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

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Reserved on: 27.10.2022

Pronounced on: 22.11.2022

+ **CRL.REV.P. 602/2022 & CRL.M.A.18571/2022**

KUMUD CHAWLA & ORS.

.... Petitioner

Through: Mr. Angad Ahluwalia and
Mr. Kushal Choudhary,
Advocates

versus

THE STATE OF NCT OF DELHI & ANR. Respondents

Through: Mr. Naresh Kumar Chahar,
APP for the State with SI
Prem Pal Singh, CAW Cell,
Central District, Delhi.
Mr. Manish Pradeep and
Mr. Loveleen Kaithwas,
Advocates for Respondent
no. 2

CORAM:

HON'BLE MS. JUSTICE SWARANA KANTA SHARMA

JUDGMENT

SWARANA KANTA SHARMA, J.

1. The instant revision petition has been filed under Sections 397 and 401 read with Section 482 of the Code Of Criminal Procedure, 1973 ("Cr.P.C.") assailing the order dated 06.08.2022 passed by learned Additional Sessions Judge-01 (POCSO), Central District, Tis Hazari Courts, Delhi whereby the applications filed by the petitioners seeking discharge in Sessions Case No. 34/2022 in FIR No. 44/2021 dated

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09.02.2021 were dismissed, and charges were framed under Sections 323/354/354B/451/506/509/34 IPC read with Section 10 of POCSO Act against petitioner no. 1 and 3, and under Sections 451/323/506/509/34 IPC against petitioner no. 2.

2. The brief facts of the case, leading to the filing of present petition are that a complaint was made by one 'DC' against the petitioners/accused persons namely Kumud Chawla, Aayush Chawla and Sunil Chawla wherein it was alleged that all three accused persons, on 17.01.2021, after committing house-trespass, caused hurt to the complainant and her minor girl child, used criminal force and also outraged the modesty of both of them while passing filthy remarks. It was also stated that they were criminally intimidated and death threats were also extended to the complainant. On the basis of said complaint, the present FIR bearing no. 44/21 was registered on 09.02.2021 under Sections 323/354/354B/451/506/509/34 of Indian Penal Code, 1860 and Section 8 of The Protection of Children from Sexual Offences Act, 2012 ("POCSO Act") at Police Station Prasad Nagar. Charge-sheet in the present case was filed on 28.01.2022, however arrest of none of them was deemed necessary by the Investigation Officer (IO). The petitioners were summoned *vide* order dated 28.01.2022 and all of them were admitted to bail on their appearance before the learned Trial Court on 03.03.2022.

3. Thereafter, three separate applications under Section 227 Cr.P.C. were moved on behalf of the petitioners seeking their discharge. The learned Trial Court *vide* order dated 06.08.2022 dismissed the said applications under Section 227 Cr.P.C. on the ground that the

creditworthiness of the prosecution witnesses can be tested only during trial and proceeded to frame the charges. The concluding part of the impugned order reads as under:

“15. Therefore, in view of settled legal propositions regarding order at the stage of charge, in the entire given facts and circumstances of the present case, I am of the considered opinion that it cannot be said there is no ground for proceeding against the accused persons. The creditworthiness of the prosecution witnesses can be tested only during trial. Thus, in the given set of circumstances, accused persons namely Sunil Chawla and Ayush Chawla presumably committed the offences punishable under section 323/506/34 IPC against complainant 'DC', minor victim 'I', Sh.'PC' husband of complainant and Sh. 'KS' father-in-law of complainant. Both of them also presumably committed offences punishable under sections 451/34 and under sections 509/34, 354/34 and 354B/34 against complainant 'DC' and minor victim 'I' and under section 9 (g), (i) and (m) of POCSO Act punishable under Section 10 of POCSO Act against the minor victim 'I', a girl child of 11 years of age. Further, accused Kumud Chawla presumably committed the offences punishable under sections 451/323/506/509/34 IPC.

4. Learned counsel for the petitioners states that petitioners and respondent no. 2 are neighbours residing in the same building, and an FIR bearing no. 24/2021 dated 17.01.2021 under Sections 451/354/356/323/506/509/34 IPC at P.S. Prasad Nagar was first lodged by the petitioners in the present case, and it was only after a delay of 21 days that the present FIR was lodged by the complainant.

5. Learned counsel for the petitioners argues that the nine public witnesses in their statements under section 161 Cr.P.C. have not supported the case of prosecution. It is averred that one Vivek Hajela in his statement under section 164 Cr.P.C. has also narrated that he had seen the complainant and his family members beating the petitioners. It is stated that similar observations were made by the learned Trial Court, in para 11 of the impugned order, which reads as under:

“11. During investigation, IO got the statements of the complainant and the minor victim recorded under section 164 Cr.P.C. wherein, both of them reiterated the allegations levelled against the accused persons. The IO also recorded the statements of nine public witnesses under section 161 Cr.P.C. who stated a somewhat different version than the versions of the complainant and the minor victim. IO also got recorded statement of one Vivek Hajela under section 164 Cr.P.C. who also stated a different version than the version of the complainant. In this way, there are statements of complainant and minor victim recorded under section 161 and 164 Cr.P.C. and the statement of husband of the complainant recorded under section 161 Cr.P.C. on the one side and the statements under section 161 Cr.P.C. of nine public witnesses giving a somewhat different version on the other side. Prosecution witnesses namely Jeevan Taxak and Pooja Chaudhary refused to get their statements recorded under section 164 Cr.P.C.”

6. It is further submitted by learned counsel for petitioner that even after observing that Investigating Officer had not given any reasons in the charge sheet for disbelieving the versions of public witnesses, the

Trial Court has still proceeded to frame the charges against the petitioners. The relevant observations find mention in para 13 of the impugned order, which are as under:

"13. There is therefore, no doubt that some quarrel had taken place on 17.01.21 between the accused persons and the family members of the respondent No.2 regarding which one FIR No 24/2021 dated 17.01.21 was registered on the complaint of accused Kumud Chawla. The said incident was witnessed by many persons, some of which have been cited as witnesses for the prosecution in the present case. On perusal of the charge sheet it is clear that the IO chose to not believe the versions of public witnesses and filed the charge sheet against the accused persons, though the reasons for reaching such conclusion are entirely absent in the charge sheet. Be it as it may, the fact remains that the IO has filed the charge sheet against the accused persons and not a cancellation report".

7. Learned counsel for the petitioners argues that there are discrepancies and contradictions between the versions of the nine public witnesses and the versions of complainant and the minor victim. It is contended by the learned counsel that learned Trial Court in para no. 9 of the impugned order has relied upon the decision of Hon'ble Apex Court in ***M.E. Shivalingamurthy v. CBI (2020) 2 SCC 768*** extracting the principles to be kept in mind at the stage of discharge. It is argued that the first principle as enlisted in the said case i.e., "(1) If two views are possible and one of them gives rise to suspicion only as distinguished from grave suspicion the trial judge would be empowered to discharge the accused", comes to the rescue of the petitioners, since

in the present case, where one scenario is consistent with the innocence of the petitioners and another scenario barely raises any suspicion, the petitioners shall be entitled to discharge.

8. Learned counsel for the petitioner has placed reliance upon the following judgments: (i) *Vineet Kumar v. State of V.P.* (2017) 13 SCC 369, (ii) *State (GNCTD) v. Mohd. Faisal* 2018 SCC OnLine Del 11656, (iii) *State of M.P. v. Sheetal Sahai* (2009) 8 SCC 617 *Amit Kapoor v. Ramesh Chander* (2012) 9 SCC 460.

9. Controverting the aforesaid contentions, Learned APP for the State has submitted that during investigation, statements of the complainant and the minor victim were recorded under Section 164 Cr.P.C. wherein, both of them reiterated the allegations levelled against the accused persons, which are serious in nature. It is further stated that the learned Trial Court, after dealing with all the contentions of the petitioners, and having considered the material available on record, had framed the charges against the petitioners, and thus, the impugned order does not suffer from any infirmity or illegality.

10. Learned counsel for the complainant, while assisting the learned APP, has submitted that the statement of eye witness Vivek Hajela under Section 164 Cr.P.C. is devoid of credit as he was outside the house when the alleged incident took place. It is further stated that no eye witnesses were present at the time when the alleged incident took place since the same occurred within the four walls of the complainant's house.

11. The rival contentions raised on behalf of both the parties have been heard and material placed on record has been perused.

12. The issue for consideration in the present petition is whether there exist any circumstances for this Court to interfere with the impugned order framing charge, on account of there being no strong suspicion and no *prima facie* case against the accused persons, borne out from the material on record.

13. For deciding the present issue, it would be first appropriate to refer to the law on the point of framing of charge as well as discharge of accused persons.

14. For a sessions case, as provided under Section 228 Cr.P.C., the Court shall proceed to frame charge against an accused if it is of opinion that there are grounds for presuming that the accused has committed an offence. Section 228 Cr.P.C. is reproduced as under:

“ 228. *Framing of charge.*

(1) If, after such consideration and hearing as aforesaid, the Judge is of opinion that there is ground for presuming that the accused has committed an offence which-

(a) is not exclusively triable by the Court of Session, he may, frame a charge against the accused and, by order, transfer the case for trial to the Chief Judicial Magistrate, and thereupon the Chief Judicial Magistrate shall try the offence in accordance with the procedure for the trial of warrant- cases instituted on a police report;

(b) is exclusively triable by the Court, he shall frame in writing a charge against the accused.

(2) Where the Judge frames any charge under clause (b) of sub- section (1), the charge shall be read and explained to

the accused and the accused shall be asked whether he pleads guilty of the offence charged or claims to be tried."

15. An accused can also be discharged as per provision of Section 227 Cr.P.C. However, for discharge of an accused, there must be a lack of sufficient grounds to believe that the accused has committed the offence. Section 227 Cr.P.C. is reproduced as under:

"Discharge — If, upon consideration of the record of the case and the documents submitted therewith, and after hearing the submissions of the accused and the prosecution in this behalf, the Judge considers that there is not sufficient ground for proceeding against the accused, he shall discharge the accused and record his reasons for so doing."

16. The Apex Court, in the case of **Sajjan Kumar v. C.B.I. (2010) 9 SCC 368**, held that at the time of framing of charge, the Court has to look at all the material placed before it and determine whether a *prima facie* case is made out or not, and the court is not required to consider the evidentiary value of the evidence as any question of admissibility or reliability of evidence is a matter of trial. The relevant portion of the judgment is reproduced below:

"21. On consideration of the authorities about 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 of the Cr.P.C. 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.”

17. It was observed by the Hon’ble Supreme Court in ***Asim Shariff v. National Investigation Agency, (2019) 7 SCC 148***, that at the stage of framing of charge, the trial court is not expected or supposed to hold a mini trial for the purpose of marshalling the evidence on record. The relevant observations are as under:

“18. Taking note of the exposition of law on the subject laid down by this Court, it is settled that the Judge while considering the question of framing charge under Section 227 CrPC in sessions cases(which is akin to Section 239 CrPC pertaining to warrant cases) 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; where the material placed before the Court discloses grave suspicion against the accused which has not been properly explained, the Court will be fully justified in framing the charge; by and large if two views are possible and one of them giving rise to suspicion only, as distinguished from grave suspicion against the accused, the trial Judge will be justified in discharging him. It is thus clear that while examining the discharge application filed under Section 227 CrPC, it is expected from the trial Judge to exercise its judicial mind

to determine as to whether a case for trial has been made out or not. It is true that in such proceedings, the Court is not supposed to hold a mini trial by marshalling the evidence on record.”

(emphasis supplied)

18. In *Amit Kapoor v. Ramesh Chander (2012) 9 SCC 460*, the Hon’ble Supreme Court enlisted certain principles with reference to exercise of power under Section 397 and Section 482 of Cr.P.C. by the Courts while deciding as to whether the charges framed against an accused be quashed or not. The principles listed are as under:

“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 loathe 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.*

27.16. *These are the principles which individually and preferably cumulatively (one or more) be taken into consideration as precepts to exercise of extraordinary and wide plenitude and jurisdiction under Section 482 of the Code by the High Court. Where the factual foundation for an offence has been laid down, the courts should be reluctant and should not hasten to quash the proceedings even on the premise that one or two ingredients have not been stated or do not appear to be satisfied if there is substantial compliance to the requirements of the offence."*

19. The Hon'ble Supreme Court in ***Bhawna Bai v. Ghanshyam, (2020) 2 SCC 217***, has observed as under:-

"13. ...At the time of framing the charges, only prima facie case is to be seen; whether case is beyond reasonable doubt, is not to be seen at this stage. At the stage of framing the charge, the court has to see if there is sufficient

ground for proceeding against the accused. While evaluating the materials, strict standard of proof is not required; only prima facie case against the accused is to be seen.”

20. In ***M.E. Shivalingamurthy v. CBI (2020) 2 SCC 768*** , the Hon’ble Apex Court, while discussing the principles to be followed while dealing with an application seeking discharge, observed as under:

- “i. If two views are possible and one of them gives rise to suspicion only as distinguished from grave suspicion, the Trial Judge would be empowered to discharge the accused.*
- ii. The Trial Judge is not a mere Post Office to frame the charge at the instance of the prosecution.*
- iii. The Judge has merely to sift the evidence in order to find out whether or not there is sufficient ground for proceeding. Evidence would consist of the statements recorded by the Police or the documents produced before the Court.*
- iv. If the evidence, which the Prosecutor proposes to adduce to prove the guilt of the accused, even if fully accepted before it is challenged in cross-examination or rebutted by the defence evidence, if any, “cannot show that the accused committed offence, then, there will be no sufficient ground for proceeding with the trial.*
- v. It is open to the accused to explain away the materials giving rise to the grave suspicion.*
- vi. The court has to consider the broad probabilities, 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, would not entitle the court to make a roving inquiry into the pros and cons.*

vii. At the time of framing of the charges, the probative value of the material on record cannot be gone into, and the material brought on record by the prosecution, has to be accepted as true.

viii. There must exist some materials for entertaining the strong suspicion which can form the basis for drawing up a charge and refusing to discharge the accused...”

21. In a recent decision in ***Manendra Prasad Tiwari v. Amit Kumar Tiwari and Anr. 2022 SCC OnLine SC 1057***, the bench of Hon’ble Justices D.Y. Chandrachud and J.B. Pardiwala has explained the well-settled law on exercise of powers under Section 397 and 482 Cr.P.C. as under:

“21. The law is well settled that although it is open to a High Court entertaining a petition under Section 482 of the CrPC or a revision application under Section 397 of the CrPC to quash the charges framed by the trial court, yet the same cannot be done by weighing the correctness or sufficiency of the evidence. In a case praying for quashing of the charge, the principle to be adopted by the High Court should be that if the entire evidence produced by the prosecution is to be believed, would it constitute an offence or not. The truthfulness, the sufficiency and acceptability of the material produced at the time of framing of a charge can be done only at the stage of trial. To put it more succinctly, at the stage of charge the Court is to examine the materials only with a view to be satisfied that prima facie case of commission of offence alleged has been made out against the accused person. It is also well settled that when the petition is filed by the accused under Section 482 CrPC or a revision Petition under Section 397 read with

Section 401 of the CrPC seeking for the quashing of charge framed against him, the Court should not interfere with the order unless there are strong reasons to hold that in the interest of justice and to avoid abuse of the process of the Court a charge framed against the accused needs to be quashed. Such an order can be passed only in exceptional cases and on rare occasions. It is to be kept in mind that once the trial court has framed a charge against an accused the trial must proceed without unnecessary interference by a superior court and the entire evidence from the prosecution side should be placed on record. Any attempt by an accused for quashing of a charge before the entire prosecution evidence has come on record should not be entertained sans exceptional cases.

22. The scope of interference and exercise of jurisdiction under Section 397 of CrPC has been time and again explained by this Court. Further, the scope of interference under Section 397 CrPC at a stage, when charge had been framed, is also well settled. At the stage of framing of a charge, the court is concerned not with the proof of the allegation rather it has to focus on the material and form an opinion whether there is strong suspicion that the accused has committed an offence, which if put to trial, could prove his guilt. The framing of charge is not a stage, at which stage the final test of guilt is to be applied. Thus, to hold that at the stage of framing the charge, the court should form an opinion that the accused is certainly guilty of committing an offence, is to hold something which is neither permissible nor is in consonance with the scheme of Code of Criminal Procedure

23. Section 397 CrPC vests the court with the power to call for and examine the records of an inferior court for the

purposes of satisfying itself as to the legality and regularity of any proceedings or order made in a case. The object of this provision is to set right a patent defect or an error of jurisdiction or law or the perversity which has crept in the proceeding.”

22. Thus, it is necessary to look into the facts and circumstances of each case to determine whether a *prima facie* case is made out or not, in order to establish charge against an accused. At the time of framing of charge, due consideration needs to be given to the material placed on record along with the investigation and the facts determined therefrom, and only the information gathered from these sources should be used to ascertain if the essential ingredients of an offence can be *prima facie* made out or not. The Court, however, is not permitted to examine the probative value of evidence while deciding as to whether a charge be framed or not, as the court is not allowed to conduct a mini trial at this stage.

23. It will be pertinent to also refer to the provisions of POCSO Act under which the charges have been framed against the petitioner no. 1 and 3. The same are as under:

“9. Aggravated sexual assault.—

(i) whoever commits sexual assault causing grievous hurt or causing bodily harm and injury or injury to the sexual organs of the child; or

(g) whoever commits gang sexual assault on a child.

Explanation.—when a child is subjected to sexual assault by one or more persons of a group in furtherance of their common intention, each of such persons shall be deemed to have committed gang sexual assault within the meaning of this clause and each of such person shall be liable for that act in the same manner as if it were done by him alone; or

(m) whoever commits sexual assault on a child below twelve years;...

10. Punishment for aggravated sexual assault.—Whoever, commits aggravated sexual assault shall be punished with imprisonment of either description for a term which shall not be less than five years but which may extend to seven years, and shall also be liable to fine.”

24. Though the present FIR was registered under Section 8 of POCSO Act, the charges were framed against petitioner no. 1 and 3 under section 9(g)(i)(m) read with Section 10 of POCSO Act. Charges have also been framed under several provisions of IPC including Section 354 i.e., assault or criminal force to woman with intent to outrage her modesty, as well as Section 354B i.e., Assault or use of criminal force to woman with intent to disrobe.

25. In the present case, it appears from the record that altercation had taken place between the petitioners and the complainant on 17.01.2021 pursuant to which an FIR was first registered at the behest of the petitioners against the complainant, and later on by the complainant against petitioners. Since the parties were neighbours and the incident had taken place in a thickly populated colony, several public witnesses

who were present in the colony at the time of incident were examined and their statements were also recorded. It is the case of petitioners that all these public witnesses had stated that they had seen respondent no. 2 and her family attacking and hurling abuses at the petitioners, but no one had seen the present petitioners attacking the complainant and her family and committing the alleged offences by entering her house. On the other hand, it is the case of prosecution that since the present incident took place inside the four walls of the complainant's house, there were no public or eye witnesses inside or immediately outside her house to witness the same, and the statements of complainant and her minor girl child have no discrepancies.

26. The statements of complainant and minor victim recorded under Sections 161 and 164 of Cr.P.C. have been perused. On the face of it, there appears to be no discrepancies, contradictions or improvements in these statements.

27. Allegations of the complainant i.e. mother of the victim were that the alleged incident took place inside their house, when the petitioners had entered there with rods and sticks. She has reiterated her allegations in her statement under Section 164 Cr.P.C. The minor victim has also reiterated her version in statement recorded under Section 164 Cr.P.C. Since the incident in question is alleged to have taken place inside the complainant's house, absence of public witnesses cannot be a ground to discharge the petitioners, by totally ignoring the testimonies of the complainant and the minor girl child.

28. The statements of the complainant and the minor victim recorded under Section 161 and 164 Cr.P.C. *prima facie* are sufficient for a

strong suspicion as to the commission of an offence under sections 451/509/3354/354B/34 IPC against complainant 'DC' and minor victim '1' and under section 9 (g), (i) and (m) of POCSO Act punishable under Section 10 of POCSO Act against the minor victim 'T', a girl child of 11 years of age. Thus, the said statements point towards the commission of offences for which the charges have been framed against the present petitioners by the learned Trial Court.

29. The contentions raised on behalf of the petitioners regarding contrary views expressed by the public witnesses and the registration of present FIR being a counter blast will have to be considered and appreciated during the course of trial, and the same cannot be dealt with in depth at this stage. Even by considering the decision of Apex Court in *M.E. Shivalingamurthy (supra)*, as also reproduced hereinabove, this Court cannot accept that the said decision advances the case of the petitioners seeking discharge.

30. Therefore, upon consideration of the material on record, this Court is of the opinion that the learned Trial Court has taken into account all the objections raised by the petitioners herein and on the basis of settled position of law with respect to the framing of charge, has proceeded to frame the charges against the petitioners.

31. In view of the foregoing discussion, there appears to be no infirmity in the order passed by the learned Trial Court. Consequently, there exist no circumstances to warrant interference with the impugned order by this Court in exercise of its revisional jurisdiction.

32. Accordingly, the present petition is dismissed.

33. It is, however, made clear that the observations made by this

Court are only for the purpose of deciding the present petition and the same shall not have any bearing on the merits of the case during the trial.

SWARANA KANTA SHARMA, J

NOVEMBER 22, 2022/kss

