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

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Reserved on: 27.07.2023
Pronounced on: 04.09.2023

+ **CRL.REV.P. 963/2019**

NARESH CHAND

..... Petitioner

Through: Mr. Subhash Solanki, Advocate

versus

STATE

..... Respondent

Through: Mr. Naresh Kumar Chahar,
APP for State with SI Brham
Prakash, PS Sarita Vihar

CORAM:

HON'BLE MS. JUSTICE SWARANA KANTA SHARMA

JUDGMENT

SWARANA KANTA SHARMA, J.

1. The instant petition under Section 397/401 of the Code of Criminal Procedure, 1973 ('Cr.P.C.') has been filed on behalf of petitioner seeking setting aside order dated 06.05.2019 passed by learned Additional Sessions Judge, Special Fast Track Court, South-East, Saket Courts, New Delhi ('Trial Court') whereby charges have been framed against him under Sections 506/509 of Indian Penal Code, 1860 ('IPC').
2. The present FIR was registered on the basis of complaint lodged by the prosecutrix wherein she had alleged that she had received a friend request on Facebook from accused Chandan Vaid and since the accused's sister was follower of her Guruji also, she had accepted his



friend request and thereafter, the accused had started sending messages to her. After some time, the prosecutrix had given her mobile number to the accused on his asking and the accused had also shared his mobile number and they had started talking to each other. It was alleged that on 10.03.2017, the accused had called her for Holi celebration near Indraprastha Park and there he had informed the prosecutrix that he always wanted a girl who believed in Guruji and he had put red colour in the parting of prosecutrix stating that he was now his wife and he would not deceive her. However, the prosecutrix had removed the colour from the parting and had told him that how she can marry the accused without knowing him. Thereafter, they both had started meeting each other. It was stated that on the insistence of the accused to see her house, the accused had come to her house for the first time on 02.04.2017 and had consumed *prasad* of Guruji and had promised to take the prosecutrix as his wife. Again on 09.04.2017, he had visited her house and had assured her that he will marry her and that he was Brahmin by caste and there was a Mandir in his house and she had to look after the same. Hearing all this, the prosecutrix had started believing him. It was alleged that on 22.04.2017 at about 9 PM, the accused had come to her house along with chocolate, ice-cream and cold drink and had made the prosecutrix consume the same, after which, she had started feeling dizziness. Thereafter, she had gone inside her room and had fallen unconscious and when she had got up at around 2-3 AM, she had realised that she had been raped by the accused. But the accused Chandan Vaid had assured her that he loved her and would soon perform marriage with her after getting his divorce finalised. Thereafter, the accused had kept on making



physical relations with the prosecutrix due to which she had got pregnant. The accused had then pressurized her for abortion and upon her refusal, on 24.06.2017 at about 9:00 AM, the accused had come to her house and had badly beaten her up and had thrown the household articles. Due to this, the prosecutrix had got severe pain in her abdomen and the accused had taken her to Guru Nank Hospital, Palwal where the doctor had informed about her miscarriage. However, the accused had got her discharged from the hospital against the advice of the doctor and had left the prosecutrix at her house. Thereafter, he had continued to make physical relations with her on the false pretext of marriage and had stated that he will perform marriage after the finalization of second motion of divorce fixed in the court on 19.09.2017. Thereafter on 21.12.2017, accused had informed the prosecutrix that his divorce has not taken place as he has compromised the matter with his wife. The accused had also asked the prosecutrix to forget him whereupon the prosecutrix had stated that she would take action against him. Thereafter, the accused had criminally intimidated her and even his father and sister had given threats to the prosecutrix, and had also abused her and passed indecent comments. On these allegations, the present FIR was registered on 11.01.2018. The accused Chandan Vaid was arrested on 12.01.2018.

3. During investigation, the statement of prosecutrix was recorded under Section 164 Cr.P.C. and statements of other witnesses were also recorded by the police. Thereafter, the prosecutrix gave another complaint to the police and got a supplementary statement recorded under Section 161 Cr.P.C. on 08.02.2018 whereby she stated that the family members of the accused had been trying to threaten her and had



been asking her through her friend and her doctor to settle the matter and when no one was left, they had approached the present accused/petitioner who had called her from his mobile number and had threatened her to compromise the matter and withdraw the case against the accused. After completion of investigation, chargesheet was filed against the accused persons under Sections 326/328/376/506/509/34 of IPC.

4. Learned Trial Court, *vide* order on charge dated 06.05.2019, framed charges against the accused persons under different provisions of IPC. The concluding portion of the said order reads as under:

“17. Accordingly, from the perusal of complaint, documents with the chargesheet and the statement u/s-164 Cr.P.C, prima facie case U/s- 328/376 IPC, 417/376(2)(n) IPC, 323/313 IPC and 506/509 IPC is made out against the accused Chandan Vaid and prima facie case U/s- 506/509 IPC is made out against the accused Purshottam Lal Vaid, Nikita Vaid and Naresh Kumar...”

5. As regards the present petitioner, the charges were framed under Sections 506/509 of IPC.

6. Learned counsel for petitioner argued that the present accused/petitioner is not connected with the commission of offence in any manner and charges have wrongly been framed by the learned Trial Court. It is also stated that though the Call Detail Records (CDRs) of the prosecutrix and the petitioner may reveal that they were in contact with each other, there is no transcript or evidence that the prosecutrix was threatened by the petitioner on 08.02.2017. It is also argued that *qua* the present petitioner, neither the prosecutrix had handed over her mobile phone for the purpose of submitting it to FSL, nor she had given any call



recordings etc., although she had given the same in respect of alleged threatening calls made by co-accused persons. It is further argued that she had also made a phone call on 10.02.2017 to the petitioner from her mobile and in case the petitioner would have threatened her earlier, why would she had called him and spoken to him for 10 minutes. It is also argued that the accused is a social worker and has been falsely implicated in the present case, in absence of any material on record.

7. *Per contra*, learned APP for the State submits that there are serious allegations against the accused persons and the main accused Chandan Vaid had made forcible sexual relationship with the prosecutrix after intoxicating her and also on false pretext of marriage and later on, he had refused to marry her. It is stated that petitioner had threatened the prosecutrix on call several times and had asked her to compromise the matter and that he would ask the accused Chandan to marry her. It is argued that issues raised before this Court are all triable in nature and thus, there is no infirmity with the impugned order *vide* which charges were framed against the accused persons including the petitioner herein.

8. This Court has heard arguments addressed by both the learned counsel for petitioner as well as learned APP for the State, and has perused the material on record.

9. The law on framing of charge and discharge is contained in Sections 227 and 228 of Cr.P.C. for cases which are triable by Sessions Court. In case of **Sajjan Kumar v. CBI (2010) 9 SCC 368**, the Hon'ble Apex Court has explained the powers of Courts in respect of framing of charge and discharge and the relevant principles as enunciated in the said decision read as under:



“21. On consideration of the authorities about the scope of Sections 227 and 228 of the Code, the following principles emerge:

(i) The Judge while considering the question of framing the charges under Section 227 Cr.P.C. 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**. The test to determine prima facie cases would depend upon the facts of each case.

(ii) 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.

(iii) The **court 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**, etc. However, at this stage, there cannot be a roving enquiry into the pros and cons of the matter and weigh the evidence as if he was conducting a trial.

(iv) If on the basis of the material on record, the court could form an opinion that the accused might have committed offence, it can frame the charge, though for conviction the conclusion is required to be proved beyond reasonable doubt that the accused has committed the offence.

(v) At the time of framing of the charges, the probative value of the material on record cannot be gone into but before framing a charge the court must apply its judicial mind on the material placed on record and must be satisfied that the commission of offence by the accused was possible.

(vi) At the stage of Sections 227 and 228, **the court is required to evaluate the material and documents on record with a view to find out if the facts emerging therefrom taken at their face value disclose the existence of all the ingredients constituting the alleged offence. For this limited purpose, sift the evidence as it cannot be expected even at that initial stage to accept all that the prosecution states as gospel truth even if it is opposed to common sense or the broad probabilities of the case**.

(vii) If two views are possible and one of them gives rise to suspicion only, as distinguished from grave suspicion, the trial Judge will be empowered to discharge the accused and at this stage, he is not to see whether the trial will end in conviction or acquittal.

(Emphasis supplied)



10. The Hon'ble Apex Court in case of *Ghulam Hassan Beigh v. Mohd. Maqbool Magrey* (2022) 12 SCC 657, after discussing several judicial precedents, has summed up the law regarding framing of charge as under:

“27. 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...”

(Emphasis supplied)

11. In the present case, the prosecutrix had alleged that the present petitioner had called her several times and had threatened her to withdraw the present complaint and also told her that he would ask the main accused i.e. Chandan to get married to her. The statement of the prosecutrix given to the police on 08.02.2018 reads as under:

नरेश नम्बरदार जिसका मोबाइल नं० ९८९९९९९९९९ ने मुझे कई बार फोन पर समझौता करने व कसे वापिस लेने की धमकी दी तथा पैसे लेने का लालच व शादी करने का दबाव दे रहे हैं। मैंने कई बार मना किया लेकिन फिर भी वे अपनी हरकतों से बाज नहीं आ रहे हैं। आज

12. During investigation, the Call Detail Records of the mobile number of petitioner were obtained and analysed and as per Status



Report filed on record by the prosecution, there were about 10 phone calls made between the prosecutrix and the petitioner during the period between 30.01.2018 to 10.02.2018. Thus, the fact that there were telephonic conversations between the petitioner and the prosecutrix is not disputed, and as per the case of prosecutrix, the petitioner had threatened and criminally intimidated her. Though it is true that the prosecutrix had failed to provide any transcript or call recording of any conversation that had taken place between her and the petitioner to the investigating officer, the same in itself cannot be the ground to discharge the petitioner for commission of offence under Section 506 of IPC. The fact as to what had actually transpired in the conversations between the prosecutrix and the petitioner is a matter of trial and whether the petitioner had actually criminally intimidated and threatened the prosecutrix can be proved or disproved only during the course of trial after the examination and cross-examination of witnesses. Thus, considering the specific allegations levelled by the prosecutrix and the investigation by the police, there are no reasons to interfere with the impugned order as far as it holds that a *prima facie* case under Section 506 of IPC is made out against the present accused/petitioner.

13. However, this Court notes that charge has also been framed against the petitioner under Section 509 of IPC, which provides as under:

“509. Word, gesture or act intended to insult the modesty of a woman.

Whoever, intending to insult the modesty of any woman, utters any word, makes any sound or gesture, or exhibits any object, intending that such word or sound shall be heard, or that such gesture or object shall be seen, by such woman, or intrudes upon the privacy of such woman, shall be punished with simple



imprisonment for a term which may extend to one year, or with fine, or with both...”

14. Having perused the entire material placed on record, including the initial complaint lodged by the prosecutrix which had culminated into the present FIR, statement of the prosecutrix recorded under Section 164 Cr.P.C., the supplementary statement recorded by the police wherein allegations were levelled against the present petitioner for the first time, as well as the charge sheet filed by the prosecution, this Court notes that the prosecutrix had not levelled any allegation whatsoever against the petitioner that he had uttered any word or made any gesture to outrage the modesty of the prosecutrix. Even though allegations falling within the domain of Section 509 of IPC were levelled by the prosecutrix against co-accused Purushottam Lal Vaid i.e. father of main accused Chandan and his sister i.e. co-accused Nikita Vaid, the present petitioner is only alleged to have threatened the prosecutrix.

15. The impugned order dated 06.05.2019 is also completely silent and does not provide any reason or discussion as to how offence under Section 509 of IPC is made out against the petitioner. Further, the formal charge framed against the petitioner on 06.06.2019 mentions that petitioner had criminally intimidated the prosecutrix and had threatened her with dire consequences and had ‘abused her’. However, the prosecutrix had not mentioned anywhere either to the police or to the Magistrate that petitioner had abused her. A perusal of the formal charge framed against all accused persons reveals that a similar line i.e. “you abused her” has been incorporated by the learned Trial Court, however,



it has been overlooked that there was no such allegation against the present petitioner.

16. Thus, even if the case of the prosecution is taken to be true in its entirety, this Court cannot decipher any material on record which would even *prima facie* show that petitioner had committed any act or had uttered any word or had made any lewd gesture with an intention to outrage the modesty of the prosecutrix which could make him liable to face trial for a charge under Section 509 of IPC. At the cost of repetition, it is to be noted that the prosecutrix had only stated that the petitioner had called her many times to compromise the matter, had threatened her to withdraw the case, had tried to bribe her with money and had asked her to marry the accused.

17. The law on framing of charge is well-settled by way of catena of judgments of the Hon'ble Apex Court that there should be at least some *prime facie* material on record collected by the prosecution which could raise suspicion against an accused for commission of the alleged offence. However, in the present case, no such material has been placed on record by the prosecution or even alleged by the prosecutrix herself which would point out towards commission of an offence under section 509 of IPC by the present petitioner.

18. Thus in view of the foregoing discussion, this Court deems it appropriate to modify the impugned order to the extent that charge framed against the petitioner under Section 509 IPC is set aside, whereas charge framed under Section 506 of IPC is upheld.

19. Accordingly, the present petition stands disposed of in above terms, along with pending application if any.



20. A copy of this judgment be forwarded to the learned Trial Court for information.
21. The judgment be uploaded on the website forthwith.

SWARANA KANTA SHARMA, J

SEPTEMBER 4, 2023/ns