged

inquiry for considering whether the case would end in conviction or not. If the material placed on record discloses grave suspicion, the Trial Court would be justified in framing the charges. While laying down the parameters for exercise of powers under Sections 227 and 228 Cr.P.C., the Supreme Court in Sajjan Kumar v. Central Bureau of Investigation reported as **(2010) 9 SCC 368**, has observed 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 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.”

8. Subsequently, the Supreme Court reiterated its earlier principles in Amit Kapoor v. Ramesh Chander and Another reported as **(2012) 9 SCC 460** and observed that while considering the quashing of the order framing charge, the power under Section 482 Cr.P.C. should be exercised sparingly. The relevant excerpt from the case is reproduced hereunder:-

“27. Having discussed the scope of jurisdiction under

these two provisions, i.e. Section 397 and Section 482 of the Code and the fine line of jurisdictional distinction, now it will be appropriate for us to enlist the principles with reference to which the courts should exercise such jurisdiction. However, it is not only difficult but is inherently impossible to state with precision such principles. At best and upon objective analysis of various judgments of this Court, we are able to cull out some of the principles to be considered for proper exercise of jurisdiction, particularly, with regard to quashing of charge either in exercise of jurisdiction under Section 397 or Section 482 of the Code or together, as the case may be :

27.1. Though there are no limits of the powers of the Court under Section 482 of the Code but the more the power, the more due care and caution is to be exercised in invoking these powers. The power of quashing criminal proceedings, particularly, the charge framed in terms of Section 228 of the Code should be exercised very sparingly and with circumspection and that too in the rarest of rare cases.

27.2. The Court should apply the test as to whether the uncontroverted allegations as made from the record of the case and the documents submitted therewith prima facie establish the offence or not. If the allegations are so patently absurd and inherently improbable that no prudent person can ever reach such a conclusion and where the basic ingredients of a criminal offence are not satisfied then the Court may interfere.

27.3. The High Court should not unduly interfere. No meticulous examination of the evidence is needed for considering whether the case would end in conviction or not at the stage of framing of charge or quashing of charge.

27.4. Where the exercise of such power is absolutely essential to prevent patent miscarriage of justice and for

correcting some grave error that might be committed by the subordinate courts even in such cases, the High Court should be loath to interfere, at the threshold, to throttle the prosecution in exercise of its inherent powers.

27.5. Where there is an express legal bar enacted in any of the provisions of the Code or any specific law in force to the very initiation or institution and continuance of such criminal proceedings, such a bar is intended to provide specific protection to an accused.

27.6. The Court has a duty to balance the freedom of a person and the right of the complainant or prosecution to investigate and prosecute the offender.

27.7. The process of the court cannot be permitted to be used for an oblique or ultimate/ulterior purpose.

27.8. Where the allegations made and as they appeared from the record and documents annexed therewith to predominantly give rise and constitute a 'civil wrong' with no 'element of criminality' and does not satisfy the basic ingredients of a criminal offence, the court may be justified in quashing the charge. Even in such cases, the court would not embark upon the critical analysis of the evidence.

27.9. Another very significant caution that the courts have to observe is that it cannot examine the facts, evidence and materials on record to determine whether there is sufficient material on the basis of which the case would end in a conviction, the court is concerned primarily with the allegations taken as a whole whether they will constitute an offence and, if so, is it an abuse of the process of court leading to injustice.

27.10. It is neither necessary nor is the court called upon to hold a full-fledged enquiry or to appreciate evidence collected by the investigating agencies to find out whether it is a case of acquittal or conviction.

27.11. Where allegations give rise to a civil claim and also amount to an offence, merely because a civil claim is maintainable, does not mean that a criminal complaint cannot be maintained.

27.12. In exercise of its jurisdiction under Section 228 and/or under Section 482, the Court cannot take into consideration external materials given by an accused for reaching the conclusion that no offence was disclosed or that there was possibility of his acquittal. The Court has to consider the record and documents annexed with by the prosecution.

27.13. Quashing of a charge is an exception to the rule of continuous prosecution. Where the offence is even broadly satisfied, the Court should be more inclined to permit continuation of prosecution rather than its quashing at that initial stage. The Court is not expected to marshal the records with a view to decide admissibility and reliability of the documents or records but is an opinion formed prima facie.

27.14. Where the charge-sheet, report under Section 173(2) of the Code, suffers from fundamental legal defects, the Court may be well within its jurisdiction to frame a charge.

27.15. Coupled with any or all of the above, where the Court finds that it would amount to abuse of process of the Code or that interest of justice favours, otherwise it may quash the charge. The power is to be exercised ex debito justitiae, i.e. to do real and substantial justice for administration of which alone, the courts exist.”

9. Coming back to the present case, it is noted that the complainant has alleged in her complaint that the petitioner used to come to her cabin on one or the other pretext and do ‘galat harkat’ (wrong deeds) with her and touch her inappropriately time and again. The complainant has also alleged that

the petitioner wanted to cause sexual harassment to the complainant and on the pretext of enhancing her salary, coaxed her to accede to his demands. When she refused, he would be peeved and she was further harassed. The complainant has stated that due to fear of him, she had started taking food in her own room and minimized the interactions with him. She even tried to make the petitioner understand but he did not relent. In her statement recorded under Section 164 Cr.P.C., it was stated that the petitioner proposed her for physical relationship. While noting the allegations, the Sessions Court came to the conclusion that the ingredients of all the alleged offences were made out and on *prima facie* view of the materials placed on record, no case of discharge was made out in favour of the petitioner.

10. The facts when seen in light of the aforementioned parameters laid down by the Supreme Court, do not call for any interference in the order passed by the Sessions Court. Accordingly, I do not find any perversity, illegality or infirmity in the order impugned and consequently, the captioned petitions are dismissed. The miscellaneous applications are disposed of as infructuous.

11. A copy of this order be communicated electronically to the concerned Trial Court.

MANOJ KUMAR OHRI, J

AUGUST 27, 2021

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[Click here to check corrigendum, if any](#)