

\$~

\* **IN THE HIGH COURT OF DELHI AT NEWDELHI**

%

***Reserved on: 09.11.2022***

***Pronounced on: 22.11.2022***

+ **CRL.REV.P. 757/2022**

**DHARMENDER HOODA**

..... Petitioner

Through: Mr. Amulya Dhingra,  
Advocate.

versus

**THE STATE OF NCT OF DELHI & ORS.** ..... Respondents

Through: Mr. Manoj Pant, APP for the  
State with SI Gayatri, P.S.  
BHD Nagar.

**CORAM:**

**HON'BLE MS. JUSTICE SWARANA KANTA SHARMA**

**JUDGMENT**

**SWARANA KANTA SHARMA, J.**

1. The instant revision petition has been filed by petitioner under Section 397 read with Section 482 Code of Criminal Procedure Code, 1973 ("Cr.P.C.") against the impugned order dated 03.08.2022 passed by learned Additional Sessions Judge (SFTC), Dwarka Courts, New Delhi in Case No. SC505/2022 titled as "*State v. Dharmender*".

2. Brief facts as disclosed in the petition are that prosecutrix /respondent no. 2 had filed a complaint against the petitioner on 17.12.2021 and on basis of same FIR was got registered for offences punishable under Sections 376/377 Indian Penal Code, 1860 ("IPC"). The prosecutrix/respondent no. 2 alleged that in the year of 2018,

petitioner had sent friend request on Face book and they become friends as both belong to the same village and knew each other very well through their families. They remained friends for around 3 years. Petitioner convinced the family members of the prosecutrix and planned a tour of Vaishno Devi on 22.07.2021. As per complaint, it is alleged that in Vaishno Devi for the first time the petitioner forcibly made physical relation with prosecutrix without her consent and after that promised to marry her. To appease the complainant he had put vermilion on her hairline. A matrimonial dispute was going on between prosecutrix with her husband and the petitioner knew about the same and during the tour of the Vaishno Devi the petitioner convinced the prosecutrix that he will engage a good lawyer and get matrimonial dispute settled soon and will marry her. On 31.07.2021, to settle the old matrimonial dispute, the petitioner asked prosecutrix to meet some good lawyers dealing with divorce matter in Goyla Dairy and the petitioner forcibly took her in his car and offered some drink in the car. After consuming the drink, she became disoriented and was taken to a Hotel in Goyla dairy. On that day 31.07.2021, the petitioner forcibly made physical relation with prosecutrix and also made video containing her nude picture etc. before dropping her home. The petitioner had shown her nude photos and videos which has caused trauma and pressure as her matrimonial case was pending. Next morning, the prosecutrix had called the petitioner and had requested him to delete the nude photos and videos. The petitioner had assured him that he will not misuse the same and again assured her that he will marry her. Thereafter on several occasions, physical relations were made between

the two. On 28.11.2021, the petitioner met prosecutrix at her house and made physical relations with her and thereafter, he stopped meeting her. He had also threatened on phone that he would kill her. On 09.12.2021 at 11:30 AM, the petitioner asked the prosecutrix to meet him or he will viral the nude photos and videos on social media. Based on the complaint, an FIR was registered on 17.12.2021 and charge sheet was filed under Sections 376/377/328/506 IPC.

3. The learned counsel for the petitioner argued that the learned Trial Court has committed error in framing charges and has failed to appreciate that there is no prima facie evidence against the petitioner. The Prosecutrix has not clearly mentioned any specific date of the commission of offence and has given contradictory versions in her complaint and her statement under section 164 Cr.P.C.regarding the alleged offence.

4. The learned counsel on behalf of the petitioner further argued that there is no medical evidence against the petitioner regarding administration of intoxicating substance as alleged by the Prosecutrix and the statement under Section 161 Cr.P.C. of PW Ms. Shalu has not been appreciated by the learned Trial Court. He further argued that in the absence of FSL report, the charge has been wrongly framed under Section 328 IPC against the petitioner.

5. The learned counsel for the petitioner relied on the following judgments:-

*a) Mahinder Kumar &Ors. v. The State, 2017(3) JCC 1510*

*b) State (NCT of Delhi) v. Jiwan Kant Jain and Anr, Crl.Rev.P. 448/2018*

6. *Per contra*, learned counsel for the State has argued that the order of framing of charge does not require any interference as the question whether offence is made out or not will be seen after leading evidence at the later stage of trial. At this stage, the statement of prosecutrix under Section 164 Cr.P.C and complaint is sufficient to frame charge against petitioner.

7. The arguments of both the sides have been heard and material on record has been perused.

8. It is appropriate to first reproduce the relevant paras of the impugned order, which are as under:

*“Whatever may be the inconsistencies there, same cannot be weighed in terms of their evidentiary value at this stage because even the love relationship per se does not allow a person to establish sexual relations with his lover without his/her consent.*

*So far as the allegation of false promise is concerned, a bare perusal of the complaint reveals that complainant had categorically stated therein that firstly she was forcibly sexually assaulted by the accused at a hotel in Mata Vaishno Devi and thereafter the promise of marriage was made to her. Therefore, it cannot be considered as a case of establishing sexual relations on the promise of marriage rather it is a case where the rape was committed first and promise to marriage had followed the same.*

*So far as the contention raised by ld. Counsel regarding the filling of her parting with vermilion by accused and asking her to believe herself to be his legally wedded wife, is concerned, I have no hesitation in holding that even a first year law student is well aware of the essential ingredients of a valid Hindu marriage as per the Hindu Marriage Act, hence merely by putting a vermilion on the forehead or parting does not confer a person, the position of a legally wedded husband or wife, as the case may be.*

*Learned counsel for accused has also argued that accused should not be put to trial unnecessarily without there being any material on record. However, this is not the case in hand.*

*Lastly, ld. Counsel for accused has submitted that prosecutrix was already in a marital relation when the alleged incident was stated to have happened with her and the relationship between the parties were consensual in nature. However, since the pleas regarding marital status of the prosecutrix or the consensual relationship between the parties are essentially and purely a matter of trial and cannot be adjudged at this stage.*

*Therefore, I do not find any merits in the submissions of ld. Counsel for accused. Prima facie there is sufficient material on record to frame charge for offence(s) u/s 376(2)(n)/328/506 IPC.....”*

9. It is well settled law that for framing of charges, *prima facie* case against the accused must be made out by the prosecution, which means that grave suspicion should exist against the accused for commission of offence. In the recent case of ***Dipakbhai Jagdishchandra Patel v. State of Gujarat, (2019) 16 SCC 547***, it was observed by the Hon’ble Apex Court that the court must not act as a mere post office and must act in accordance with the principles which have been laid down for framing of charge.

10. After hearing arguments, this Court is of the opinion that learned Trial Court has committed no error in hold that the inconsistency if any could not be weighed in terms of their evidentiary value at the stage of charge and the specific allegations regarding sexual intercourse being committed at false promise of marriage at various places could not be ignored. It is also rightly pointed out by the learned Trial Court that categorical assertion of the complainant that she was first forcibly

sexually assaulted at a hotel in Jammu at a religious place and thereafter promise of marriage was made rather false under the definition of commission of rape since sexual intercourse was committed first and promise to marriage followed later. Learned Trial Court has also rightly observed that the plea regarding mental status of the prosecutrix or the consensual relationship of the parties is a matter of trial and cannot be adjudged at this stage, therefore, learned Trial Court has rightly come to the conclusion that charge under Section 376(2)(n)/506 IPC is made out since the threats were extended to the petitioner on several occasions including threat to make her inappropriate photographs public.

11. However, as far as framing of charge under Section 328 IPC is concerned, this Court is of the opinion that learned Trial Court has given no finding regarding framing of charge as to how charge under Section 328 IPC is made out.

12. For appreciation of intent of Section 328, the same is reproduced hereunder:-

*“328. Causing hurt by means of poison, etc., with intent to commit an offence.--Whoever administers to or causes to be taken by any person any poison or any stupefying, intoxicating or unwholesome drug, or other thing with intent to cause hurt to such person, or with intent to commit or to facilitate the commission of an offence or knowing it to be likely that he will thereby cause hurt, shall be punished with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine.”*

13. In a case of ***Prashant Bharti vs. State (NCT of Delhi) (2013) 9 SCC 113***, the victim had alleged that the accused therein had offered her cold drink (Pepsi) allegedly containing poisonous/intoxicating

substance. After drinking the same, she felt inebriated whereupon the appellant started misbehaving with her and also touched her breasts. She was taken for medical examination but no evidence of poisoning was found by the police during investigation. The Apex Court quashed the charge under Section 328 IPC observing that allegations levelled by the prosecutrix of having been administered some intoxicant in a cold drink could not be established by the cogent evidence.

14. A perusal of record reveals that the prosecutrix in her statement under Section 161 Cr.P.C has stated that on 31.07.2021, petitioner had taken her to hotel and on the way had offered her cold drink, after consuming which she had become disoriented. FIR in this case was registered on 17.12.2021 i.e. after five months of the alleged incident of administration of the intoxicating substance. However, there is statement under Section 161 Cr.P.C of the Manager of the hotel wherein she has stated that the prosecutrix i.e. respondent no. 2 had visited the hotel with the accused and she was not in disoriented condition and had put her signatures in the entry register of the guest house on 31.07.2021. The present statement along with the fact that there is neither medical examination conducted nor any evidence is available on record regarding administration of intoxicating substance. Charge under Section 328 IPC could not have been framed as there was nothing on record before learned Trial Court for a grave suspicion regarding administration of the above allegations. Therefore placing reliance on the judgment of *Prashant Bharti vs. State (supra)*, there was nothing on record before learned Trial Court to even prima facie

take a view that ingredients of Section 328 IPC were made out for the purpose of framing charge.

15. Accordingly, the impugned order dated 03.08.2022 is set aside to the extent of framing of charge under Section 328 IPC. No infirmity is found as far as the rest of the order is concerned.

16. It is clarified that this will have no bearing on the other charges framed under Sections 376/377/506 IPC. Accordingly, petition stands partly allowed in the aforesaid terms.

17. In view of the above, the present petition stands disposed of.

**SWARANA KANTA SHARMA, J**

**NOVEMBER 22, 2022/kss**

