

\$~

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

%

Reserved on: 14.12.2022
Pronounced on: 19.12.2022

+ **CRL.REV.P.831/2018 & CRL.M.A. 32894/2018**

SURESH CHAND MISHRA & ANR. Petitioner

Through: Mr. M. Hasibuddin, Advocate

versus

STATE (NCT OF DELHI)& ANR. Respondent

Through: Mr. Manoj Pant, Ld. APP for
the State with W/SI Veena,
P.S. M.S. Park

CORAM:

HON'BLE MS. JUSTICE SWARANA KANTA SHARMA

JUDGEMENT

SWARANA KANTA SHARMA, J.

1. The instant revision petition under Sections 397 read with Section 401 of the Code of Criminal Procedure, 1973 ("Cr.P.C.") has been filed by petitioners against the impugned order dated 27.08.2018 passed by learned Additional Sessions Judge ("ASJ"), Karkardooma Courts, Delhi in SC No. 85/2018 whereby learned ASJ was pleased to frame the charge against the petitioners under Sections 506/34 of the Indian Penal Code, 1860 ("IPC").

2. The brief facts of the case are that on the basis of complaint filed by the complainant/respondent no. 2/prosecutrix, an FIR

bearing no. 130/2015, was registered at Police Station (“P.S.”) Mansarovar Park, North-East District, Delhi for the offences punishable under Sections 376/366 of IPC. It was alleged in the FIR that on 20.10.2011, respondent no. 2 was abducted by the son of petitioners i.e., Pranav Mishra from Delhi and he took prosecutrix to Kedarnath, Uttarakhand. It is alleged that complainant was forced by accused Pranav Mishra to have sexual intercourse with him. It was further alleged that till the time of registration of the above-mentioned FIR, accused Pranav Mishra repeatedly forced himself upon the complainant and committed rape upon her at several places i.e., at Kedarnath (Uttarakhand), Mathura, Vrindavan, Haridwar, Agra, at his office in Daryaganj, Delhi, at his house in Vasundhara, Ghaziabad etc., without her consent. It was further alleged that prior to the registration of above-mentioned FIR, accused Pranav Mishra and petitioners in furtherance of their common intention committed criminal intimidation by threatening the complainant to defame her and kill her which caused an alarm in her mind.

3. Learned Counsel for petitioners states that learned Trial Court has committed error in framing of charges without appreciating the fact that complainant nowhere alleged any allegations against the petitioners in the above-mentioned FIR. It is further stated by learned counsel for petitioners that learned Trial Court has failed to consider the complete statement of prosecutrix which was recorded under Section 164 Cr.P.C as well as statement given before the Counsellor CIC and in her Original complaint on the basis of which above-mentioned FIR was registered and without going through the

material on record have framed the charge under Sections 506/34 IPC against the petitioners.

4. It is further stated by learned Counsel for petitioners that learned Trial Court failed to consider that even the Investigating Officer (IO) has not collected any material on record qua the petitioners in respect of the offence under Sections 506/34 IPC and without finding iota of averments in the chargesheet, the charge has been wrongly framed against the petitioners. Further, it was stated that learned Trial Court even failed to consider the orders dated 12.03.2015 and 25.03.2015 passed by learned ASJ, Karkardooma Courts, Delhi in which it was observed that the role assigned qua the petitioners while dealing their bail applications u/s 438 Cr.P.C. and without application of Judicial mind has framed the charges in a routine manner.

5. Per contra, learned APP for the State states that it is a *prima facie* case for the offences punishable under Sections 506/34 of IPC against the petitioners as petitioners along with accused Pranav Mishra had taken the complainant into confidence by saying that they accept her as their daughter-in-law and accused Pranav Mishra took the benefit of that trust while committing the rape upon the prosecutrix.

6. I have heard the arguments on behalf of both the parties and have gone through the material on record.

7. Before going into the merits of the case, it will be useful to refer the impugned order dated 27.08.2018 whereby charges have been framed under Sections 506/34 of IPC against the petitioners. The relevant portion of the impugned order reads as under:

“In the present case, if the charge sheet is analyzed in the light of above said case laws, it is found prima facie case is made out against the accused persons. Under the provisions as submitted by the Add. P.P. In the case statement of prosecutrix (on the basis of which FIR has been registered) and her statement recorded u/s 164 CrPC. The prosecutrix has categorically stated that her husband has abandoned her since the year 2009 and w.e.f. 13.01.2011 she developed friendship with the accused and on 20.10.2011 the accused took her to Kedarnath from Delhi and repeatedly committed rape with her on the false pretext of marriage without her consent and against her will and thereafter he took her to Mathura, Vrindavan, Haridwar and Agra and again committed rape with her. She has also stated that the accused had committed rape with her. She has also stated against accused Suresh Mishra and Manju Mishra, who are parents of accused Pranav Mishra that they threatened to defend and kill her. Thus it is clear that prima-facie case for the offences punishable u/s 366/376/376(2)(n)/506 IPC against accused Pranav Mishra and u/s 506/34 IPC against accused Suresh Mishra and Manju Mishra is made out. However, there is no allegation for the offences punishable u/s 366/376 IPC against accused Suresh Mishra and Manju Mishra.

Therefore, they both i.e. accused Suresh Kumar and Manju Mishra are discharged for the offences punishable u/s 366/376 IPC. Charges are framed accordingly, to which the accused persons have not guilty and claimed trial.”

8. In the present case, the petitioners were charged under Sections 506 and 34 of the IPC. The basic constituent of an offence under Section 506 of IPC is to punish a person for the offence of criminal intimidation, which lays down the cases where threat to death or grievous hurt be caused. Section 506 IPC reads as under:

“Section 506. Punishment for criminal intimidation.—
Whoever commits the offence of criminal intimidation shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both;

If threat be to cause death or grievous hurt, etc.—
and if the threat be to cause death or grievous hurt, or to cause the destruction of any property by fire, or to cause an offence punishable with death or 8[imprisonment for life], or with imprisonment for a term which may extend to seven years, or to impute unchastity to a woman, shall be punished with imprisonment of either description for a term which may extend to seven years, or with fine, or with both.”

9. The Hon’ble Supreme Court in ***Vikram Johar v. State of Uttar Pradesh and Another, (2019) 14 SCC 207***, held that:

“25. Now, reverting back to Section 506, which is offence of criminal intimidation, the principles laid down by Fiona Shrikhande [Fiona Shrikhande v. State of Maharashtra, (2013) 14 SCC 44 : (2014) 1 SCC (Cri) 715] has also to be applied when question of finding out as to whether the ingredients of offence are made or not. Here, the only allegation is that the appellant abused the complainant. For proving an offence under Section 506 IPC, what are the ingredients which have to be proved by the prosecution? Ratanlal & Dhirajlal on Law of Crimes, 27th Edn. with regard to proof of offence states the following:

“... The prosecution must prove:

(i) That the accused threatened some person.

(ii) That such threat consisted of some injury to his person, reputation or property; or to the person, reputation or property of someone in whom he was interested;

(iii) That he did so with intent to cause alarm to that person; or to cause that person to do any act which he was not legally bound to do, or omit to do any act which he was legally entitled to do as a means of avoiding the execution of such threat.”

(emphasis supplied)

10. In the present case the only allegation levelled against the petitioners was that petitioners convinced the complainant to go with their son to Kedernath and only on this allegation the petitioners were charged under Section 506/34 IPC. The allegations levelled by complainant in her complaint reads as under:

“I wished to meet his family members, he agreed after long struggle. His mother, Manju Mishra, and his father, Suresh Mishra showed great sympathy and said they are with me and you are my daughter-in-law from today. Whenever you want, you may come to my house. As such Pranab's family took me into confidence. Due to this trust my family also accepted him and my daughter also started calling him Papa. I was also shown a bright future. On 20th October 2011, he asked me to go to Kedarnath which I refused but his mother and father asked me that you are now getting married so what is the objection to there and in this manner you will, come to know each other. We will talk to your family. On the insistence I agreed and they took my family in confidence.

Next day he and his family member blocked their phone number and whatsapp also and stopped me to come at their houses and threatened that if you do not stop to come to my house. We will get you kill and since then I am sad and under stress. Pranav Mishra and his family raped me and sexually exploited socially, physically and mentally.”

11. As per Section 228 of Cr.P.C., the Court shall proceed to frame charge against an accused if it is of opinion that there is ground for presuming that the accused has committed an offence. Section 228 of Cr.P.C. is reads as under:

“Section 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, 1[or any other Judicial Magistrate of the first class and direct the accused to appear before the Chief Judicial Magistrate, or, as the case may be, the Judicial Magistrate of the first class, on such date as he deems fit, and thereupon such 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 subsection (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.”

12. An accused can also be discharged as per Section 227 Cr.P.C., however, for discharge of an accused there must be grave suspicion that

accused has not committed the offence. Section 227 of Cr.P.C. is reads as under:

“Section 227. 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.”

13. 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 reads 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)

14. Recently, the Hon’ble Supreme Court in ***State of Rajasthan v. Ashok Kumar Kashyap, 2021 SCC OnLine SC 314***, held that at the stage of framing of the charge and/or considering the discharge application, a mini trial is not permissible. The Court observed that the position of law that emerge at the stage of discharge/framing of charge is that the Judge is merely required to shift the evidence in order to find out whether or not there is sufficient ground for proceeding against the accused or not.

15. Therefore, in order to establish whether there is sufficient material on record for proceeding against the accused or not and whether a *prima facie* case exists to hold so is an essential. At the time of framing charge due consideration needs to be given to the entire material placed on record which includes the statements of the witnesses, complaint, subsequent statements of the complainant, etc. to reach a conclusion regarding whether a grave suspicion exists against an accused that he might have committed an offence though the Court is not permitted to examine the probative value of evidence while deciding as to whether charges made out or not. It is essential to apply judicial mind to determine even a case for trial has been made out or not.

16. In ***Vikram Johar (supra)*** the Supreme Court has reiterated that during the stage of framing charge, the court must not conduct a mini-trial and the decision should be based on the *prima facie* appreciation of

material placed on record. The relevant portion of the said judgment is as under:

“19. It is, thus, clear that while considering the discharge application, the Court is to exercise its judicial mind to determine whether a case for trial has been made out or not. It is true that in such proceedings, the Court is not to hold the mini trial by marshalling the evidence.”

17. Coming back to the case in hand, the main allegation against the petitioners is that they took the complainant into confidence stating that they had accepted her as their daughter-in-law and therefore, on that basis she had accompanied the complainant to Kedarnath. The complainant is 32 years of age and has one daughter. It is further alleged that the present petitioners had threatened the complainant that she will be killed in case she will come to their house as they are the parents of the main accused. The exact allegation is contained in one line in the complaint of the petitioner i.e. that *“Next day he and his family member blocked their phone number and what's app also and stopped me to come at their houses and threatened that if you do not stop to come to my house. We will get you kill and since then I am sad and under stress.”*

18. The petitioners who are parents of the main accused already stand discharged under Sections 366 and 376 of IPC. There are only orders to frame charges against them is only under Section 506 of IPC.

19. Section 506 IPC is divided into 2 categories which are lesser and graver forms of criminal intimidation. The main requirement of the offence is threatening of the victim and the intention is an important aspect of the offence.

20. This Court after going through the material on record notes that the complainant has made a general allegation not specific time of such threat or in what manner the threat was extended has been explained. The facts revealed that the complainant expected the parents of the main accused to help her in getting married to their son Pranav Mishra however, Pranav Mishra was not interested to get married to her. The complaint is, therefore, silent regarding as to who had threatened her and in what manner and from which phone the threat was extended to which phone number. A general allegation that accused Pranav Mishra and his family member had blocked their phone number and WhatsApp and had stopped her to come to their house and had threatened her if she did not stop to come their house she will be killed. It is thus also not clear since she says that “family member had blocked the phone number and has asked not to come to my house” her only grievance at the cost of repetition is that Pranav Mishra’s father and mother who are petitioners herein had helped her to have an affair with their son were not even finds sufficient to frame charges under Sections 366 and 376 of IPC against them.

21. A perusal of material on record reveals that no specific time has been mentioned by the complainant in her complaint that when she was threatened by the petitioners. Although, outburst is not sufficient to hold that it would fall within the mischief of Section 506 IPC. The Court observed that for an offence to amount to criminal intimidation one must look at to whom it was intended, whether the alarm was caused, what are the actual words employed. In the present case, as per

the complainant, petitioners only expressed their sympathy to the complainant and told her that they accept her as their daughter-in-law.

22. In view of the facts and circumstances mentioned above as well as considering ambit of Section 506 of IPC only expressing sympathy and later on not being able to help a person does not attract ingredients of Section 506 of IPC. It is not clear from the definition of Section 506 of IPC that the immediate purpose of criminal intimidation is to induce a person threatened to do pause alarm to that person or to pause that person to do any act which he is not legally bound to do, or omit to do any act which he was legally entitled to do as a means of avoiding the execution of such threat or further that such threat consisted of some injury to the complainant his reputation or property or injury to the person's reputation or property of someone the complainant was interested in. In the present case, none of these ingredients were present even on perusal of the entire material placed before the learned Trial Court. Thus, in view of the fore-going discussion, the case under Section 506 of IPC is held not to be made out against the petitioner.

23. Therefore, in the light of the foregoing discussion the impugned order dated 27.08.2018 passed by learned ASJ, Karkardooma Courts, Delhi in SC no. 85/2018 titled as "*State v. Pranav Mishra & Ors*", is hereby set aside and accordingly, petitioners are discharged under Sections 506/34 IPC.

24. Accordingly, the present petition stands disposed of along with pending application.

25. It is, however, clarified 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

DECEMBER 19, 2022/ns

