

\$~

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

Reserved on: 18.11.2023
Pronounced on: 13.02.2023

%

+ **CRL.M.C. 2500/2020, CRL.M.A. 17711/2020 & 2490/2021**

SUNDER KUKREJA

..... Petitioner

Through: Mr. Madhav Khurana, Mr.
Vignaraj Pasayat and Mr.
Kartikeye Dang, Advocates

versus

THE STATE

..... Respondent

Through: Mr. Naresh Kumar Chahar, APP
for State with SI Vivek Gautam,
P.S. Amar Colony

Mr. Manoj Taneja, Advocate for
complainant

CORAM:

HON'BLE MS. JUSTICE SWARANA KANTA SHARMA

JUDGMENT

SWARANA KANTA SHARMA, J.

1. The present petition has been filed under Section 482 of the Code of Criminal Procedure, 1973, (*hereinafter "Cr.P.C."*) seeking following reliefs:

- i. setting aside of order dated 19.12.2019 passed in C.R. No. 478/2019 titled '*Sunder Kukreja vs. State & Anr.*' by Addl. Sessions Judge-02 (South-East), Saket Courts, New Delhi (*hereinafter "learned ASJ"*); and

ii. quashing the order on charge dated 28.05.2019 passed in Cr.C. No. 92310 of 2016 titled '*State vs. Sunder Kukreja*' by learned Metropolitan Magistrate (Mahila Court)-02, South East District, Saket Courts, New Delhi (*hereinafter "learned MM"*) and the charge framed under Sections 354/354D/506 of Indian Penal Code, 1860 (*hereinafter "IPC"*).

2. The present FIR bearing no. 1310/2015 under Sections 354/354D/506 IPC was registered on 19.12.2016 at Police Station Amar Colony, New Delhi on the basis of complaint filed by complainant 'R' wherein it was stated that on 19.12.2015, the petitioner, along with his wife and other family members, was present at M-Cinemas, East of Kailash, New Delhi (*hereinafter "the premises"*), and when the complainant was trying to enter the premises, her way was blocked by several bouncers/guards who were unauthorizedly deployed by the petitioner. It is alleged that petitioner and his men were video-graphing every nook and corner of the premises and also hacking computer systems for which the petitioner had brought an engineer along with him. Taking note of the conduct of petitioner, the complainant started following and watching his actions. It is alleged that when the complainant and petitioner were in kitchen, the petitioner pinched the buttock of complainant and pushed her, at which complainant screamed and went outside, and while she was leaving, the petitioner laughed and followed her. Thereafter, petitioner's wife also came and screamed and hurled abuses at the complainant. It is further alleged that petitioner also intimidated and threatened the complainant

by saying that he was well-connected with influential people. Besides the details qua the incident dated 19.12.2015, it is further mentioned in the complaint that petitioner and his men had been video-graphing all the movements of complainant including her going to the washroom, and that the petitioner and his men were making the complainant feel uncomfortable through their dirty gazes for more than 7-8 days before the date of present incident.

3. Pursuant to investigation, charge-sheet in the present case was filed on 07.05.2016 under Sections 354/354D/506 of IPC, and charges were framed against the petitioner by the learned MM *vide* order dated 28.05.2019. The concluding portion of the said order, which is impugned before this Court, reads as under:

“7. I have heard the arguments on point of charge on behalf of accused and learned APP for the State and Ld. Counsel for complainant, carefully gone through the material available on record and I am of the considered view that in the present matter, complainant has stated categorically the manner in which the accused Sunder Kukreja had misbehaved with her by touching her inappropriately and pinching her on her buttock and further that the aforesaid behaviour have been committed by the accused for 7-8 days repeatedly even prior to the date of incident. Further, it is categorically stated by the complainant that accused had extended threats to her by stating of being well connected with people in power. It is further seen that merely a gap of 3-4 hours in lodging of FIR does not fall in the category of delay and in fact the conduct of the complainant of being so shocked that she started crying which is evident from the pictures annexed with the chargesheet, itself shows that the complainant was shattered and outraged by the accused. Further, there is complete corroboration of the complaint filed by the complainant with her statement recorded u/s 164 CrPC and therefore, I find no

reason to disbelieve the complainant, at this stage as there is strong suspicion that the offence was committed by the accused which amounted to outraging the modesty of the complainant.

8. At the time of framing of charge, the court is only required to consider the version of the complainant and not required to look for independent corroboration.

9. It has been held in the case of 'State of Maharashtra v. Priya Sharan Maharaj & Ors.' in Criminal Appeal no. 263 of 1997 passed by Hon'ble Supreme Court of India that "at the stage of framing of charge, the Court has to consider the material with a view to find out if there is ground for presuming that the accused has committed the offence or that there is no sufficient ground for proceeding against him and not for the purpose of arriving at the conclusion that it is not likely to lead to a conviction".

10. Therefore, in my considered view, offence u/s 354/354D/506 IPC is made out against accused Sunder Kukreja."

4. Accordingly, the learned MM framed Charge against the petitioner vide order dated 07.06.2019, and the relevant portion of it reads as under:

"...That on 19.12.2015 in the morning at M Cinemas, Amar colony, New Delhi, within the jurisdiction of PS Amar colony, you stalked the complainant by repeatedly following her in the aforesaid premises and on previous several occasions and tried to foster personal interaction with the complainant despite her clear indication of disinterest and when she refused to communicate with you, you committed criminal intimidation by touching her inappropriately and pinching her on her lower body with the intention to outrage her modesty and even threatened her and thereby you committed an offence punishable under section 354/354D/506 IPC and within my Cognizance..."

5. Aggrieved by the order dated 28.05.2019 passed by learned MM, the petitioner preferred a revision petition before the Court of learned ASJ, which was dismissed *vide* impugned order dated 19.12.2019, with the following observations:

“5. As has been observed by the trial court, complainant is seen crying in the photographs annexed with the charge sheet. Thus, there exists grave suspicion about commission of crime by the petitioner. At this stage, the Court has no reason to disbelieve the version given by complainant and hence, there is no hesitation in saying that the version of complainant inspires the confidence of the Court.

6. Another ground for challenging the impugned order is the delay in registration of FIR. Time is also mentioned in the photographs of incident which show that incident occurred at around 12 noon and FIR was registered in the evening. Therefore, there is no undue delay in registration of FIR and this issue has been rightly dealt with by the trial court.

7. The next submission of Mr. Rajiv Mohan was that if the intention of accused was to outrage the modesty of complainant, he would not have taken videographer with him. This argument can also operate against the petitioner as petitioner failed to provide the video recording of the incident which was done by a photographer employed with him. Therefore, an adverse inference is liable to be drawn against him.

8. It has been held in various judgments that scrutiny of court at the stage of deciding the question of charge is very limited. The Court cannot enter into detailed analysis and examination of evidence”

6. In such circumstances, the petitioner has approached this Court, assailing the aforesaid impugned orders.

7. Learned counsel for the petitioner submits that the impugned orders were passed without proper appreciation of facts and law, by ignoring the glaring contradictions in the complaint.

7.1. It is stated that it was not the petitioner who was following the complainant, rather the complainant was herself following the petitioner when he was video-recording the premises. It is further stated that even as per complainant's version, her way was blocked by the bouncers/guards and not by the petitioner, and these bouncers/guard were not implicated as co-accused in the present case

7.2. It is argued that the charge has wrongly been framed by the learned MM and the acts mentioned therein and attributed to the petitioner were never alleged to have been committed by him, even as per the version of complainant. It is also stated that since petitioner has to defend the contents of the charges so put to him, the fact that it was not the case of complainant in the very first place, shall cause grave prejudice to him. Reliance has been placed upon the decision of *Sou Vijaya alias Baby v. State of Maharashtra*, (2003) 8 SCC 296 to contend that in case where a defective charge is framed and the ingredients of the alleged offences are not established by the prosecution, the same must result in acquittal of accused.

7.3. Learned counsel for the petitioner further states that no prima facie offence is made out against petitioner under Sections 354/354D/506 of IPC and the FIR was registered with a malafide intention, and thus, needs to be quashed as per the judgement of *State of Haryana v. Bhajan Lal* 1992 SCC (Crl) 426.

7.4. Learned counsel for petitioner states that there is a long history of litigation, including civil and criminal disputes, between the parties. It is argued on behalf of petitioner that with regard to the premises, an arbitral award was passed in favour of petitioner and further *vide* order dated 07.12.2015, this Court had granted unhindered access to the petitioner and his partners, to the premises M-Cinemas as well as book of accounts the firm/premises. It is stated that even though the arbitral award was in the favour of petitioner, the petitioner had gone to the premises only after giving several formal notices to the other side for accessing the books of accounts and there was no other intention of the petitioner to visit the said premises.

7.5. Learned counsel for the petitioner contends that there was no intimidation or fear caused by the petitioner, and to the contrary, it was the complainant who was seen threatening and intimidating the petitioner in the video recording where she can be seen tearing a copy of the order passed by this Court dated 07.12.2015 *vide* which the petitioner was granted unhindered access to the premises.

7.6. It is averred that the present FIR was filed five hours post the alleged incident, only with the intention of pressurizing the petitioner to give up his share and rights in the M-Cinema and to withdraw the criminal and civil cases filed by the petitioner against complainant's father.

8. On the other hand, Learned APP for the State submits that the complainant has supported her earlier version in her statement under Section 164 Cr.P.C. and considering the nature of allegations, no case is made out for either quashing of FIR or for discharge.

8.1. It is stated that the complainant had also given a pen drive containing camera recordings to the investigating officer to support her complaint, and the petitioner and complainant were seen making arguments with each other and complainant was seen crying in the said footage. It is also submitted that the petitioner failed to give any recording, despite stating that he would try to procure the same as his men were video-graphing the premises at the time of alleged incident.

9. Controverting the contentions raised on behalf of petitioner, learned counsel for the complainant states that complainant had filed the instant case against the petitioner after having been aggrieved by his repeated misbehaviour, and that despite her clear indication of disinterest, the petitioner had brought several men including a videographer and was recording her movements at the premises.

9.1. Learned counsel for complainant states that the petitioners had also moved an application before the learned MM seeking further investigation under Section 173(8) Cr.P.C praying that the investigation of the present case was not properly conducted but the same was dismissed *vide* order dated 19.12.2017. it is also stated that a detailed order on charge had been passed by the learned MM after going through the CCTV footage provided by the complainant. Therefore, he states that there is no illegal or infirmity in the order on charge.

9.2. It is further submitted by learned counsel for complainant that another FIR bearing no. 1311/2015 for the offences punishable under Sections 354/506/34 IPC was registered at Police Station Amar Colony, New Delhi on the complaint of the wife of petitioner and after

due investigation, a cancellation report was filed on 07.04.2016 before the learned Trial Court.

9.3. It is further submitted by learned counsel for complainant that with regard to consideration of the additional/new documents which admittedly were not part of the chargesheet, the same cannot be considered at this stage. For the same, reliance was placed on ***Tarun Jit Tejpal v. State of Goa 2019 SCC Online SC 1053***. The counsel for complainant further stated that, without prejudice, if at all required, the language of charge framed can be corrected/ modified /altered as per law, in the interest of justice, by this Court, and reliance in this regard was placed on decisions in ***Dr. Nallapareddy Sridhar Reddy v. State of Andhra Pradesh 2021 (1) JCC 175*** and ***Jitender Singh Tomar v. State 2019 (1) JCC 826 (Delhi)***.

10. This Court has heard the arguments on behalf of both the parties and has perused the material on record.

11. The law regarding framing of charge and discharge is contained under Sections 227 and 228 of Cr.P.C. While deciding as to whether a Court should either frame charges against an accused or discharge the accused, the Court is required 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 the said information, the Court is required to ascertain if the essential ingredients of an offence are *prima facie* made out or not. It is impermissible to conduct an in-depth appreciation of evidence and roving inquiry into the pros and cons of the case since a 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 SCC 460*; *Asim Sharif v. National Investigation Agency (2019) 7 SCC 148*; *Dipakbhai Jagdishchandra Patel v. State of Gujarat (2019) 16 SCC 547*; and *Vikram Johar v. State of Uttar Pradesh & Anr., 2019 SCC OnLine 609*]

12. In the case at hand, learned counsel for petitioner argued that the offences for which the charges have been framed against the petitioner are not made out on the face of it. The petitioner herein has been charged under Sections 354, 354D and 506 of IPC.

12.1. *Firstly*, Section 354 of IPC relates to “Assault or criminal force to woman with intent to outrage her modesty.” In the present case, the complainant had specifically stated in her complaint, which culminated into FIR, as well as in her statement under Section 164 Cr.P.C. that on the day of incident i.e. 19.12.2016, when the complainant and petitioner were in the kitchen at the premises, the petitioner had pinched the buttock of complainant and pushed her, at which the complainant had gone outside screaming whereas the petitioner followed and laughed at her.

12.2. *Secondly*, Section 354D of IPC relates to “Stalking”. Inasmuch as this offence is concerned, the petitioner has given details in her complaint and statement under Section 164 Cr.P.C. as to how on the day of incident and for past 7-8 days, petitioner was making her feel uncomfortable through his staff and their dirty gazes. It is stated that men deployed by the petitioner at the premises used to continuously follow the complainant, video-graph her movements including her going to the washroom and despite repeated requests of complainant to

the petitioner, the petitioner did not mend his ways. Rather, it is alleged that petitioner told the complainant to not enter the premises if she felt uncomfortable by his and his men's actions. It is further alleged that when the complainant was in the kitchen at premises, the petitioner had pinched her buttock upon which she screamed and went outside, and when she was leaving, the petitioner laughed at her and followed her.

12.3. *Thirdly*, Section 506 of IPC relates to "Criminal intimidation". In this regard, the complainant has alleged in her complaint and statement under Section 164 Cr.P.C. that the petitioner was coming to the premises for last 7-8 days with his guards/bouncers who used to videograph every nook and corner of the premises, including staring at complainant and videographing her movements, and upon complainant's request to desist from doing the aforesaid acts, she was abused and threatened by the petitioner who told her that he had contacts with influential persons including members of judiciary. Thus, as alleged, she was intimidated to not file any complaint against the petitioner as the same would not be taken up due to influential position of the petitioner.

13. The perusal of charge-sheet also points out that the complainant had provided a CCTV footage in support of her case to the investigating officer, and the same revealed the incidents of arguments between the petitioner and complainant on the day of alleged incident and further, the complainant was also seen crying in the said footage. As stated before this Court, the said footage was also played before the Court of learned MM. Contrary to this, the petitioner, who had deployed his men on the premises for the purpose of videography, was

also asked by the investigating officer to hand over video footage that he was in possession of, including any footage of the kitchen area. However, petitioner herein was unable to provide any footage whatsoever of the day of incident.

14. With regard to the contentions of learned counsel for petitioner, *firstly*, a delay of 4-5 hours in lodging of FIR cannot be termed as undue so as to disbelieve the contents of the same. *Secondly*, the ingredients of the offences alleged against the petitioner are made out, *prima facie*, for the purposes of framing of charge, as already discussed above. *Thirdly*, any previous enmity or litigation among the family members of the petitioner and complainant cannot be the ground to seek discharge as needless to say, each case has to be tested and tried on its own facts and circumstances, as per law.

15. Considering the aforesaid, and having taken note of the settled law on framing of charge and the allegations leveled against the petitioner, this Court is of the view that there exists sufficient material on record to frame charges against the petitioner for the offences so alleged.

16. This Court also notes that present petition has been filed under Section 482 Cr.P.C., under which, proceedings can be quashed by a High Court in order to prevent abuse of process of any Court or otherwise to secure ends of justice. With regard to quashing an order on charge and order passed by learned ASJ in a revision petition, a reference can be made to the recent decision of Hon'ble Apex Court in *Asian Resurfacing of Road Agency Private Ltd. v. C.B.I. (2018) 16 SCC 299*, relevant portion of which is as under:

“27. Thus, even though in dealing with different situations, seemingly conflicting observations may have been made while holding that the order framing charge was interlocutory order and was not liable to be interfered with under Section 397(2) or even under Section 482 Cr.P.C., the principle laid down in Madhu Limaye [Madhu Limaye v. State of Maharashtra, (1977) 4 SCC 551 : 1978 SCC (Cri) 10] still holds the field. Order framing charge may not be held to be purely an interlocutory order and can in a given situation be interfered with under Section 397(2) CrPC or 482 CrPC or Article 227 of the Constitution which is a constitutional provision but the power of the High Court to interfere with an order framing charge and to grant stay is to be exercised only in an exceptional situation.

28. We have thus no hesitation in concluding that the High Court has jurisdiction in an appropriate case to consider the challenge against an order framing charge and also to grant stay but how such power is to be exercised and when stay ought to be granted needs to be considered further.

37. Thus, we declare the law to be that order framing charge is not purely an interlocutory order nor a final order. Jurisdiction of the High Court is not barred irrespective of the label of a petition, be it under Sections 397 or 482 CrPC or Article 227 of the Constitution. However, the said jurisdiction is to be exercised consistent with the legislative policy to ensure expeditious disposal of a trial without the same being in any manner hampered. Thus considered, the challenge to an order of charge should be entertained in a rarest of rare case only to correct a patent error of jurisdiction and not to reappreciate the matter...”

17. The guidelines for quashing of criminal proceedings have been laid down by the Hon'ble Supreme Court in *State of Haryana v. Bhajan Lal (supra)*, which are extracted herein-under for reference:

“102. In the backdrop of the interpretation of the various relevant provisions of the Code under Chapter XIV and of the principles of law enunciated by this Court in a series of decisions relating to the exercise of the extra-ordinary power under Article 226 or the inherent powers Under Section 482 of the Code which we have extracted and reproduced above, we give the following categories of cases by way of illustration wherein such power could be exercised either to prevent abuse of the process of any Court or otherwise to secure the ends of justice, though it may not be possible to lay down any precise, clearly defined and sufficiently channelized and inflexible guidelines or rigid formulae and to give an exhaustive list of myriad kinds of cases wherein such power should be exercised.

1. Where the allegations made in the First Information Report or the complaint, even if they are taken at their face value and accepted in their entirety do not prima-facie constitute any offence or make out a case against the accused.

2. Where the allegations in the First Information Report and other materials, if any, accompanying the F.I.R. do not disclose a cognizable offence, justifying an investigation by police officers Under Section 156(1) of the Code except under an order of a Magistrate within the purview of Section 155(2) of the Code.

3. Where the uncontroverted allegations made in the FIR or complaint and the evidence collected in support of the same do not disclose the commission of any offence and make out a case against the accused.

4. Where, the allegations in the F.I.R. do not constitute a cognizable offence but constitute only a non-cognizable offence, no investigation is permitted by a police officer without an order of a Magistrate as contemplated Under Section 155(2) of the Code.

5. Where the allegations made in the FIR or complaint are so absurd and inherently improbable on the basis of which no prudent person can ever reach a just conclusion that there is sufficient ground for proceeding against the accused.

6. Where there is an express legal bar engrafted in any of the provisions of the Code or the concerned Act (under which a criminal proceeding is instituted) to the institution and continuance of the proceedings and/or where there is a specific provision in the Code or the concerned Act, providing efficacious redress for the grievance of the aggrieved party.

7. Where a criminal proceeding is manifestly attended with mala fide and/or where the proceeding is maliciously instituted with an ulterior motive for wreaking vengeance on the accused and with a view to spite him due to private and personal grudge.”

18. It is trite law that High Courts cannot embark upon the appreciation of evidence in a minute manner while considering the petition filed under Section 482 Cr.P.C. [See *Priti Saraf & Anr. v. State of NCT of Delhi & Anr.* 2021 SCC OnLine SC 206]. It is also settled that in a petition under Section 482 Cr.P.C., a High Court can neither test veracity of the allegations nor can it proceed in the manner that a judge conducting a trial is supposed to do on the basis of the evidence collected during the course of trial [See *Mahendra KC v. State of Karnataka* (2022) 2 SCC 129].

19. The power under Section 482 Cr.P.C. is an extraordinary power and the same cannot be exercised ordinarily by the Courts, in absence of exceptional circumstances. Testing the facts of the present case on the anvil of principles laid down by the Apex Court in *Bhajan Lal (supra)*, this Court is of the considered view that neither the allegations leveled against the petitioner by the complainant are absurd or improbable, nor it is the case where no prima facie offence at all or no cognizable offence is made out. Even otherwise, no circumstances have been shown on behalf of petitioner for this Court to arrive at a finding that continuation of proceedings against him would amount to an abuse of process of law.

20. As far as contention of learned counsel for petitioner that formal charge framed against the petitioner is incorrect is concerned, this Court observes that the same is premised upon the allegations leveled against the petitioner by the complainant in the FIR and in her statement under Section 164 Cr.P.C., and the language of the charge qua the offence of stalking has been taken from the language used in statutory provision of Section 354D. It is for the complainant to show during the course of her examination that petitioner followed the complainant on several occasions with an intention to foster personal interaction, and for the petitioner to disprove the same in order to avoid the guilt under Section 354D(1)(i) of IPC. Furthermore, the said ground has been taken for the first time before this Court and the same was not agitated either before learned MM or learned ASJ. If at all the petitioner is aggrieved by the language of formal charge framed vide order dated 07.06.2019, he shall

have the liberty to move appropriate application before the concerned Trial Court for the alteration of same.

21. Needless to state, the contentions of the petitioner before this Court and the documents relied upon by him are a matter of trial and the same can be dealt with by the learned Trial Court at appropriate stage.

22. In view of the foregoing discussion, this Court finds no error or infirmity in the orders passed by learned MM and learned ASJ, and thus, no case is made out for quashing/setting aside the impugned orders.

23. Accordingly, the present petition along with pending applications stands dismissed.

24. It is however clarified that this Court has not given any opinion on merits of the case and the observations made herein-above are only for deciding the present petition.

25. The judgment be uploaded on the website forthwith.

SWARANA KANTA SHARMA, J

FEBRUARY 13, 2023/kss