

\$~

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

%

Reserved on: 15.03.2023
Pronounced on: 20.03.2023

+ **CRL.REV.P. 271/2023**

THE STATE (GNCT OF DELHI)

...Petitioner

Through: Mr. Manoj Pant, APP for the
State with SI Suman, P.S. North
Rohini.

versus

SACHIN SHARMA

...Respondent

Through: Counsel (appearance not given)

CORAM:

HON'BLE MS. JUSTICE SWARANA KANTA SHARMA

JUDGMENT

SWARANA KANTA SHARMA, J.

1. The instant revision petition under Section 397/401 of the Code of Criminal Procedure, 1973 ('Cr.P.C.') has been filed by the State assailing order dated 11.01.2022 passed by learned Additional Sessions Judge-Special Fast Track Court, North-West, Rohini Courts, Delhi ('learned ASJ') in case FIR bearing no. 28/2021 registered at Police Station North Rohini, Delhi for offence punishable under Sections 376 of the Indian Penal Code, 1860 ('IPC'), whereby the application filed by the accused/ respondent seeking discharge was allowed.

2. The case of prosecution, to state briefly, is that the present FIR was registered on 20.01.2021 on the basis of complaint lodged by the

complainant, aged 32 years, whereby she had stated that she had come in contact with the accused one month back and both had started having conversation with each other, during course of which, the complainant had disclosed to the accused about her being a divorcee and accused had told her that he was unmarried. It was alleged that the accused had asked the complainant to meet him at Petrol Pump, Sector 7, Rohini on 18.01.2021, and when the complainant had reached the said location at 2:30 PM, the accused had called her and had informed her that he was sitting in a white colour Brezza car. It was alleged that upon boarding his car, the accused had taken the complainant to OYO Hotel in Rohini, in either room 204 or 402, where he had started harassing the complainant and had also threatened her to keep quiet, and under such threats, had committed forcible and non-consensual sexual intercourse with her thrice. It was further alleged that the accused had taken Rs. 2,000/- from her on the pretext that he had forgotten his wallet. The complainant had also stated that she had met one person namely Ajay Kumar who had offered her his help after seeing her perplexed, and the complainant had disclosed the entire incident to him, and had thereafter reached the concerned police station on 19.01.2021. Upon such complaint, present FIR was registered and investigation was carried out.

3. The complainant was medically examined on 20.01.2021 and her statement under Section 161 Cr.P.C. was also recorded. In her statement to the police as well as to the doctor during the course of her MLC, the complainant reiterated her allegations against the accused. The statement of complainant was recorded under Section 164 Cr.P.C.

before the Magistrate on 25.01.2021 whereby she resiled from her earlier statements.

4. The learned ASJ, vide order dated 11.01.2022, discharged the accused for commission of offence punishable under Section 376 IPC, with the following observations:

“10. In view of the aforesaid Judgment of the Hon'ble Delhi High Court and in the light of statement of the prosecutrix U/s 164 Cr.P.C. which is voluntarily statement and without any threat or coercion, it can be safely concluded that the prosecutrix did not allege that accused forcibly committed rape upon her, at any point of time. The material improvements and differences of two statements of the prosecutrix, one in the form of complaint made before the police and other statement UIs 164 Cr.PC. are making it clear that there is no strong suspicion against the accused to proceed against him. Hence, this Court finds that there is no grave suspicion the accused Sachin Sharma has committed any offence of commission of forcible rape upon the prosecutrix after 'criminally intimidating her. Accordingly, accused Sachin Sharma is discharged in the present case...”

5. Aggrieved by the aforesaid, the State has preferred the present petition on the ground that the charges ought to have been framed against the accused/respondent by taking a 'prima facie' view.

6. Learned APP for the State argues that the learned ASJ has ignored the fact that complainant had levelled specific allegations against the accused in her complaint as well as during the course of preparation of her MLC. It is stated that contradictions in the statements, if any, is a matter of trial and cannot be looked into at the

stage of framing of charge, and reliance in this regard has been placed on several decisions of Hon'ble Apex Court and this Court.

7. On the other hand, learned counsel for the accused/respondent argues that the impugned order suffers from no illegality and learned ASJ had rightly discharged the accused considering the statement of complainant under Section 164 Cr.P.C. whereby she had stated that the sexual intercourse between the parties was consensual in nature and the complainant had levelled allegations against the accused due to some misunderstanding. It is also stated that present accused/respondent was granted bail after the complainant had given her no objection to the same.

8. I have heard arguments of both the sides and have perused the impugned order and case file.

9. The allegations against the accused/respondent are that he had called the complainant to meet him on 18.01.2021 and had taken her to a hotel, where he had threatened her, harassed her and had forcibly committed sexual intercourse with her thrice. The complainant had also informed the doctor concerned during the course of preparation of her MLC that she was sexually assaulted by one of her male acquaintances on 19.01.2021 at 2:00 PM in a hotel in Rohini and was forced to have vaginal intercourse three times, once without protection. However, the complainant in her statement recorded under Section 164 Cr.P.C. before the Magistrate relied from her earlier version and stated that the complainant had gone to the hotel on 19.01.2021 with the accused and physical relations were established between them with her consent and the accused had not forced her or harassed her. It was also stated by

complainant that she had been suffering from depression, taking medicines for the same, and that she had taken such a step in anger as some misunderstanding had arisen between her and the accused on the day of alleged incident. The accused/respondent was arrested on 20.01.2021 and was granted bail by the Trial Court concerned on 01.02.2021 and during the hearing of said bail application, the complainant had given her no objection to grant of bail to the accused and concerned Court had recorded that the complainant appeared to have made the statement voluntarily and without any pressure.

10. Considering the facts and circumstances of the case at hand, the reliance placed by learned ASJ on the decision of this Court in *State v. Dr. Giriraj Singh* 2017 SCC OnLine Del 6672 does not seem to be misplaced as contended by the State. There is no denying the fact that contradictions between the statements under Section 161 and 164 Cr.P.C. are a matter of trial and cannot be a sole ground for discharge if the material on record discloses prima facie case against an accused. However, the present case is not one where there are some contradictions between the statements of complainant, rather the complainant in her statement recorded under Section 164 Cr.P.C. before the Magistrate, voluntarily and without any coercion, has completely exonerated the present accused/respondent and had stated that she had filed the present complaint in anger and because she was suffering from depression, and that the sexual intercourse between her and the accused had taken place with her consent and she was not willing to continue with the present proceedings.

As far as settled law on framing on charge is concerned, while deciding as to whether a charge be framed against an accused or not, it is necessary for the Court to look into the facts and circumstances of the case and due consideration needs to be given to the material placed on record along with the investigation and the facts determined therefrom. From information so gathered, the Court will be required to ascertain if the essential ingredients of an offence are prima facie made out or not. An in-depth appreciation of evidence and roving inquiry into the pros and cons of the case is not permitted as the Trial Court is not allowed to conduct a mini trial while passing an order on charge. [See *Sajjan Kumar v. C.B.I.* (2010) 9 SCC 368; *Amit Kapoor v. Ramesh Chander* (2012) 9 SC 460; *Asim Shariff v. National Investigation Agency* (2019) 7 SCC 148; and *Dipakbhai Jagdishchandra Patel v. State of Gujarat* (2019) 16 SCC 547]. However, in the present case, the material placed on record makes it clear that no offence, even prima facie, is made out to frame charge against the accused. Charges cannot be framed against the accused merely because charge sheet has been filed by the prosecution. In view of the statement given under Section 164 Cr.P.C., the complainant has given reason also as to why the first statement was given to police under misunderstanding and anger due to her suffering from depression. She is major, married and mature and there is no reason not to believe her statement given before the learned Magistrate which has been certified to be voluntarily made. In view of the same, grave and strong suspicion does not arise against accused to frame charge against him.

11. Therefore, in view of the statement of complainant recorded under Section 164 Cr.P.C. and the fact that she had also given her no objection to grant of bail to accused, there can be no grave suspicion against the accused for having committed an offence under Section 376 IPC. There is no *prima facie* material on record to frame charge against the accused inasmuch as the essential ingredient of an offence under Section 376 IPC i.e. sexual intercourse *without consent*, is absent in the present case.

12. In view thereof, this Court finds no illegality or infirmity with the impugned order dated 11.01.2022 passed by learned ASJ discharging the accused/respondent.

13. Accordingly, the present petition stands dismissed.

14. The judgment be uploaded on the website forthwith.

SWARANA KANTA SHARMA, J

MARCH 20, 2023/zp