



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

Reserved on : 20.10.2023

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Pronounced on : 29.11.2023

+ **CRL.REV.P. 316/2023 & CRL.M.A. 7864/2023**

HEMANT SHARMA

..... Petitioner

Through: Mr. Sparsh Chaudhary and Mr. Vishal
Tomar, Advs.

versus

THE STATE (GOVT OF NCT DELHI)

..... Respondent

Through: Mr. Raghuinder Verma, APP with
W/SI Neelu, PS Bindapur, Distt.
Dwarka.

Mr. Parikshit Mahipal and Mr. Arvind
Gupta, Advs. for complainant.

CORAM:

HON'BLE MR. JUSTICE RAJNISH BHATNAGAR

JUDGMENT

RAJNISH BHATNAGAR, J.

1. By way of present petition under Section 482 of the Code of Criminal Procedure, 1973 ('Cr.P.C.'), the petitioner seeks setting aside of order on charge and charge dated 13.01.2023 passed by the court of sh. Lokender Sharma, Ld. ASJ-02/FTC, Dwarka courts Delhi in case titled as State Vs. Hemant Sharma pertaining to FIR NO. 610/2022 U/S 376/506 IPC registered with Police Station Bindapur, New Delhi
2. Brief facts of the case are that on 22.08.2022 the prosecutrix made a complaint to P.S. Bindapur, on the basis of which the present FIR was



registered on 23.08.2022 U/S 376/323/506/509 IPC, P.S. Bindapur, Delhi. As per the complaint of victim, she was proposed for the marriage by the petitioner in the month of February, 2022 and thereafter engaged into relations (physical and emotional intimacy) since march, 2022 and thereafter. The petitioner behavior during the period of intimacy was very violent, aggressive and sexually provocative, disrespectful and abused the victim verbally. On 27.10.2022, IO has filed the chargesheet/final report before Ld. MM, Dwarka courts.

3. Learned counsel for the petitioner submits that petitioner has been falsely implicated in the present case and charges have been wrongly framed against him under Sections 376 (2) (n)/506 of IPC. It is further submitted that there is a considerable delay in lodging the FIR and it is a settled law that delay in lodging the First Information Report quite often results in embellishment which is a creature of afterthought.

4. It is further submitted that the Petitioner and the prosecutrix developed friendship and intimacy with each other and enjoyed every moment of life for more than 6 months. The contents of the FIR, statement under section 164 C.r.P.C and the Chargesheet do not disclose the offence of rape more particularly u/s 375 r/w 376 IPC. The Hon'ble Supreme court of India in ***Pramod Suryabhan Pawar Vs State of Maharashtra (2019) 9 SCC 608*** at para 18,19 & 21 held that there is a distinction between false promise to marry and breach of promise to marry. In this case as well the Hon'ble Supreme Court quashed the FIR. Essentially, the case of the present petitioner is at parity with the cases referred above.

5. On the other hand, learned counsel for the complainant submits that the defence of accused cannot be considered at the stage of charge and as



rightly held by learned ASJ, prima facie case is made out against the petitioner under Sections 376 (2) (n)/506 IPC. The accused who gave the promise to marry, did not have intention to marry and the prosecutrix gave the consent for sexual intercourse on such assurance by accused that he would marry her, such consent would not excuse the offender and such offender can be said to have committed rape as per the judgment of Hon'ble Supreme Court in *Anurag Soni Vs State of Chattisgarh 2019 SCC online SC 509*. Thus, there are no reasons warranting any interference by this court in the impugned order.

6. Learned APP for the State also submits that when prima facie case is made out against an accused, a detailed enquiry into merits of the case cannot be conducted at the stage of charge. It is, thus, stated that the present petition be dismissed.

7. Heard arguments addressed by both sides and have perused the material on record.

8. In the present case, the accused has been charged for the offence under section 376/506 IPC. It is the case on behalf of appellant accused that as it is a case of consensual sex, the courts below have committed an error in framing the charge under the above sections. The court below have accepted the case of prosecution that the consent of the prosecutrix was given on the basis of misconception of fact and, therefore, considering Section 90 of the IPC, such a consent cannot be said to be a consent and, therefore, the accused has committed the rape as defined under Section 375 of the IPC and thereby has committed an offence under Section 376 of the IPC. Therefore, the intention of the accused right from the beginning cannot be said to be bonafide. This kind of consent



taken by the accused with clear intention not to fulfill the promise and persuading the girl to believe that he is going to marry her and obtained her consent for the sexual intercourse under total misconception cannot be treated to be a consent.

9. In this connection reference may be made to the amendment made in the Evidence Act. Section 114A was introduced and the presumption has been raised as to the absence of consent in certain prosecutions for rape. Section 114A reads as under:

“114A. Presumption as to absence of consent in certain prosecutions for rape.—In a prosecution for rape under clause (a) or clause (b) or clause (c) or clause (d) or clause (e) or clause (g) of sub section (2) of Section 376 of the Indian Penal Code (45 of 1860), where sexual intercourse by the accused is proved and the question is whether it was without the consent of the woman alleged to have been raped and she states in her evidence before the court that she did not consent, the court shall presume that she did not consent.”

10. In the present case, the accused had sexual intercourse with the prosecutrix by giving false assurance to the prosecutrix that he would marry her. From this, it is evident that he never intended to marry her and procured her consent only for the reason of having sexual relations with her, which act of the accused falls squarely under the definition of rape as he had sexual intercourse with her consent which was consent obtained under a misconception of fact as defined under Section 90 IPC. Thus, the alleged consent said to have been obtained by the accused was not voluntary consent and this Court is of the view that the accused indulged in sexual intercourse with the prosecutrix by misconstruing to her his true intentions.

11. So far as the decisions upon which reliance has been placed by the learned counsel appearing on behalf of the accused referred to hereinabove are concerned, the same shall not be applicable to the facts of the case on



hand. As far as law laid down in the case of Pramod Suryabhan Pawar (supra), the facts of that case are different where a girl after being in relationship for long and despite denial of marriage, which was made in the year 2008, filed an FIR in 2016 and the girl continued to remain in relationship for long 8 years despite intermittent breakups and then made allegations invoking provisions of SC/ST Act, the Supreme Court observed that none of the offences under provisions of the SC/ST Act, so to constitute an offence under Section 3(1)(u), (w) and 3 (2)(vii) of the SC/ST Act were said to have been made out.

12. The statutory law with respect to framing of charge and discharge is provided under Sections 227 and 228 of Cr.P.C., and the same has been reproduced as under:

"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.

" 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 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..."



13. In relation to exercise of power under Section 397 or Section 482 of Cr.P.C. by the Courts while deciding a petition seeking discharge or quashing of charge framed by the Trial Court, the Hon'le Apex Court in ***Manendra Prasad Tiwari v. Amit Kumar Tiwari and Anr. 2022 SCC OnLine SC 1057*** has reiterated the well-settled law, with the following observations:

“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.” (Emphasis supplied)

14. Thus, having considered the arguments addressed before this Court as well as the material placed on record, this Court is of the opinion that the contentions raised on behalf of petitioner cannot be adjudicated upon at the stage of framing of charge. As discussed above, powers of the Court at the time of framing of charge are limited to the extent of guidelines laid in this regard by various judicial precedents.

15. In view of the foregoing discussions, this Court finds no reason to interfere with the impugned order dated 13.01.2023 passed by learned ASJ.

16. Accordingly, the present petition stands dismissed, along with pending applications, if any.

17. Nothing expressed hereinabove shall tantamount to an expression on merits of the case.

RAJNISH BHATNAGAR, J

NOVEMBER 29, 2023