



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

Date of Decision : 13.12.2021

+ **CRL.REV.P. 301/2021**

IN THE MATTER OF:

VIKAS BHUSHAN

..... Petitioner

Through: Mr. Ajay Kumar Jha, Advocate.
Versus

STATE (NCT OF DELHI)

..... Respondent

Through: Mr. Hirein Sharma, APP for State along
with SI Meenakshi, P.S. Ranjit Nagar,
Delhi.

CORAM:

HON'BLE MR. JUSTICE MANOJ KUMAR OHRI

JUDGMENT

MANOJ KUMAR OHRI, J. (ORAL)

1. The present revision petition has been filed under Section 397 Cr.P.C. read with Section 482 Cr.P.C. on behalf of the petitioner assailing the order dated 07.04.2021 passed by the learned Addl. Sessions Judge (SFTC-01), West District, Tis Hazari Courts, Delhi in SC No. 127/21 arising out of FIR No. 265/2020 registered under Section 376 IPC at Police Station Ranjit Nagar, Delhi, whereby application filed on behalf of the petitioner under Section 227 Cr.P.C. seeking discharge in the aforesaid case was disposed of and charges under Sections 376(2)(n)/417 IPC framed against him.

2. Briefly stated, the facts, as noted by the Trial Court, are as under:

"02. The brief facts of the case are that a complaint was made by Ms. "A" to the effect that she had come to Delhi for preparation of competitive exam, came in contact with accused. In October, 2015 accused expressed interest in entering into



physical relations with her, she conveyed her reluctance. The accused continuously also conveyed his intention of promise to marry. On believing his words complainant accepted the proposal and decided to enter into physical relations with the accused. She shifted her residence and even then the accused would visit her on or off, maintaining his promise of marriage. The accused had even met the parents of the complainant and conveyed his intention to marry, however, in September, 2019 accused conveyed to the complainant that he had no intention to marry her. On 24th September, 2019 the complainant's parents went to the house of accused to discuss the proposal of marriage but could not meet the parents of the accused or the accused. She received a call from the brother of the accused who told her that accused did not have intention to marry her and therefore, they should not contact and communicate with them. On the basis of the complaint made by the complainant FIR u/s 376 IPC was registered at the PS Ranjit Nagar. After registration of the FIR charge-sheet was filed against the accused”.

3. Mr. Ajay Kumar Jha, learned counsel for the petitioner, has contended that the alleged false promise to marry, stated to have been given by the petitioner, had no direct/immediate nexus with the decision of the prosecutrix to engage in the sexual act. He further submits that the prosecutrix is aged over 30 years and being a well-educated lady, she could not have had any misconception of facts. He also submits that there was a delay in reporting of the incident and registration of the FIR. As per her own complaint, the prosecutrix came in contact with the petitioner somewhere in the year 2015 and came to know of his decision not to marry her on 25.09.2019, however, the FIR came to be registered only on 07.07.2020, i.e. after a delay of about 10 months.

4. In support of his submissions, learned counsel for the petitioner has placed reliance on the decisions in Maheshwar Tigga v. State of Jharkhand reported as



(2020) 10 SCC 108, Pramod Suryabhan Pawar v. State of Maharashtra and Another reported as (2019) 9 SCC 608, Uday v. State of Karnataka reported as (2003) 4 SCC 46 and Chandan Sawhney v. State reported as MANU/DE/0452/2020.

5. Mr. Hirein Sharma, learned APP for the State, on the other hand, has opposed the prayer made in the petition and supported the impugned order passed by the Trial Court. It is submitted that the allegations levelled by the prosecutrix in the present case are clear that the petitioner established physical relations with her on the false pretext of marriage. It is further submitted that the petitioner's dishonest intention is apparent from the fact that he denied to marry the prosecutrix only in the year 2019, i.e. after 5 years of relationship. It is also submitted that even otherwise, the question whether the intention of the petitioner was dishonest since beginning shall be determined in the trial.

6. I have heard the learned counsels for the parties and perused the material placed on record.

7. Before proceeding further, I deem it apposite to recount the position of law on the scope and power of a Court under Section 227 Cr.P.C. when testing the order framing charge.

8. The Supreme Court in Union of India v. Prafulla Kumar Samal and Another reported as (1979) 3 SCC 4 has held as follows:-

"10. Thus, on a consideration of the authorities mentioned above, the following principles emerge:

(1) That the Judge while considering the question of framing the charges under Section 227 of the Code 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.

(2) 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.

(3) The test to determine a prima facie case would naturally depend upon the facts of each case and it is difficult to lay down a rule of universal application. By and large however if two views are equally possible and the Judge is satisfied that the evidence produced before him while giving rise to some suspicion but not grave suspicion against the accused, he will be fully within his right to discharge the accused.

(4) That in exercising his jurisdiction under Section 227 of the Code the Judge which under the present Code is a senior and experienced 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 appearing in the case and so on. This however does not mean that the Judge should make a roving enquiry into the pros and cons of the matter and weigh the evidence as if he was conducting a trial."

9. In Sajjan Kumar v. Central Bureau of Investigation reported as **(2010) 9 SCC 368**, the Supreme Court has reiterated the principles set out in Prafulla Kumar Samal (Supra) regarding the scope of Section 227 Cr.P.C. and expounded as follows:

"21. ...(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."

10. Adverting to the present case, it is noted that reliance has been placed on behalf of the petitioner on the decision in Uday (Supra) where while allowing an appeal against judgment of conviction under Section 376 IPC, the Supreme Court observed that failure to keep a promise to marry at a subsequent point in time was distinguishable from a promise to marry which was false from the date of inception and acquitted the appellant.

The said case, however, is distinguishable from the present case inasmuch as the prosecutrix in Uday (Supra) was conscious of the unlikelihood of marriage with the appellant in view of caste-differences and gave consent for physical relations regardless of the same. Such is not the



situation in the present case. At the same time, the Court in Uday (Supra) emphasized that each case is to be decided on its own facts and circumstances and opined as follows:-

"21. It therefore appears that the consensus of judicial opinion is in favour of the view that the consent given by the prosecutrix to sexual intercourse with a person with whom she is deeply in love on a promise that he would marry her on a later date, cannot be said to be given under a misconception of fact. A false promise is not a fact within the meaning of the Code. We are inclined to agree with this view, but we must add that there is no straitjacket formula for determining whether consent given by the prosecutrix to sexual intercourse is voluntary, or whether it is given under a misconception of fact. In the ultimate analysis, the tests laid down by the courts provide at best guidance to the judicial mind while considering a question of consent, but the court must, in each case, consider the evidence before it and the surrounding circumstances, before reaching a conclusion, because each case has its own peculiar facts which may have a bearing on the question whether the consent was voluntary, or was given under a misconception of fact. It must also weigh the evidence keeping in view the fact that the burden is on the prosecution to prove each and every ingredient of the offence, absence of consent being one of them."

(emphasis added)

11. Likewise, reliance placed by the learned counsel for the petitioner on the decision in Maheshwar Tigga (Supra), rendered in an appeal filed against conviction, is also misplaced, insofar as the facts involved in the said case were different. The prosecutrix in the said case was aware that the marriage with the accused was unlikely to be performed because of different religious



beliefs of their families. In the present case, no such averment has been made by the parties.

Besides, the prosecutrix in the present case is yet to be examined in Court and the petitioner has assailed the order on charge.

12. Reliance has further been placed on behalf of the petitioner on the decision in Pramod Suryabhan Pawar (Supra) but the same is misplaced as well, as in the said case, the FIR did not *prima facie* indicate any averment that the promise to marry was made in bad faith or with an intention to deceive the prosecutrix.

13. Reliance placed on behalf of the petitioner upon the decision in Chandan Sawhney (Supra) is also misplaced. Even though a Co-ordinate Bench of this Court in the said case had set aside the order framing charge against the petitioner/accused under Sections 376/377/420 IPC, the same is distinguishable from the present case in that the Court in Chandan Sawhney (Supra) was in seisin of a case where allegations related to a solitary incident and the CDR placed on record further showed that there was a telephonic conversation of 324 seconds between the complainant/prosecutrix and the petitioner/accused on the day of the incident. Moreover, there was a delay of about 8 months in the registration of the FIR which was not explained.

Per contra, the allegations in the instant case relate to a relationship which subsisted for about 5 years, and *prima facie*, the delay in the registration of the FIR has been sufficiently explained as the prosecutrix in her statement recorded under Section 164 Cr.P.C. has stated that she could not lodge the FIR earlier because of restrictions imposed by the COVID-19 pandemic.



14. In view of the discussion undertaken hereinabove, it is discernible that the scope of enquiry at the stage that proceedings were at before the Trial Court was limited to examining the allegations levelled in the FIR for the limited purpose of determining whether or not on sifting and weighing the evidence, a *prima facie* case was made out against the petitioner/accused. At such stage, if the material placed on record makes out a case of grave suspicion, the trial ought to proceed. The Court is not to embark upon an enquiry as to the reliability or genuineness of the allegations made in the FIR.

15. In the present case, a perusal of the FIR would show that the complainant has clearly alleged that the petitioner had made a false promise to marry for the purpose of inducing her to enter into physical relations with him. Considering the allegations levelled in the FIR, which are duly corroborated in the statement of the prosecutrix recorded under Section 164 Cr.P.C., I am of the view that a *prima facie* case against the accused was clearly made out before the Trial Court, and thus, the impugned order does not suffer from any illegality or perversity.

16. The petition being devoid of any merits is dismissed.

17. Nothing stated hereinabove shall be construed as an expression on the merits of the case. The observations are only *prima facie* and have been made to dispose of the present petition.

(MANOJ KUMAR OHRI)
JUDGE

DECEMBER 13, 2021