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

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Reserved on: 25.04.2023

Pronounced on: 29.05.2023

+ **CRL.M.C. 3101/2019 & CRL.M.A. 12671/2019**

DHANPATI @ DHANWANTI

..... Petitioner

Through: Dr. R.D. Rana with Mr. Jagdish
Singh, Advocates

versus

THE STATE (GOVT. OF NCT OF DELHI) & ANR.. Respondents

Through: Mr. Satish Kumar, APP for the
State with SI Udai Singh, P.S.
Saket.
Mr. Vipul Chaudhary, Advocate for
R-2

CORAM:

HON'BLE MS. JUSTICE SWARANA KANTA SHARMA

JUDGMENT

SWARANA KANTA SHARMA, 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 dated 22.05.2019 passed by learned Additional Sessions Judge/Special Judge (NDPS), South, Saket Court, New Delhi in Criminal Revision No. 27/2019 titled '*State vs. Dhanpati @ Dhanwanti*' whereby charges were framed against the petitioner under Sections 341/323/506 of Indian Penal Code, 1860 ('IPC') in FIR bearing no. 57/2017 and order



dated 14.12.2018 passed by learned Metropolitan Magistrate-02 (Mahila Court), South, Saket Court, New Delhi discharging the petitioner was set aside.

2. Brief facts of the case, as disclosed from the record and impugned order, are that present petitioner is complainant in FIR bearing no. 606/2014 registered at Police Station Kotla Mubarakpur, Delhi under Sections 376/506 IPC, pending trial. The present FIR was registered on the complaint of complainant 'P', a practising advocate who had alleged that on 08.02.2017, she had appeared in Saket Courts with her client Rajender Singh who was accused in case arising out of FIR bearing no. 606/2014 in which the present accused is the complainant. It was alleged that after the hearing in the said case, the petitioner/accused had started abusing and misbehaving with the complainant in the court premises, and when she was going towards her chamber along with her client, the petitioner had stopped her and had beaten and threatened her. It was also alleged that the petitioner, after having restrained her, had misbehaved with her and had bitten her hand badly. After completion of investigation, charge sheet was filed against the petitioner herein for offences punishable under Sections 323/341/506 of IPC.

3. The learned MM, *vide* order dated 14.12.2018, after perusing the statements of the complainant and witness Rajender Singh, and noting that there was no other public witness, no CCTV footage of the place of incident as well as no medical examination of the complainant to support the case of prosecution, had discharged the accused i.e. petitioner for the alleged offences. The relevant portion of the said order reads as under:



“...There is no other statement of any other public witness. The complainant refused to get her medical examination done and there was no CCTV camera found at/ near the place of the incident because of which there is no CCTV recording. It is vaguely alleged that the complainant was beaten, threatened by the accused and that the accused had also misbehaved with her badly and had bitten her hand. Even the statement of Rajender u/s 161 of Cr.PC vaguely mentions that there was haatha-pai between the accused and the complainant.

Therefore, based on the material on record, the court is of the view that there is no prima facie case made out against the accused as there are no specific allegations attracting the ingredients of Sections 341/323/506 of IPC against the accused and the accused is discharged...”

4. Thereafter, the State had preferred Criminal Revision No. 27/2019 and *vide* order dated 22.05.2019, the learned ASJ had set aside the order passed by learned MM, observing that there was sufficient material for the purpose of framing charges against the accused in view of categorical statements of the complainant and witness Rajender Singh recorded under Section 161 Cr.P.C. The relevant portion of this order is reproduced hereinunder:

“7. In the present case, the charge-sheet was filed u/s 341/323/506 IPC. There are some minor variations in the description of incident by the complainant and by the witness Rajender Singh but it is not the case that the two statements are mutually destructive and the allegations made by the complainant are totally unbelievable. When we look at the statement of the complainant and the statement of Rajender Singh, there are allegations of wrongful restraint which creates offence u/s 341 IPC, there are allegations of simple hurt which create offence u/s 323 IPC and there are allegations of threat which create offence u/s 506 (I) IPC. The allegations cannot be dismissed at the stage of framing of charge because there is no CCTV footage. If no one else known to her witnessed the incident except Rajender Singh, complainant could not have



cited any other public witness and there was no way for the police also to find a witness after the incident was over. Learned Trial Court did not examine the material on record with the standard to be applied at the stage of framing of charge and wrongly held that the ingredients of the offences were not present. The view taken by Ld. MM cannot be sustained.

8. In view of above discussion, the revision is allowed...”

5. Aggrieved by the aforesaid order, the petitioner had preferred the present petition, however, the proceedings before the learned Trial Court were not stayed by this Court.

6. Accordingly, the learned MM, pursuant to order of learned ASJ dated 22.05.2019, proceeded to frame charges against the petitioner under Sections 323/341/506(I) IPC on 03.07.2019. Aggrieved by the same, the petitioner preferred Criminal Revision Petition No. 252/2019 on the ground that since the present petition challenging the order of learned ASJ was pending before this Court, learned MM ought not to have proceeded to frame charges against her. By way of order dated 19.07.2019, the said revision petition was dismissed by learned Additional Sessions Judge-03 (South), Saket Courts, Delhi with the following observations:

“...However, after thoughtful consideration of submission raised from both the sides, I do not find any merits in any of the ground agitated before this court to challenge the impugned order. It is nowhere the case of the revisionist that any stay has been granted by the Hon'ble High Court in the aforementioned criminal Misc.No.3101/2019 where the order dated 22.05.2019 passed by Id. ASJ has been challenged, to stay the operation of said order. In absence of any stay order from the Hon'ble High Court, Ld Trial Court was justified in framing the charges against the revisionist in accordance with the directions passed by Ld.AS in said order dated 22.05.2019.



It is pertinent to note here that the court of Magistrate being subordinate to the Sessions Court is bound to obey the directions passed by the Superior Court and in view of the fact that there is no stay against the order dated 22.05.2019 by the court superior to the court of Sessions, Ld. Magistrate was duty bound to comply the directions contained in said order. As regard the pendency of other cross FIR no.28/2019, I am of the view that it does not have any bearing to the issue as far as framing of charges in present FIR No.27/2019 is concerned. Considering the fact that the superior court of Ld. ASJ has already passed the directions for framing of charges against the revisionist, Ld. Magistrate did not have any authority to go into the question of correctness of said order and therefore, the ground agitated before this court that Ld. ASJ did not give any reason while passing the aforementioned order dated 22.05.2019 is totally frivolous and misconceived...”

7. Learned counsel for the petitioner submits that petitioner has been falsely implicated in the present case and charges have been wrongly framed against her under Sections 341/323/506 of IPC. It is stated that petitioner has been a victim of circumstance and she is being harassed by the complainant, who is a lawyer, representing one Rajender Singh against whom the petitioner had lodged an FIR bearing no. 606/2014 under Sections 376/506 IPC. It is stated that there is no evidence to support the testimony of the complainant and there are several contradictions in her version and the trial will not conclude in conviction. Thus, it is prayed that impugned order be set aside.

8. On the other hand, learned counsel for the complainant/ respondent no. 2 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 323/341/506 IPC. Thus,



there are no reasons warranting any interference by this Court in the impugned order.

9. 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.

10. This Court has heard arguments addressed by both sides and has perused the material on record.

11. Since the petitioner has assailed the impugned order framing charges against her, it will be appropriate to succinctly discuss the relevant provisions and judicial precedents on law on charge.

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 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...”

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’ble 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. In the present case, learned counsel for the petitioner wants this Court to appreciate the variations in the statements of the witnesses regarding description of the incident in question. However, considering the settled law on framing of charge, the same cannot be gone into in depth at this stage. Further, only because there is no CCTV footage of the alleged incident, it cannot become a basis of discharge of the accused. As



far as the witnesses being known to the complainant in the present case are concerned, the police can cite only those witnesses who had witnessed the incident and cannot implead false witnesses or evidence. Moreover, at the stage of framing of charge, the Courts below could not have gone into conducting an inquiry or a mini-trial to ascertain the veracity of statements of the witnesses which were recorded by the police.

15. Another contention raised on behalf of petitioner is that the present FIR is motivated since a criminal case under Section 376 IPC is pending trial against the client of complainant in this case and to save her client and pressurize the present petitioner the advocate has filed the present false case.

16. In the considered opinion of this Court, such contention is bereft of any merit. The present FIR has been lodged by the complainant who is lawyer by profession who has been allegedly threatened, restrained and assaulted by the petitioner/accused herein in the year 2017, whereas the FIR lodged by the petitioner herein against the client of complainant, pertains to the year 2014 and is pending trial since then.

17. One of the fundamental principles of legal representation by a lawyer is that lawyers do not allow personal biases or prejudices to influence or interfere with their professional obligations and their responsibility to provide representation and legal assistance to their client to uphold the principles of fairness and justice. They are supposed to act in the best interests of their clients and vigorously advocate for their positions, while still maintaining a sense of fairness and respect for the legal process. A lawyer representing her client, is only carrying out her duties and she cannot be presumed to have any personal enmity or grudge



against the complainant in case she is representing an accused or against an accused, if she is representing the complainant. The lawyers are officers of the Court and should not be presumed to be only defending the party concerned as part of their duty. **They are an essential and powerful pillar of judicial adjudicatory process and therefore, their duty towards a client has to be respected by all concerned.** The lawyers are bound by their commitment to the duties cast on them by *Part VI (Rules Governing Advocates), Chapter II (Standards of Professional Conduct and Etiquette) of Bar Council of India Rules* which define their duties towards the Court, Client, Opponent and Colleagues.

18. Therefore, to hold that the present complaint is false only because it is lodged by a lawyer, who was representing a client against whom the assaulter had lodged a complaint a few years back, will be, to say the least, unreasonable and absurd. In case, such a finding is returned by this Court, Advocates will not be able to work or discharge their professional duties without fear. In such a scenario, even if a person injures or assaults an advocate or a lawyer he will seek protection under a plea that the advocate has lodged complaint on behalf of her client.

19. Any complaint received by the police or the Court has to be seen, appreciated and adjudicated upon irrespective of the financial or professional nature or status of either the complainant or the accused. A person's financial position or profession cannot become a basis for holding that due to their such profession or position, the complaint lodged is false even if in reality they have been assaulted and injured.

20. 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.

21. In view of the foregoing discussion, this Court finds no reasons to interfere with the impugned order dated 22.05.2019 passed by learned ASJ.

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

23. It is, however, clarified that nothing expressed hereinabove shall tantamount to an expression on merits of the case.

24. The judgment be uploaded on the website forthwith.

SWARANA KANTA SHARMA, J

MAY 29, 2023/ns