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* IN THE HIGH COURT OF DELHI AT NEW DELHI

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Reserved on: August 07, 2023
Decided on: September 12, 2023

+ CRL.M.C. 5130/2019

GOPAL JHA

..... Petitioner

Through: Mr. Rahul Kumar and
Mr. Prakash Chandra,
Advocates.

V

STATE & ANR

..... Respondents

Through: Mr. Utkarsh, APP for
State/R-1 with SI Urmila,
NDD. W/Insp. Neelmani
Keyin, Vigilance
Barakhamba, HQ.
SI Akansha Bhargava, P.S.
North Avenue.
Mr. Prince Sharma,
Advocate for R-2.

+ CRL.REV.P. 406/2023 & CRL.M.A. 9494/2023(stay)

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**Barakhamba, HQ.
SI Akansha Bhargava, P.S.
North Avenue.
Mr. Prince Sharma,
Advocate for R-2.**

**CORAM
HON'BLE DR. JUSTICE SUDHIR KUMAR JAIN**

J U D G M E N T

1. The petitioner filed petition bearing no. CrI. M.C. 5130/2019 under section 482 of the Code of Criminal Procedure, 1973 (hereinafter referred to as “**the Code**”) for quashing of FIR bearing no 0007/2016 registered at PS North Avenue under sections 498A/406/354/34 of the Indian Penal Code, 1860 (hereinafter referred to as “**IPC**”) and the revision petition bearing no. CrI. Rev. P. 406/2023 under sections 397 and 401 of the Code read with section 482 of Code against order on charge dated 10.03.2023 passed by the court of Sh. Pawan Kumar, Additional Sessions Judge, Special Fast Track Court, Patiala House Courts, Delhi.

2. FIR bearing no. 0007/2016 dated 16.01.2016 was got registered under sections 498A/406/354/34 IPC at P.S. North Avenue, Delhi based on the complaint made by the respondent no. 2. The respondent no. 2 primarily alleged that she got married with Sujeet Kumar Jha



s/o Jugal Kishore Jha, who was employed in Air Force, on 10.06.2011 at Village Maniyari, Dist. Sitamarhi, Bihar as per the Hindu rites and ceremonies and at the time of marriage sufficient dowry including cash and jewellery was given. The respondent no 2 was tortured for dowry demands. The petitioner is the brother-in-law (husband of the sister of Sujeet Kumar) of the respondent no 2 and Sujeet Kumar. Sujeet Kumar allegedly compelled the respondent no 2 to establish physical relation with the petitioner and was beaten by Sujeet Kumar on refusal. Jugal Kishore Jha, father in law of the respondent no 2 also tried to establish relations with her forcibly. The respondent no. 2 was left at the native village on the pretext of celebration of *Chhath Puja* and thereafter, the respondent no 2 was left at the house of the petitioner where his wife was not staying. The respondent no 2 also informed her father about mental and physical torture being faced by her. The respondent no. 2 was brought back to Delhi and the petitioner also came to Delhi after 3-4 days. The petitioner continued to harass the respondent no 2. Sujeet Kumar demanded Rs. 10 lakhs on 17.02.2015 for the construction of new house at Muzaffarpur. Sujeet Kumar on 23.02.2015 at about 4pm had



left to join his duty but did not report for the duty and accordingly missing report was lodged at PS Kalkaji. The petitioner also came after about 15 days and asked the respondent no 2 to do the acts as dictated by the petitioner. The respondent no 2 lodged a complaint at DCP Office, Sarita Vihar and PS Kalkaji and went to her parental house. The petitioner had gone back to Sitamarhi but extended threat to the father of the respondent no 2 through two boys. Accordingly, present FIR bearing no 0007/2016 under sections 498A/406/34 and 354 IPC was got registered at PS North Avenue and investigation was handed over to SI Ram Kumar.

2.1 The statements of the respondent no 2 and her father Sh. Arvind Kumar Jha were recorded under section 161 of the Code during the investigation. The respondent no 2 in supplementary statement recorded under section 161 of the Code on 08.08.2016 stated that the respondent no 2 has committed rape with her several times against her consent when the respondent no 2 was left at house of the petitioner situated at Sitamarhi by her husband Sujeet Kumar. The respondent no 2 did not disclose this fact to anyone due to fear but disclosed it to her mother. The statement of the respondent no 2 was



also recorded under section 164 of the Code vide proceedings dated 11.05.2016 conducted by Sh. Aashish Gupta, Metropolitan Magistrate, Patiala House Courts, Delhi wherein the respondent no 2 made allegations of harassment, molestation and rape at Sitamarhi and attempt to rape at Delhi against the petitioner. Thereafter, offence punishable under section 376 IPC was also added against the petitioner on the basis of statement of the respondent no 2 under section 164 of the Code. The investigation was handed over to WSI Neelam Sharma. The respondent no. 2 during investigation had refused to undergo gynaecological examination. The charge sheet after conclusion of the investigation was filed for the offence punishable under sections 498A/406/354/34/376 IPC wherein the petitioner and Jugal Kishore Jha, father-in-law of the respondent no 2 were implicated.

3. The Court of Sh. Pawan Kumar, Additional Sessions Judge, Special FTC, Patiala House Courts, Delhi (hereinafter referred to as **“the trial court”**) vide order dated 10.03.2023 (hereinafter referred to as **“the impugned order”**) has discharged the accused Jugal Kishore Jha. The relevant part of order dated 10.03.2023 qua the



accused Jugal Kishore Jha reads as under:-

7). Considering the incoherent and general allegations against the accused no. 1 in the FIR and no allegations in the statement recorded under Section 164 Cr.P.C., this court is of the view that this is not the case of grave suspicion wherein the charge can be framed against the accused no. 1. In view of the facts and submissions, this court is of the considered opinion that no prima facie case is made out against accused no. 1 and accordingly, he stands discharged.

3.1 The trial court vide impugned order framed the charges against the petitioner for the offences punishable under sections 354/354B/376/506 IPC. The relevant part of order dated 10.03.2023 qua the accused the petitioner reads as under:-

9.) Despite the fact that the prosecutrix had not stated about the commission of rape in the FIR and for the first time, the prosecutrix had alleged to have been subjected to the forcible sexual relation by the accused no. 2, while she was staying at the house of the accused no. 2 at Sitamarhi, Bihar, in her statement under Section 164 Cr.P.C. Considering the case law and the factual situation and from the above discussion and perusal of material placed on record by the prosecution, there is sufficient prima facie material to frame charges against the accused no. 2 for having committing sexual intercourse with the prosecutrix against her will and without her consent. Therefore, charge u/s. 354, 354B, 376 & 506 IPC is made out against the accused no. 2 Gopal Jha. Formal charge to be frame accordingly.

4. The petitioner filed the petition bearing no 5130/2019 under section 482 of the Code for quashing of FIR bearing no 0007/2016



and consequential judicial proceedings stated to be pending in the trial court and made following prayer-

In view of the above facts and circumstances, it is most respectfully prayed that this Hon'ble Court may graciously be pleased to pass an order: -

- a) allowing the present petition of the petitioner and quashed the FIR No. 7/2016 dated 16.01.2016 registered at Police Station North Avenue, under Section 498A/406/354/376 IPC, against the petitioner, and quash the entire criminal proceedings arisen out of the above FIR which are presently pending in the court of Sh. P.K Jain, learned Additional Session Judge, Patiala House Courts, New Delhi;**
- b) any other or such further orders, as this Hon'ble Court may deem fit and proper on the facts and dated circumstances of the case in the interest of justice.**

4.1 The petitioner filed revision petition bearing no 406/2023 to challenge the impugned order passed by the trial court whereby charges for offences punishable under sections 354, 354B, 376 & 506 IPC were ordered to be framed against the petitioner and made following prayer:-

In the premises aforesaid it is most humbly and respectfully prayed that this Hon'ble Court may graciously be pleased to:-

- (a) allow the petition filed by the petitioner by setting aside impugned order dated 10.03.2023, passed Sh. Pawan Kumar, learned Additional Sessions Judge/SPL,**



**Fast Track Court, Patiala House Courts, New Delhi in connection with the SC No. 108of2019;
(b) pass other or further orders as this Hon'ble Court may deem fit and proper on the facts and circumstances of the case and in the interest of justice.**

5. The petitioner in petition bearing no 5130/2019 pleaded that the respondent no 2 got married with Sujeet Jha on 10.06.2011 at Village Maniyari, District Sitamarhi, Bihar as per the Hindu rites and ceremonies. Sujeet Jha who was employed in Air Force went missing on 23.02.2015 for which missing report vide DD No 21A dated 24.02.2015 was lodged in PS Kalkaji Police Station and subsequently FIR bearing no 325/2015 was registered on 09.04.2015 under section 365 IPC at PS Kalkaji. Jugal Kishore Jha, father in law of the respondent no 2 filed a Writ of Habeas Corpus bearing WP (Crl.) no 1162/2015. The respondent no 2 also filed a complaint under section 12 of the Protection of Women from Domestic Violence Act, 2005. The respondent no 2 after about 18 months lodged a false and frivolous complaint on 16.01.2016 and accordingly present FIR bearing no. 0007/2016 was registered under sections 498A/406/354/34 IPC at PS North Avenue. The respondent no 2 after 4-5 months of lodging of FIR made statement under section 161 of the Code on 05.04.2016 wherein the respondent no 2 improved her



statement by alleging that the petitioner had sexually assaulted her once but in statement recorded under section 164 of the Code, she alleged that the petitioner sexually assaulted her three to four times.

5.1 The petitioner sought quashing of FIR bearing no. 0007/2016 on grounds that no prima facie case is made out against the petitioner as per the contents of FIR and evidences collected during the investigation. The respondent no.2 did not allege rape till recording of statements under sections 161 and 164 of the Code as such there is considerable delay which is not explained. The alleged incident of rape was committed in year 2014 at Sitamarhi, Bihar and the respondent no. 2 returned at New Delhi thereafter but did not file any complaint before any authority at Delhi. The respondent no 2 has not stated any specific time or date of the alleged incident of rape. There is no independent witness to support the case of the respondent no 2. There is no incriminating evidence against the petitioner except statements recorded under sections 161 and 164 of the Code. The alleged incident of rape was committed at Sitmarhi, Bihar and as such trial should be conducted where alleged offence was committed.



It is prayed that present FIR be quashed along with consequential proceedings.

5.2 The petitioner in revision petition bearing no 406/2023 besides narrating factual background as stated in petition no 5130/2019 challenged the impugned order dated 10.03.2023 on grounds that the impugned order is not sustainable in the eyes of the law. No prima facie case is made out against the petitioner on the basis of material collected during investigation. The respondent no.2 did not file any complaint before any authority pertaining to rape prior to the missing of her husband. There is nothing to suggest that the petitioner visited Sitamarhi, Bihar where the alleged offence of rape had happened. The respondent no.2 did not allege committal of rape till recording of statements under sections 161 and 164 of the Code wherein the respondent no 2 improved her version. There is unexplained delay. The petitioner did not state specific time and date of the alleged incident of rape. There is no independent witness to support the version of the respondent no 2. The alleged incident of rape was committed at Sitamarhi, Bihar and as such trial should have



commenced at place of offence. It is prayed that impugned order be set aside.

6. The counsel for the petitioner in respect of petitions bearing no 5130/2019 and 406/2023 argued that the respondent no 2 prior to registration of present FIR has filed complaints before various authorities but in those complaints, the respondent no 2 did not allege committal of rape by the petitioner. The counsel for the petitioner also argued that there was delay in registration of FIR. The present FIR was registered on 16.01.2016 on the basis of written complaint filed by the respondent no 2 but alleged offence of rape was committed of present FIR was committed at Sitamarhi, Bihar in the month of October, 2014 when the respondent no. 2 went to Sitamarhi with her husband Sujeet Kumar Jha. The respondent no. 2 did not file complaint before any local authorities at Sitamarhi, Bihar.

6.1 The counsel for the petitioner further argued that the respondent no. 2 improved her statement on every occasion. The offence punishable under section 376 IPC was added on the basis of statement of the respondent no. 2 recorded under section 164 of the Code. The allegation pertaining to offence punishable under section



376 IPC firstly surfaced in statement of the respondent no. 2 recorded under section 161 of the Code on 05.04.2016. The respondent no. 2 as such told a total different story which was not stated in FIR bearing no. 0007/2016 and previous complaints. The respondent no. 2 did not mention the specific date and time of the alleged committal of rape by the petitioner in statement recorded under section 164 of the Code. The counsel for the petitioner further argued that no incriminating evidence including medical evidence could be collected against the petitioner during the investigation. The counsel for the petitioner also argued that the petitioner is entitled for discharge on ground of territorial jurisdiction. The alleged offences subject matter of present FIR were committed at Sitamarhi, Bihar and offence of rape is not a continuing offence. The counsel for the petitioner cited **Vijayan V State of Kerala & another**, (2010)2 SCC 398, **Prasant Bharti V State of NCT of Delhi**, AIR 2013 SC 2753, **Rajiv Thapar & other V Madan Lal Kapoor**, AIR 2013 SC (Supp) 1056 etc.

7. The counsel for the respondent no. 2 assisted the Additional Public Prosecutor for the respondent no. 1/State argued that the respondent no. 2 made specific allegations against the petitioner in her



complaint. The respondent no. 2 in statement under section 161 of the Code had specifically stated that the petitioner used to do inappropriate acts with the respondent no. 2. The petitioner used to come in the kitchen and grab the respondent no. 2 from behind. The petitioner used to push the respondent no. 2 on the bed and made forceful physical relations with her. The respondent no. 2 on 13.12.2014 came to Delhi along with her husband. The petitioner pushed the respondent no. 2 on the bed and made forceful relations with her when the husband of the respondent no. 2 had left for job and threatened her with consequences. The respondent no. 2 had corroborated her complaint in statements under sections 161 and 164 of the Code. The counsel for the petitioner cited **Bhawna Bai V Ghanshyam**, (2020) 2 SCC 217 and **Manendra Prasad Tiwari V Amit Kumar Tiwari and another**, 2022 SCC OnLine SC 1057.

8. The Chapter XVIII of the Code deals with trial before a Court of Session. Section 227 deals with situation when the accused shall be discharged. Section 228 deals with framing of charge. Sections 227 and 228 of the Code reads 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, 3 [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 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.

8.1 The purpose of framing a charge is to intimate the accused about the clear, unambiguous and precise nature of accusation that the accused is called upon to meet in the course of a trial as observed in **V.C. Shukla V State through C.B.I.**, 1980 Supp SCC 92. The prosecution is required to establish a prima facie before a charge can



be framed. The Supreme Court in **Union of India V Prafulla Kumar Samal & another**, (1979) 3 SCC 4 considered scope of inquiry at the stage of framing of charge as per section 227 of the Code in Sessions criminal trial and observed as under:-

(1) That the Judge while considering the question of framing the charges under section 227 of the Code 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.

(2) 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.

(3) The test to determine a prima facie case would naturally depend upon the facts of each case and it is difficult to lay down a rule of universal application. By and large however if two views are equally possible and the Judge is satisfied that the evidence produced before him while giving rise to some suspicion but not grave suspicion against the accused, he will be fully within his right to discharge the accused.

(4) That in exercising his jurisdiction under section 227 of the Code the Judge which under the present Code is a senior and experienced Judge 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 appearing in the case and so on. This however does not mean that the Judge should make a roving enquiry into the pros and cons of the matter and weigh the evidence as if he was conducting a trial.

8.2 The Supreme Court in **Onkar Nath Mishra & others V State**



(NCT of Delhi) & another, Appeal (Crl.)1716 of 2007 decided on 14th December, 2007 regarding framing of charge observed as under:-

It is trite that at the stage of framing of charge the court is required to evaluate the material and documents on record with a view to finding out if the facts emerging therefrom, taken at their face value, disclosed the existence of all the ingredients constituting the alleged offence. At that stage, the court is not expected to go deep into the probative value of the material on record. What needs to be considered is whether there is a ground for presuming that the offence has been committed and not a ground for convicting the accused has been made out. At that stage, even strong suspicion founded on material which leads the court to form a presumptive opinion as to the existence of the factual ingredients constituting the offence alleged would justify the framing of charge against the accused in respect of the commission of that offence.

8.3 The Supreme Court *Dipakbhai Jagdish Chandra Patel V State of Gujarat*, (2019) 16 SCC 547 discussed law relating to the framing of charge and discharge and observed as under:-

15. We may profitably, in this regard, refer to the judgment of this Court in *State of Bihar v. Ramesh Singh* wherein this Court has laid down the principles relating to framing of charge and discharge as follows:

4.....Reading Sections 227 and 228 together in juxtaposition, as they have got to be, it would be clear that at the beginning and initial stage of the trial the truth, veracity and effect of the evidence which the prosecutor proposes to adduce are not to be meticulously judged. Nor is any weight to be attached to the probable defence of the accused. It is not obligatory for the Judge at that stage of the trial to consider in any detail and weigh in a sensitive



balance whether the facts, if proved, would be incompatible with the innocence of the accused or not. The standard of test and judgment which is to be finally applied before recording a finding regarding the guilt or otherwise of the accused is not exactly to be applied at the stage of deciding the matter under Section 227 or Section 228 of the Code. At that stage the Court is not to see whether there is sufficient ground for conviction of the accused or whether the trial is sure to end in his conviction. Strong suspicion against the accused, if the matter remains in the region of suspicion, cannot take the place of proof of his guilt at the conclusion of the trial. But at the initial stage if there is a strong suspicion which leads the Court to think that there is ground for presuming that the accused has committed an offence then it is not open to the Court to say that there is no sufficient ground for proceeding against the accused. The presumption of the guilt of the accused which is to be drawn at the initial stage is not in the sense of the law governing the trial of criminal cases in France where the accused is presumed to be guilty unless the contrary is proved. But it is only for the purpose of deciding *prima facie* whether the court should proceed with the trial or not. 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 the offence, then there will be no sufficient ground for proceeding with the trial....

If the scales of pan as to the guilt or innocence of the accused are something like even at the conclusion of the trial, then, on the theory of benefit of doubt the case is to end in his acquittal. But if, on the other hand, it is so at the initial stage of making an order under Section 227 or Section 228, then in such a situation ordinarily and generally the order which will have to be made will be one under Section 228 and not under Section 227.

23. At the stage of framing the charge in accordance with the principles which have been laid down by this Court,



what the Court is expected to do is, it does not act as a mere post office. The Court must indeed sift the material before it. The material to be sifted would be the material which is produced and relied upon by the prosecution. The sifting is not to be meticulous in the sense that the Court dons the mantle of the Trial Judge hearing arguments after the entire evidence has been adduced after a full-fledged trial and the question is not whether the prosecution has made out the case for the conviction of the accused. All that is required is, the Court must be satisfied that with the materials available, a case is made out for the accused to stand trial. A strong suspicion suffices. However, a strong suspicion must be founded on some material. The material must be such as can be translated into evidence at the stage of trial. The strong suspicion cannot be the pure subjective satisfaction based on the moral notions of the Judge that here is a case where it is possible that accused has committed the offence. Strong suspicion must be the suspicion which is premised on some material which commends itself to the court as sufficient to entertain the prima facie view that the accused has committed the offence.

8.4 The Supreme Court in Asim Shariff V National Investigation Agency, (2019) 7 SCC 148 expressed that the trial court is not expected or supposed to hold a mini trial for the purpose of marshalling the evidence on record. The Supreme Court in **State of Karnataka V M.R. Hiremath, (2019) 7 SCC 515** held that it is a settled principle of law that at the stage of considering an application for discharge the court must proceed on the assumption that the material which has been brought on the record by the prosecution is



true and evaluate the material in order to determine whether the facts emerging from the material, taken on its face value, disclose the existence of the ingredients necessary to constitute the offence. The Supreme Court in **Bhawna Bai v Ghanshyam**, (2020) 2 SCC 217 as cited by the counsel for the respondent no. 2 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.

8.5 The Supreme Court in Ghulam Hassan Beigh V Mohammad Maqbool Magrey & Others, Criminal Appeal No. 001041 of 2022 (Arising out of S.L.P. (Criminal) no 4599 OF 2021) decided on 26th July, 2022 observed as under:-

Thus from the aforesaid, it is evident that the trial court is enjoined with the duty to apply its mind at the time of framing of charge and should not act as a mere post office. The endorsement on the charge sheet presented by the police as it is without applying its mind and without recording brief reasons in support of its opinion is not countenanced by law. However, the material which is required to be evaluated by the Court at the time of framing charge should be the material which is produced and relied upon by the prosecution. The sifting of such material is not to be so meticulous as would render the



exercise a mini trial to find out the guilt or otherwise of the accused. All that is required at this stage is that the Court must be satisfied that the evidence collected by the prosecution is sufficient to presume that the accused has committed an offence. Even a strong suspicion would suffice. Undoubtedly, apart from the material that is placed before the Court by the prosecution in the shape of final report in terms of Section 173 of CrPC, the Court may also rely upon any other evidence or material which is of sterling quality and has direct bearing on the charge laid before it by the prosecution. (See: Bhawna Bai v. Ghanshyam, (2020) 2 SCC 217).

9. It is reflecting that the respondent no. 2 was married with Sujeet Kumar Jha, who was employed in Air Force, on 10.06.2011 at Village Maniyari, Dist. Sitamarhi, Bihar. The petitioner is brother-in-law of the respondent no. 2 i.e. husband of sister of Sujeet Kumar, husband of the respondent no. 2. The respondent no. 2 after marriage came to Delhi. The respondent no. 2 got registered present FIR bearing no. 0007/2016 registered under sections 406/498A/354/34 IPC at PS North Avenue wherein Jugal Kishore Jha, father in law of the respondent no. 2 and the petitioner were implicated. The respondent no. 2 primarily alleged that she was tortured for dowry demands and was allegedly compelled by Sujeet Kumar to establish physical relation with the petitioner. The respondent no. 2 was taken to native village on the pretext of celebration of *Chhath Puja* where



the petitioner used to harass her. The respondent no. 2 was brought back to Delhi but the petitioner continued to harass the respondent no. 2. Sujeet Kumar on 23.02.2015 was found missing and accordingly missing report was lodged at PS Kalkaji. The respondent no. 2 lodged a complaint at DCP Office, Sarita Vihar and PS Kalkaji which was culminated into registration of present FIR bearing no 0007/2016 under sections 498A/406/34 and 354 IPC at PS North Avenue. The respondent no. 2 only made general allegations of harassment and molestation against her father in law namely Jugal Kishore Jha and the petitioner but did not make allegations of forceful sexual acts or rape against the petitioner towards the respondent no. 2. The respondent no. 2 also did not make allegations of rape against the petitioner in other complaints made by her to various authorities as referred by the counsel for the petitioner during arguments. The statements of the respondent no. 2 and her parents were also recorded under section 161 of the Code but no allegations of rape were made against the petitioner. The respondent no. 2 in supplementary statements recorded under section 161 of the Code on 05.04.2016 and 08.08.2016 for first time made allegations of harassment, molestation



and rape against the petitioner by stating that the petitioner has committed rape with her several times against her consent when the respondent no. 2 was left at house of the petitioner situated at Sitamarhi, Bihar. The respondent no. 2 in statement under section 164 of the Code recorded vide proceedings dated 11.05.2016 made allegations of harassment, molestation and rape at Sitamarhi, Bihar and attempt to rape at Delhi against the petitioner. The offence under section 376 IPC was added against the petitioner on the basis of statement of the respondent no.2 under section 164 of the Code. The respondent no. 2 had refused to undergo gynaecological examination. The investigating officer had implicated the petitioner and Jugal Kishore Jha in the charge sheet. Jugal Kishore Jha was ordered to be discharged vide impugned order as the trial court opined that only incoherent and general allegations are made against Jugal Kishore Jha in FIR and no allegations are made in the statement recorded under Section 164 of the Code. The trial court vide impugned order framed the charges against the petitioner for the offences under sections 354/354B/376/506 IPC by observing that there is sufficient prima facie material to frame charges against the accused no. 2 for



having committed sexual intercourse but simultaneously also observed that the respondent no. 2 had not stated about the commission of rape in the FIR and for the first time alleged to have been subjected to the forcible sexual relation by the accused no. 2 while she was staying at the house of the petitioner at Sitamarhi, Bihar in statement under Section 164 of the Code.

10. Issue which needs judicial consideration is that whether on basis of material collected during investigation, a *prima facie* case is made out against the petitioner which is sufficient to frame charges against the petitioner for offences punishable under sections 354/354B/376/506 IPC.

11. The counsel for the petitioner primarily argued that the respondent no. 2 made improvements regarding commission of offences for which the petitioner was charged in statements under section 161 and 164 of the Code. The trial court at time of consideration of framing of charge is not supposed to conduct mini trial. It is accepted proposition of law that the court is required to consider only *prima facie* case at the time of framing the charges and to see that there is sufficient ground for proceeding against the



accused. The court is not required to consider whether prosecution would be able to prove its case beyond reasonable doubt. The sifting of material collected during investigation is not required to be done equivalent to mini trial to find out the guilt or otherwise of the accused. As mentioned hereinabove, the respondent no. 2 did not make allegations of rape against the petitioner in the complaint which culminated into registration of FIR but made allegations of rape in subsequent statements recorded under sections 161 and 164 of the Code. The petitioner cannot be discharged merely due to reason that the respondent no. 2 did not make allegation of rape in FIR and other complaints. The entire material collected during investigation should be appreciated as whole and cannot be bifurcated to decide that one particular offence is made out or not. The statements of the respondent no. 2 recorded under section 161 of the Code on 05.04.2016 and 08.08.2016 and statement of the respondent no. 2 recorded under section 164 of the Code on 11.05.2016 cannot be appreciated in isolation and contents of FIR cannot be read or appreciated independent of statements under section 161 and 164 of the Code. The statements of the respondent no. 2 under sections 161



and 164 of the Code *prima facie* discloses commission of offences punishable under section 376 IPC and other offence with which the petitioner is charged.

11.1 The Supreme Court in **Hazrat Deen V The State of Uttar Pradesh**, Special Leave to Appeal (Crl.) No(s). 9552/2021 decided on 06.01.2022 also appreciated relevance of statement under section 164 of the Code at the time of consideration of charge and held that the prosecutrix under Section 164 of the Code after the prosecutrix attained majority, categorically made statements which tantamount to offence under Section 376 IPC. Discrepancies between the FIR and any subsequent statement under Section 164 of the Code may be a defence. However, the discrepancies cannot be a ground for discharge without initiation of trial. The Coordinate Bench of this court in **Renu Vij V State**, Crl. Rev. P. 272/2007 decided on 12th July, 2011 held that the sole testimony of the prosecutrix can be the basis of conviction of an accused for an offence under Section 376 IPC, if the same inspires confidence but whether the same inspires confidence or not is a question of fact to be decided on the basis of evidence adduced by the prosecution during trial, the cross-



examination and the defence of the accused. Another Coordinate Bench of this court in **State V Mohd. Javed Nasir & others**, CrI. Rev. P. 268/2018 decided on 23rd November, 2022 considered relevance of statement recorded under section 164 of the Code and observed that charges under section 376 IPC could be framed even if allegations pertaining to offence under section 376 IPC are not made.

It was observed as under:-

In the given facts, a charge under Section 376 IPC could have been framed solely on the basis of the statement made under Section 164 Cr.P.C. even if such an allegation was not made in the FIR or in statement under Section 161 Cr.P.C. This is so because in offences like rape where only the victim is the witness in majority of the cases, the statement made by victim should be looked at from a considerate and liberal perspective at the time of framing charges. A statement made under Section 164 Cr.P.C. disclosing the offence of rape shall be sufficient to frame charges under Section 376 of IPC.

11.2 The Supreme Court in **Manendra Prasad Tiwari V Amit Kumar Tiwari and another**, 2022 SCC OnLine SC 1057 observed that quashing of charge cannot be done by weighing the correctness or sufficiency of the evidence and 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. It was observed 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 Cr.P.C 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.



12. The counsel for the petitioner also sought discharge of the petitioner on grounds of delay in registration of FIR and due to lack of territorial jurisdiction of courts at Delhi. The trial court did not deal with issue of territorial jurisdiction. The counsel for the petitioner argued that as per contents of FIR, there is considerable delay in registration of FIR. The petitioner cannot be discharged on ground of delay in registration of FIR as prosecution should be given due opportunity to explain delay if any in registration of FIR during trial.

12.1 The Supreme Court in **Ms. P V State of Uttarakhand & another**, Appeal No 903 of 2022 (Arising out of SLP (Crl.) No 6548 of 2019) decided on 16th June, 2022 considered discharge of accused on ground of lack of territorial jurisdiction. In above referred case, the Sessions Court at Chamoli discharged the accused/respondent no. 2 of the offence under Section 376 IPC on the ground of lack of territorial jurisdiction. The appellant alleged that she after engagement with the respondent no. 2 was invited by him to Delhi and was subjected to sexual intercourse by the respondent no. 2 against her wishes at Delhi in the month of February 2016. The



appellant further alleged that the respondent no. 2, thereafter, made a demand of money and refused to marry her when the demand was not met and later on the respondent no. 2 hurled abuses and also threatened to kill her. FIR as per direction under section 156(3) of the Code was registered at Police Station, Gairsain and charge sheet was submitted after investigation in the Court of Judicial Magistrate First Class, Gairsain, District Chamoli for offences under Sections 376/504/506 IPC and was committed to the Court of Sessions Judge, Chamoli. The order passed by the Sessions Judge, Chamoli on framing charge has given rise to the present dispute. The Sessions Judge held that the offence under Section 376 IPC had taken place at Delhi and was not a continuing offence and whatever threat was allegedly given by the respondent no. 2/accused to the appellant/victim did not constitute a kind of offence which could be said to be in the series of same transaction. The Sessions Judge concluded that the respondent no. 2/accused was entitled to be discharged in relation to the offence under Section 376 IPC for want of territorial jurisdiction. The High Court also dismissed the revision petition. The Supreme Court considered limited question concerning



validity of the order passed by the Sessions Judge segregating the offences and discharging the accused/respondent no. 2 of the offence under section 376 IPC for want of territorial jurisdiction. In instant case the complaint as made by the appellant is of the allegations of different offences, of different nature and at different places of occurrence though said to have been committed by the respondent no. 2 and against the appellant. It was also considered by the Supreme Court that the allegations consist of offences of distinct nature as one set of allegations is of the offence of rape at Delhi (Section 376 IPC) and the other set of allegations is of hurling abuses and extending threat on phone calls received by the appellant at her village in District Chamoli (Sections 504 and 506 IPC) with reference to section 220 read with section 184 of the Code as to whether the alleged offences are such that the respondent no. 2 could be charged with and tried at one trial for each of them and in other words the question is as to whether the acts complained of could be said to be 'one series of acts so connected together as to form the same transaction' for the purpose of trial together.



12.1.1 The Supreme Court in **Mohan Baitha and others v State of Bihar and another**, (2001) 4 SCC 350 and **Anju Chaudhary V State of Uttar Pradesh and another**, (2013) 6 SCC 384 as referred in instant case pointed out that no formula of universal application could be enunciated for determining as to whether two or more acts constitute the same transaction which is purely a question of fact and indicated the core elements like proximity of time, unity or proximity of place, continuity of action and community of purpose or design, which are of relevant considerations and when these factors are applied to common sense and ordinary use of language, the vexed question of ‘same transaction’ could be reasonably determined. The Supreme Court in instant case observed that the appellant and the respondent no. 2 were engaged for matrimonial alliance on 13.11.2015 at their village Dangidhar, Tehsil Gairsain, District Chamoli, the alleged acts of sexual relationship took place at Delhi in the months of February and March, 2016, the other alleged acts of hurling abuses and extending threats which the appellant received over telephone at her village in or around the month of November, 2016. It was further observed that these acts in question were neither



proximate in time nor proximate in place and were not of continuity. The appellant had alleged that she submitted to the sexual acts because of the threat by the respondent no.2 to snap the proposed alliance but it had not been her case that the respondent no. 2 attempted to coerce her into the same physical relationship while hurling abuses or threatening to kill at the later part of time. The Supreme Court observed it is difficult to find continuity of actions and community of purpose or design in two different acts leading to two different set of offences, i.e., one under Section 376 IPC and the other under Sections 504/506 IPC. The Supreme Court accordingly upheld decision given by the Sessions Judge.

12.2 The facts of present case are entirely different from above referred decision delivered by the Supreme Court. In the present case, the respondent no. 2 got married on 10.06.2011 at Village Maniyari, Dist. Sitamarhi, Bihar but was allegedly tortured for dowry demands in Delhi. The respondent no. 2 was allegedly compelled to establish physical relation with the petitioner at Delhi also. The respondent no. 2 was harassed, molested and subjected to sexual abuse at house of the petitioner situated at native village as well as in Delhi as reflected



from contents of FIR and statements of the respondent no. 2 recorded under sections 161 and 164 of the Code. The offences as complained of are committed both at Delhi and native village of the petitioner. The acts constituting offences subject matter of present trial constitute the same transaction due to continuity of action and community of purpose or design. Accordingly trial arising out of present FIR is not hit by want of territorial jurisdiction.

13. The impugned order does not warrant any interference. The petitioner cannot be discharged for offences as complained of and for which charges have ordered to be framed vide impugned order dated 10.03.2023. The petitioner cannot be discharged for offences punishable under sections 376/354/354B/506 IPC. The revision petition bearing no 406/2023 is dismissed along with pending application, if any.

14. The petitioner also filed petition bearing no 5130/2019 under section 482 of the Code for quashing of FIR bearing no 0007/2016 along with consequential judicial proceedings. The extraordinary power under section 482 of the Code should be exercised sparingly and with great care and caution and can be used to prevent abuse of



the process of the court or to secure ends of justice and the exercise of inherent powers entirely depends on facts and circumstances of each case. The Supreme Court in **Sushil Suri V Central Bureau of Investigation and another**, (2011) 5 SCC 708 considered the scope and ambit of the inherent jurisdiction of the High Court and observed that the power possessed by the High Court under section 482 of the Code is very wide but it is not unbridled and has to be exercised sparingly, carefully and cautiously and to do real and substantial justice. The Supreme Court in **Gian Singh V State of Punjab and others**, (2012) 10 SCC 303 observed that before exercise of power under section 482 of the Code, the High Court must have due regard to the nature and gravity of the crime. Heinous and serious offences of mental depravity or offences like murder, rape, dacoity, etc. cannot be fittingly quashed even though the victim or victim's family and the offender have settled the dispute. Such offences are not private in nature and have serious impact on society. The Supreme Court in **Daxaben V The State of Gujrat & others**, SLP Criminal No.1132-1155 of 2022 decided on 29.07.2022 also expressed similar view.



15. The present FIR also pertains to offence punishable under section 376 IPC which is a serious and heinous offence. It has already been observed while dismissing revision petition bearing no.406/2023 to challenge impugned order that material collected during investigation *prima facie* discloses commission of offences punishable under sections 354/354B/376/506 IPC against the petitioner. The present FIR bearing no 0007/2016 cannot be quashed along with consequential judicial proceedings. Hence petition bearing no 5130/2019 along with pending application, if any, is dismissed.

16. Copy of this order be sent to the concerned trial court for information.

DR. SUDHIR KUMAR JAIN
(JUDGE)

SEPTEMBER 12, 2023

Sk/ak/sm