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

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*Reserved on: 01.02.2023*  
*Pronounced on: 02.02.2023*

+ **CRL.REV.P. 200/2018**

**THE STATE GOVT OF NCT OF DELHI** ..... Petitioner

Through: Mr. Naresh Kumar Chahar,  
APP for the State with SI  
Himani, P.S. M.S. Park, Delhi

versus

**AFAQ HUSSAIN ANSARI & ORS.** ..... Respondents

Through: Ms. Ananya Kar Sanghi and  
Mr. Prateek Vaish, Advocates

**CORAM:**

**HON'BLE MS. JUSTICE SWARANA KANTA SHARMA**

**JUDGMENT**

**SWARANA KANTA SHARMA, J.**

1. The petitioner i.e. State has filed the present petition impugning the order dated 18.09.2017 passed by learned ASJ-01, Special Judge (POCSO) Shahdara District, Karkardooma Courts, Delhi whereby accused persons have been discharged for offences punishable under Sections 451/354/354B/427/324/376/ 511/34 of the Indian Penal Code, 1860 ("IPC") and Section 4/8 of Protection of Children from

Sexual Offences Act, 2012 (“POCSO”) in case FIR No.252/2014 registered at Police Station M.S. Park, Delhi.

2. The present FIR was registered on the complaint of ‘S’ wherein it was stated that on 21.04.2014, her mother, maternal aunt and sister-in-law had gone to Karkardooma Courts for meeting her father and his sons, whereas the complainant ‘S’ and her cousin ‘T’ were present at the house. It was alleged that at about 1:00-2:00 PM, when she was present at the ground floor, accused persons Tayyab, Tahir and Babar and Afaaq suddenly entered the house and started teasing her and when she protested, they torn her clothes and attempted to rape her and also pressed soft parts of the body, as a result of which, she sustained injuries and their house was also ransacked. It was stated that complainant’s cousin ‘T’ had seen the incident from upstairs and had raised alarm, due to which, certain passerby reached the spot and saved her. It was further alleged that while leaving the ouse, the accused persons had threatened the complainant to rape her in future and kill her parents also. Thereafter, the victim was taken to GTB Hospital for medical examination. During investigation, the statement of the complainant ‘S’ as well as other witnesses were recorded under Section 161 Cr.PC, and statement of complainant under Section 164 Cr.P.C. was recorded on 06.05.2014.

3. Learned APP for the State submits that perusal of order on charge passed by learned Trial Court reveals that the learned Trial Court has conducted the trial itself at the stage of charge and has tried to appreciate the inconsistency in the statement of the witnesses, as well as other observations which have been made in the order on

charge, such as those relating to Call Detail Records (CDR), could not have been made at the time of passing order on charge.

4. Learned counsel for respondents, on the other hand, states that there is no infirmity in the order passed by learned Trial Court. It is stated that the learned Trial Court has passed a reasoned judgment and it is only grave suspicion which may result into framing of charge. It is also argued on behalf of learned counsel for respondents that the present case was filed as a counter-blast to the cross FIR which was filed against the complainant's relatives, by the present accused persons, who stood convicted under Section 302 IPC. It is also stated that perusal of FIR reveals that the offence in question as mentioned in the FIR could not have taken place, as on the day of alleged incident, the accused persons could not have been at the alleged spot of incident.

5. The rival contentions on behalf of parties have been heard and the material on record has been perused.

6. The concluding portions of the impugned order, vide which the accused persons have been discharged, reads as under:

“14. In view of glaring Inconsistency in the statement of the victims including complainant and MLC, it is apparent that the complainant has created plan to falsely implicate the accused persons for the apparent reason that all male family members of the complainant are in jail in connection with murder of neighbour Ibrahim Ansari, who was brother of accused persons and another FIR was registered against their family members regarding quarrel at KKD on the same day

15. Therefore keeping in view the glaring inconsistency in the statements, location of all accused persons except Mohd.

Azruddin Babar was not at the place of occurrence, MLC of victims which do not corroborate their statement, possibility of self inflicted injury cannot be ruled out and further the previous enmity and FIR which was registered on alleged date of incident on the complaint of family member of accused persons regarding quarrel took place in KKD Court against the family members of the complainant, I am of the opinion that there are no sufficient material on record to proceed against the accused persons and the case of grave suspicion prima facie is not made out against all four accused persons and accordingly, I am of the opinion that they are entitled to discharge. Accordingly, I discharge all four accused persons namely Dr. Afaq Hussain Ansari, Mohd. Azruddin Babar, Tahir Hussain and Tayyab Hussain. Their bail bonds stands cancelled and sureties discharged. However, all four accused are directed to furnish personal bond in the sum of Rs.25,000/- each alongwith one surety each in the like amount u/s 437A Cr.PC for period of six months within a week. Case property, if any, be destroyed after the expiry of period of appeal...”

7. As far as statutory law on framing of charge is concerned, Section 228 Cr.P.C. provides that a Court shall proceed to frame charge against an accused if it is of opinion that there are grounds for presuming that the accused has committed an offence. Section 228 Cr.P.C. is reproduced as under:

“ 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.”

8. An accused can also be discharged as per provision of Section 227 Cr.P.C. However, for discharge of an accused, there must be a lack of sufficient grounds to believe that the accused has committed the offence. Section 227 Cr.P.C. is reproduced as under:

"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."

9. The principles and considerations to be kept in mind while deciding as to whether an accused should be charged or discharged have been laid down in catena of judgments by the Hon'ble Apex Court, which were reiterated and referred to in the recent decision of Hon'ble Supreme Court in ***Ghulam Hassan Beigh v. Mohammad Maqbool Magrey & Ors.*** 2022 SCC OnLine 913. The relevant portions of the said decision are extracted as under:

“...25. In *Sajjan Kumar v. CBI* [(2010) 9 SCC 368: (2010) 3 SCC (Cri) 1371], this Court had an occasion to consider the scope of Sections 227 and 228 CrPC. The principles which emerged there-from have been taken note of in para 21 as under : (SCC pp. 376-77)

“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 CrPC 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 case 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.”

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27. In the case of *Asim Shariff v. National Investigation Agency*, (2019) 7 SCC 148, this Court, to which one of us (A.M. Khanwilkar, J.) was a party, in so many words has expressed that the trial court is not expected or supposed to hold a mini trial for the purpose of marshalling the evidence on record. We quote the relevant observations as under:—

“18. Taking note of the exposition of law on the subject laid down by this Court, it is settled that the Judge while considering the question of framing charge under Section 227 CrPC in sessions cases (which is akin to Section 239 CrPC pertaining to warrant cases) 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; where the material placed before the Court discloses grave suspicion against the accused which has not been properly explained, the Court will be fully justified in framing the charge; by and large if two views are possible and one of them giving rise to

suspicion only, as distinguished from grave suspicion against the accused, 3 (2018) 13 SCC 455 4 (2019) 14 SCC 207 : (2019) 6 Scale 794 the trial Judge will be justified in discharging him. It is thus clear that while examining the discharge application filed under Section 227 CrPC, it is expected from the trial Judge to exercise its judicial mind to determine as to whether a case for trial has been made out or not. It is true that in such proceedings, the Court is not supposed to hold a mini trial by marshalling the evidence on record.”

(emphasis supplied)

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29. 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)...”

10. Applying the principles regarding framing of charge, this Court

is of the view that the learned Trial Court has conducted a roving enquiry into the merits of the case and has gone into minute details of appreciating the statement of the witnesses to the extent of finding out the discrepancies in their statements. The statements as put up before the learned Trial Court were recorded by the Investigating Officer and the witnesses were not examined as yet before the learned Trial Court and had not been put to cross-examination so as to test their veracity and to reach a conclusion as to whether there were any discrepancies emerging on record which could demolish the case of prosecution. Therefore, to have based the discharge of accused persons on the ground of discrepancies after perusal of bare statements of few witnesses is not permitted in law at the stage of passing order on charge.

11. The finding regarding non mentioning of the entire story related to offence at the time of lodging of the FIR and the subsequent statements and improvement therein also could not have been basis of discharge. To this effect, a reference can be made to the decision of Hon'ble Apex Court in ***Hazrat Deen v. State of UP, SLP (Crl.) No(s). 9552/2021*** wherein it has been categorically held that an FIR in just an initial document, and any discrepancies between the contents of FIR and subsequent statement under Section 164 Cr.P.C. cannot be a ground for discharge, though the same may be a defence during the trial. It is also well-established that FIR is not an encyclopaedia which need not contain every single detail about the incident [Ref: ***Motiram Padu Joshi v. State of Maharashtra (2018) 9 SCC 429***; ***Neeharika Infrastructure (P) Ltd. v. State of Maharashtra (2020) 10 SCC 118***;

*Amish Devgan v. Union of India, 2020 SCC OnLine SC 994]*

12. Further, the reliance placed on Call Detail Records and the presumption regarding the accused persons not being at the spot also could not have become the basis of discharge of the accused(s) since it will only emerge at the time of trial as to whether the accused persons were, in fact, in possession of their mobile phones or not at the time of commission of alleged offence. It is also noted from the impugned order that the Call Detail Records reveal that the location of accused Mohd. Hazruddin Babar was rather near or at the spot itself, however, no distinct finding has been given regarding him and he too has been discharged from commission of offence in question. If this would become a criteria to discharge an accused, a person while committing an offence may keep his mobile phone elsewhere and claim discharge on such a ground.

13. The contention of the learned counsel for the respondents that the previous enmity between the parties lay at the heart of lodging of the present FIR also could not have been looked into at the stage of considering as to whether prima facie charge was made out against the accused persons or not, since it is a matter of trial as to whether the statements and the complaint against the present accused(s) were motivated or not. The same cannot be decided at the stage of framing of charge.

14. The contention of the learned counsel for respondents that the material on record does not even reveal grave suspicion regarding commission of offence and it is improbable that this offence could have been committed also has no force, since the statements of the

witnesses on record reveal that there was grave suspicion regarding commission of offence and there is a distinction between grave suspicion regarding commission of offence and whether case will end into conviction. As per law, it is not to be seen as to whether the case will end into conviction or not but a prima facie view and arrays suspicion that the offence could have taken place will suffice to frame charge against an accused.

15. The observation of the learned Trial Court that perusal of the MLC and statements of witnesses reveal that the injuries could have been self inflicted is also erroneous in law since the Court concerned, on its own, could not have reached the conclusion that the injuries were self-inflicted, without recording testimony of the doctor concerned without trial.

16. Furthermore, the learned Trial Court has even gone ahead to hold that it is apparent that the complainant has created plan to falsely implicate the accused persons. All these findings have been given by the learned Trial Court at the stage of framing of charge, which in the opinion of this Court, are untenable in law.

17. Considering the aforesaid, the impugned order dated 18.09.2017 passed by learned ASJ-01, Special Judge (POCSO) Shahdara District, Karkardooma Courts, Delhi in case FIR No.252/2014 registered at Police Station M.S. Park, Delhi, is set aside. The matter is remanded back to the learned Trial Court for passing order on charge afresh, after hearing the parties, in accordance with law.

18. Accordingly, the present petition is allowed in above terms.

19. A copy of this order be forwarded by the Registry to the

concerned Trial Court for information and compliance.

20. The judgment be uploaded on the website forthwith.

**SWARANA KANTA SHARMA, J**

**FEBRUARY 2, 2023/ns**

