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

+ CRL.REV.P. 429/2022

RAVI KUMAR

..... Petitioner

Through: Mr.Karan Babuta, Mr.Rajeev Kumar
and Mr.S.K.Jha, Advocates

versus

STATE/NCT OF DELHI

..... Respondent

Through: Mr.Amit Sahni, APP for the State.

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Date of Decision: 21.07.2023

CORAM:

HON'BLE MR. JUSTICE DINESH KUMAR SHARMA

J U D G M E N T

DINESH KUMAR SHARMA, J. (Oral)

1. Present revision petition has been filed under Section 399 read with Section 397 Cr.P.C. challenging the order on charge dated 23.03.2021 passed by learned ASJ/Special FTC/PHC/ND vide which the learned Court has framed charge against the petitioner under Sections 354C/376/376(2)(n)/506 and 509 IPC.
2. Briefly stated the facts are that the complainant/ prosecutrix lodged FIR No.313/2018 dated 02.09.2018 u/s 376/509/506, IPC at PS Vasant Vihar against the petitioner, alleging therein that the petitioner has

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committed rape on her on multiple occasions by obtaining her consent fraudulently on the false pretext of marriage. Chargesheet has been filed u/s 376/509/506, IPC and charge has been framed u/s 354C/376/376(2)(n)/506 and 509 IPC.

3. Learned counsel for the petitioner submits that in fact in the present case the complainant is a well-educated lady who is a divorcee and a mother of two grown up children. It has been submitted that she had a consensual relationship with the petitioner and the affair started as they were residing in the same locality and the complainant developed physical intimacy with the petitioner.
4. It has further been submitted that as per her allegation, after 2016, there was no relation between them and when the petitioner got a job in Dubai, she lodged the present FIR just to pressurize the petitioner.
5. Learned counsel also submitted that in her statement under Section 164 Cr.P.C., the complainant stated that the petitioner refused to marry her. However, till August 2018 she did not make any complaint. It has been submitted that the FIR is false and frivolous just to harass the petitioner and to spoil his job prospects in Dubai. Learned counsel submits that this is a case where two adults had a mutual and consensual relationship and when the relationship turned sour, the complainant lodged the FIR. Learned counsel submits therefore the charges under Section 354C/376/376(2)(n)/506 and 509 IPC could not have been framed.



6. Learned APP has opposed the present revision petition. Learned APP submits that the investigating agency has filed the charge sheet after thorough investigation. Ld. APP submits that there is sufficient material on record on the basis of which charges have been framed against the petitioner.
7. The scope of revisional jurisdiction is very limited. The Courts can exercise its revisional jurisdiction only if there is patent illegality, perversity, jurisdictional error, or an error apparent on the face of the record. In revisional jurisdiction, the Courts cannot substitute its opinion with that of the Courts below. Where two views are possible and the trial court has taken one view which is a plausible view, merely because another view is possible, the High Court should not interfere, and would be in error in interfering with the findings of the trial court in its revisional jurisdiction. High Courts cannot reappraise evidence and come to a different conclusion. The revisional jurisdiction operates within narrow contours and can be exercised only in exceptional cases where the interest of public justice so requires such an interference, to rectify a gross miscarriage of justice. In absence of any manifest error of law or procedural defects, the High Courts should refrain from interfering with the order of trial court in its revisional jurisdiction. The revisional court does not function as a court of appeal and the Court cannot reappraise evidence. Revisional jurisdiction is normally exercised only in exceptional cases where there is a glaring defect in the procedure or there is a manifest error of law and consequently there



has been a flagrant miscarriage of justice. The High Court cannot interfere with findings of fact of the learned trial Court which have been arrived at after due consideration and appreciation of evidence and material on record.

8. The law on this has been well settled by a catena of judgements of the Hon'ble Apex Court which have been followed time and again by this Court.
9. In ***Kishan Rao v. Shankargouda***, (2018) 8 SCC 165, the Hon'ble Apex Court *inter alia* held as under:

“12. This Court has time and again examined the scope of Sections 397/401 CrPC and the ground for exercising the revisional jurisdiction by the High Court. In State of Kerala v. Puttumana Illath Jathavedan Namboodiri, (1999) 2 SCC 452, while considering the scope of the revisional jurisdiction of the High Court this Court has laid down the following: (SCC pp. 454-55, para 5)

“5. ... In its revisional jurisdiction, the High Court can call for and examine the record of any proceedings for the purpose of satisfying itself as to the correctness, legality or propriety of any finding, sentence or order. In other words, the jurisdiction is one of supervisory jurisdiction exercised by the High Court for correcting miscarriage of justice. But the said revisional power cannot be equated with the power of an appellate court nor can it be treated even as a second appellate jurisdiction. Ordinarily, therefore, it would not be appropriate for the High Court to reappreciate the evidence and come to its own conclusion on the same when the evidence has already been appreciated by the Magistrate as well as the Sessions Judge in appeal, unless any glaring feature is brought to the notice of the



High Court which would otherwise tantamount to gross miscarriage of justice. On scrutinising the impugned judgment of the High Court from the aforesaid standpoint, we have no hesitation to come to the conclusion that the High Court exceeded its jurisdiction in interfering with the conviction of the respondent by reappreciating the oral evidence. ...”

13. Another judgment which has also been referred to and relied on by the High Court is the judgment of this Court in Sanjaysinh Ramrao Chavan v. Dattatray Gulabrao Phalke, (2015) 3 SCC 123. This Court held that the High Court in exercise of revisional jurisdiction shall not interfere with the order of the Magistrate unless it is perverse or wholly unreasonable or there is non-consideration of any relevant material, the order cannot be set aside merely on the ground that another view is possible. Following has been laid down in para 14: (SCC p. 135)

“14. ... Unless the order passed by the Magistrate is perverse or the view taken by the court is wholly unreasonable or there is non-consideration of any relevant material or there is palpable misreading of records, the Revisional Court is not justified in setting aside the order, merely because another view is possible. The Revisional Court is not meant to act as an appellate court. The whole purpose of the revisional jurisdiction is to preserve the power in the court to do justice in accordance with the principles of criminal jurisprudence. The revisional power of the court under Sections 397 to 401 CrPC is not to be equated with that of an appeal. Unless the finding of the court, whose decision is sought to be revised, is shown to be perverse or untenable in law or is grossly erroneous or glaringly unreasonable or where the decision is based on no material or where the material facts are wholly ignored or where the judicial discretion is exercised arbitrarily or capriciously, the courts may not interfere with decision in exercise of their



revisional jurisdiction.”

10. In **Amit Kapoor v. Ramesh Chander**, (2012) 9 SCC 460, the Hon’ble Supreme Court held as under:

“20. The jurisdiction of the court under Section 397 can be exercised so as to examine the correctness, legality or propriety of an order passed by the trial court or the inferior court, as the case may be. Though the section does not specifically use the expression “prevent abuse of process of any court or otherwise to secure the ends of justice”, the jurisdiction under Section 397 is a very limited one. The legality, propriety or correctness of an order passed by a court is the very foundation of exercise of jurisdiction under Section 397 but ultimately it also requires justice to be done. The jurisdiction could be exercised where there is palpable error, non-compliance with the provisions of law, the decision is completely erroneous or where the judicial discretion is exercised arbitrarily.....”

11. Further, a Coordinate Bench of this Court in **Taron Mohan vs. State & Anr.**, (2021) SCC OnLine Del 312, relying on the settled principles with respect to interference of this Court under its revisional jurisdiction under section 397 CrPC has *inter alia* held as under:

“9. The scope of interference in a revision petition is extremely narrow. It is well settled that Section 397 CrPC gives the High Courts or the Sessions Courts jurisdiction to consider the correctness, legality or propriety of any finding inter se an order and as to the regularity of the proceedings of any inferior court. It is also well settled that while considering the legality, propriety or correctness of a finding or a conclusion, normally the revising court does not dwell at length upon the facts and evidence of the case. A court in revision considers the material only to satisfy itself about the legality and propriety of the findings, sentence and order and refrains from substituting its own conclusion on an elaborate consideration of evidence.”



12. The reading of the above judgments makes it amply clear that the revisional jurisdiction can be invoked only if there is illegality, perversity or impropriety in the order of the learned trial court. In the present case, there is no ground to suggest that the order on charge suffers from any illegality or perversity. The question regarding whether the complainant had consented voluntarily, or her consent was obtained fraudulently, is a matter of fact which will be determined during trial after proper examination of evidence and material on record.
13. In the absence of any illegality or perversity which necessitates the interference of this Court, this Court cannot interfere with the order on charge. Hence, the order on charge dated 23.03.2021 is upheld. I do not find any merit in the present revision petition. Accordingly, the same is dismissed.

DINESH KUMAR SHARMA, J

JULY 21, 2023

rb/ss