



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

Date of Decision : 10.12.2021

+ **CRL.REV.P. 416/2021 and CRL.M.A. 19821/2021**

IN THE MATTER OF:

CAPT. (RETD.) JAGDISH RATH

..... Petitioner

Through: Mr. Roshan Sonthalia, Advocate.

versus

STATE OF NCT OF DELHI & ANR.

..... Respondents

Through: Mr. Hirein Sharma, APP for State.

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 Sections 401 and 482 Cr.P.C. assailing the order dated 06.10.2021 passed by the learned ASJ/FTC/Patiala House Court, New Delhi in SC No. 266/2018 arising out of FIR No. 579/2017 registered under Sections 376/506 IPC at Police Station Vasant Kunj (South), vide which the learned ASJ has framed charges against the petitioner under Sections 354C/376(2)(n)/506 IPC.

2. Learned counsel for the petitioner has contended that the impugned order shows complete non-application of mind, inasmuch as the allegations levelled against the petitioner are baseless and the order is a mere reiteration of the allegations in the FIR. It is also submitted that even otherwise, a reading of the allegations levelled in the FIR and the material filed alongwith the charge sheet,



do not disclose any *prima facie* case against the petitioner. It is further submitted that the present case is not one of rape, but rather one where relationship between the parties went awry. The petitioner neither had any intention to cheat the complainant nor by falsely committing to marry did he have sexual relationship with her. Learned counsel also submitted that the WhatsApp chats between the parties as well as the air tickets placed on record would show that the complainant had willingly accompanied the petitioner to outstation places where she stayed as his wife. Lastly, it is submitted that no charge under Section 354C could have been framed as no obscene material has been recovered from the mobile phone of the petitioner. In this regard, learned counsel has referred to the portion of the charge sheet where the Investigating Officer has stated that he had found the pictures of the petitioner and the prosecutrix from the petitioner's mobile phone, but no obscene photograph was found.

3. Mr. Hirein Sharma, learned APP for State, on the other hand, has vehemently opposed the issuance of notice. It is submitted that the Trial Court has rightly framed the charges against the petitioner after going through the material placed on record.

4. I have heard the learned counsel for the petitioner as well as the learned APP for the State and perused the entire material placed on record.

5. In the present case, the complaint came to be filed on 13.12.2017 for commission of offence under Section 376 IPC. It was alleged that the prosecutrix was a single woman staying with her old parents and in one of the parties organised at Civil Servant Officers Mess, the petitioner introduced himself to her in August, 2014, whereafter he started ringing her regularly. It was stated that she had earlier been married twice and was in litigation with her husband, and despite knowing the same, the petitioner invited her to his house in February, 2015 and



professed his love for her. During further meetings, the petitioner told the complainant that his wife had deserted him about six years ago and he had sent documents for divorce to her, which will be finalised in 6 months.

When the complainant got divorced in August, 2016, the petitioner informed her that he had also obtained divorce, but had not received a copy of the divorce decree from Bhubaneshwar, Family Court. It was further alleged that in the end of August, 2016, the petitioner said that he will put vermilion on her forehead and informed common friends about their marriage and assured them of grand function when they formally got married. In this manner, the petitioner misled her in order to develop physical relations with her. Both of them travelled together and stayed as husband and wife. Again, on 05.03.2017, he put vermilion on her forehead at Somnath Temple, Mumbai and promised that he would soon marry her socially. He also gave her his wife's Naval ID Card.

As per the allegations, the complainant was later informed by her friends that the petitioner had not taken divorce and was misleading her by promising to marry. When she confronted the petitioner, he kept on assuring that he had been legally divorced, but the order for the same had not been received by him. Subsequently, the petitioner started blackmailing her with the photographs he had taken during their relationship. It was stated that he was also in possession of photographs of their intimate relationship, which were taken without her knowledge and/or permission. Some of the photographs were reportedly circulated in the friends' group and the petitioner threatened the complainant as to what he could do.

During the investigation, statement of the complainant was recorded under Section 164 Cr.P.C. where she reiterated the allegations levelled in the complaint. The petitioner claimed that the mobile phone containing the photographs of the



petitioner was no longer with him, and therefore, he could not produce the same. However, he handed over another mobile phone to the Investigating Officer. On examination of the mobile phone, the Investigating Officer stated that although it contained photographs of the petitioner with the prosecutrix, the same did not have any obscene photographs. The mobile phone was sent to the FSL and the report on the same is awaited.

6. In connection with Section 227 Cr.P.C., 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.”



7. Later in P. Vijayan v. State of Kerala and Another reported as **(2010) 2 SCC 398**, the Supreme Court took note of the decision in Prafulla Kumar Samal (Supra) and held thus:

“10. ...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. Further, the words “not sufficient ground for proceeding against the accused” clearly show that the Judge is not a 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 fact, it is not necessary for the court to enter into the pros and cons of the matter or into a weighing and balancing of evidence and probabilities which is really the function of the court, after the trial starts.

8. The legal position, as culled out from the aforementioned decisions, is that at the time of framing of charge, the Court has undoubted power to sift and weigh the evidence for the limited purpose of determining whether a *prima facie* case is made out against the accused or not. The sifting and weighing of evidence, however, is not to be undertaken with a view to ascertain whether the trial would lead to conviction or not. Neither shall the Court weigh the evidence as if it was conducting a trial nor shall it get into a roving enquiry into the pros and cons of the matter. If the material placed before it discloses grave suspicion, the Court would be justified in framing the charge.

9. Coming to the impugned order, it is noted that while framing charge, the Trial Court observed as follows:-



“Firstly, during the period w.e.f. July 2015 to 18.10.2017 at time unknown at your house at H. No. C-303, Ishwar Apartment, Sector 12, Dwarka, New Delhi at the house of the prosecutrix and at different places i.e. Manali, Hongkong, Macau, Bangkok, Mumbai, Lonavala, Andaman and Nicobar Island, Chennai, Nanital, Udaipur etc. You forcibly repeatedly had sexual intercourse with the prosecutrix (Name of victim, her father and complete address has been informed to the accused verbally) by falsely promising her that you would be marrying her and as such fraudulently obtained her consent for sexual intercourse on the false assurance of marriage, which is no consent in the eyes of law and thereby you committed offence punishable u/s 376(2)(n) of IPC within the jurisdiction of Vasant Kunj (South) and within the cognizance of this Court.

Secondly, during the abovesaid period, you also clicked her obscene photographs during such physical relationship and on the basis of such obscene photographs, you threatened her to defame her if she refuses to have such relationship with you and that thereby, you committed the offences punishable u/s 354©/506 IPC within the jurisdiction of PS Vasant Kunj (S) as well as within jurisdiction of this Court.

And I hereby direct, you to be tried for the above said offences.”

10. It was observed by the Trial Court that instances of physical relationship between the complainant and the petitioner existed both prior as well as post August, 2016, i.e., when the complainant had taken divorce from her erstwhile husband. Since the physical relations continued even after complainant's divorce, the decision in Mohit Narula v. State of NCT of Delhi & Anr. reported as **2018 SCC OnLine Del 8764** was held not to be applicable to the case.

11. A perusal of the entire material placed on record would show that the complainant in the present case has alleged that after the petitioner introduced himself to her, their friendship grew gradually. Initially, the petitioner made the



complainant believe that he was in the process of taking divorce from his wife and that the same would face no trouble as his wife had been living separately from him for the last 6 years. Thereafter, he made her believe that he had already taken divorce from his wife, but the divorce decree is awaited. On the pretext of promise to marry the complainant, he entered into a physical relationship with her which continued even after August, 2016, i.e., when she obtained divorce from her erstwhile husband.

12. Insofar as the first charge is concerned, it is noted that the prosecutrix had clearly stated in her complaint that sexual relations were established by the petitioner on the false promise of marriage. It was also stated that subsequently she was threatened by him and the physical relations were forced. Relevant extract from the FIR is reproduced hereunder:-

“At the same, after the facts came to be known he extended threats to continue the physical relations, taken certain intimate photographs without the consent and information and extended threat of reputation and life and to force to continue the physical relations.”

13. In her statement recorded under Section 164 Cr.P.C., the prosecutrix has reiterated that physical relations were established by the petitioner on the false promise of marriage and that she was misled by his assurance that he had obtained divorce. It was further stated that since their marriage, the petitioner had been threatening her, harassing her and having physical intimacy/sex.

14. So far as the second charge is concerned, the contention raised on behalf of the petitioner is that no case under Section 354C IPC could have been made out in absence of recovery of any obscene photographs. However, it is noted that the phone furnished by the petitioner to the Investigating Officer was in use since



19.06.2017. He had come into contact with the complainant in August, 2014 and admittedly, the phone he was using prior, which had pictures and videos of the complainant, was not furnished to the Investigating Officer. Further, even though on visual inspection, the Investigating Officer could not find any obscene photographs in the mobile phone being used by the petitioner since 19.06.2017, the same has been sent to FSL and the report is awaited.

15. In view of the foregoing analysis, I find no ground to interfere with the impugned order.

16. The present petition, being devoid of merits, is dismissed. Miscellaneous application is disposed of as infructuous.

(MANOJ KUMAR OHRI)
JUDGE

DECEMBER 10, 2021

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Click here to check corrigendum, if any