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

% *Date of decision: November 28, 2023*

+ CRL.REV.P. 193/2017

STATE

..... Petitioner

Through: Mr. Utkarsh, APP for the State with
SI Seema P.S. Najafgarh

versus

SUNIL

..... Respondent

Through: Mr. Om Prakash Dalal, Advocate

CORAM:

HON'BLE DR. JUSTICE SUDHIR KUMAR JAIN

JUDGMENT (oral)

1. The present revision petition is filed under section 397 read with section 401 and 482 Cr.P.C. to impugn the order dated 07.11.2016 passed by the court of Sh. Praveen Kumar, ASJ-SFTC, Dwarka Courts, New Delhi in FIR case bearing no.0378/2014 registered under sections 328/376D IPC at P.S. Najafgarh titled as **Sunil V State**.

2. The respondent was put to trial after the conclusion of the investigation for the offences punishable under sections 328/376D IPC arising out of the FIR bearing no.0378/2014 registered at P.S Najafgarh for the offences punishable under sections 328/376D IPC. The court of Sh.



Praveen Kumar, ASJ-SFTC, Dwarka Courts, New Delhi vide order dated 07.11.2016 has discharged the respondent for the offences punishable under sections 328/376D IPC.

3. The perusal of the impugned order dated 07.11.2016 relates to section 328 IPC which reflects that the trial court has observed that there was no evidence that the victim was administered any stupefying intoxicating or unwholesome drug or other thing which is imperative for commission of offence section 328 IPC. It was also observed that the prosecutrix stated that she had become unconscious after consuming 'Frooti' and which in the opinion of the trial court cannot be taken as stupefying intoxicating or unwholesome drug within the mandate of section 328 IPC. The trial court in respect of the offence punishable under section 376D IPC opined that the prosecutrix made the relationship with the respondent out of her own consent which is also reflecting from the statement under section 164 Cr.P.C.

4. The relevant portion of the impugned order dated 07.11.2016 reads as under :-

7. The essential ingredient of Section 328 IPC is that the victim should be administered poison or any stupefying intoxicating or unwholesome drug or other thing. The forensic examination of the stomach wash in order to determine that the substance that administered was poison is, therefore, imperative for ascertaining



the commission of the offence punishable u/s 328 IPC. Admittedly, no stomach wash of the prosecutrix was taken for forensic examination in the present case. The averment made by the prosecutrix that she became unconscious after having beverage- 'Frooti' cannot be said to be final to reach to the conclusion that the beverage administered was either poison or any stupefying intoxicating or unwholesome drug. For taking this view I am supported with the judgment - Sanjay Singh v. State, Crl. Appeal No.636/2005 decided on 23.4.2008 by the High Court of Delhi speaking through Hon'ble Mr. Justice S. Murlidhar. As there is no medical evidence on record that the substance administered was either poison or stupefying intoxicating or unwholesome drug, no prima facie case u/s 328IPC can be said to be made out against the accused.

8. After the charge-sheet was filed, on 19.1.2016 IO appeared before Ld. CMM and submitted that Sanjeev and accused Sunil are one and the same person. It was further submitted by the IO that the prosecutrix is not traceable. The prosecutrix has not supported the prosecution in her statements u/s 164 Cr.PC and u/s 161 Cr.PC (dated 4.5.2014) and has categorically stated that her relations with accused were consensual. There is nothing on record that the statement of prosecutrix u/s 164 Cr.PC was not correctly recorded.

9. It is the settled law that order framing the charges does substantially affect the persons and the Court must not automatically frame the charge merely because the prosecution authorities, by relying on the documents referred to in Section 173 Cr.PC, consider it proper to institute the case.

10. After examining the documentary as well as oral evidence which the prosecution proposes to adduce to prove the guilt of the accused, even if fully accepted, before it is challenged by cross examination or rebutted by defence evidence, if any, is not showing that accused committed the alleged offences for which he is being prosecuted.

11. Considering the facts and circumstances of this case, after sifting and weighing the evidence for the limited purpose of finding out whether or not a prima facie case is made out against the accused, I am of the opinion that the materials placed before



the Court do not disclose the grave suspicion against the accused for framing a charge against him for committing offences punishable under Sections 328/376D IPC. Accordingly, accused in the present case is discharged. His personal bond is cancelled and surety is discharged. In terms of Section 437(A) Cr.P.C., accused is directed to furnish personal bond in the sum of Rs.25.000/- with one surety in the like amount for a period of six months for his appearance before the High Court of Delhi in the event the prosecution wishes to challenge the present order by filing the appropriate petition in the High Court. Ahlmad is directed to page and bookmark the file so as to enable the digitisation of the entire record. File be consigned to Record Room.

5. The Additional Public Prosecutor for the petitioner/State stated that although prosecutrix has not supported the case of the prosecution in statement under section 164 Cr.P.C but the perusal of the entire charge-sheet and annexed documents reflects that there is incriminating evidence against the respondent for his implication for the offences punishable under sections 328/376D IPC. During the course of the arguments he also referred the FSL report.

6. The Chapter XVIII of the Cr.P.C. deals with trial before a Court of Session. Section 227 deals with situation when the accused shall be discharged. Section 228 deals with framing of charge. Sections 227 and 228 of Cr.P.C. of reads 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, 3 [or any other Judicial Magistrate of the first class and direct the accused to appear before the Chief Judicial Magistrate, or, as the case may be, the Judicial Magistrate of the first class, on such date as he deems fit, and thereupon such 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 subsection (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.

7. The purpose of framing a charge is to intimate the accused about the clear, unambiguous and precise nature of accusation that the accused is called upon to meet in the course of a trial as observed in **V.C. Shukla V State through C.B.I.**, 1980 Supp SCC 92. The prosecution is required to establish a prima facie before a charge can be framed. The Supreme Court in **Union of India V Prafulla Kumar Samal & another**, (1979) 3 SCC 4 considered scope of inquiry at the stage of framing of charge as per section 227 of the Code in Sessions criminal trial and observed as under:-

(1) That the Judge while considering the question of framing the charges under section 227 of the Code 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.

(2) 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.

(3) The test to determine a prima facie case would naturally depend upon the facts of each case and it is difficult to lay down a rule of universal application. By and large however if two views are equally possible and the Judge is satisfied that the evidence produced before him while giving rise to some suspicion but not grave suspicion against the accused, he will be fully within his right to discharge the accused.

(4) That in exercising his jurisdiction under section 227 of the Code the Judge which under the present Code is a senior and experienced Judge cannot act merely as a Post office or a mouth-piece 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 appearing in the case and so on. This however does not mean that the Judge should make a roving enquiry into the pros and cons of the matter and weigh the evidence as if he was conducting a trial.

8. The Supreme Court in **Onkar Nath Mishra & others V State (NCT of Delhi) & another**, Appeal (Crl.)1716 of 2007 decided on 14th December, 2007 regarding framing of charge observed as under:-

It is trite that at the stage of framing of charge the court is required to evaluate the material and documents on record with a view to finding out if the facts emerging therefrom, taken at their face value, disclosed the existence of all the ingredients constituting the alleged offence. At that stage, the court is not expected to go deep into the probative value of the material on record. What needs to be considered is whether there is a ground for presuming that the offence has been committed and not a



ground for convicting the accused has been made out. At that stage, even strong suspicion founded on material which leads the court to form a presumptive opinion as to the existence of the factual ingredients constituting the offence alleged would justify the framing of charge against the accused in respect of the commission of that offence.

9. The Supreme Court in **Sajjan Kumar V CBI** (2010) 9 SCC 368 has provided guidelines relating to the scope of sections 227 and 228 Cr.P.C which reads 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 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.

9.1 The Supreme Court in **Dipakbhai Jagdish Chandra Patel V State of Gujarat**, (2019) 16 SCC 547 discussed law relating to the framing of charge and discharge and observed as under:-

15. We may profitably, in this regard, refer to the judgment of this Court in **State of Bihar v. Ramesh Singh** wherein this Court has laid down the principles relating to framing of charge and discharge as follows:

4.....Reading Sections 227 and 228 together in juxtaposition, as they have got to be, it would be clear that at the beginning and initial stage of the trial the truth, veracity and effect of the evidence which the prosecutor proposes to adduce are not to be meticulously judged. Nor is any weight to be attached to the probable defence of the accused. It is not obligatory for the Judge at that stage of the trial to consider in any detail and weigh in a sensitive balance whether the facts, if proved, would be incompatible with the innocence of the accused or not. The standard of test and judgment which is to be finally applied before recording a finding regarding the guilt or otherwise of the accused is not exactly to be applied at the stage of deciding the matter



under Section 227 or Section 228 of the Code. At that stage the Court is not to see whether there is sufficient ground for conviction of the accused or whether the trial is sure to end in his conviction. Strong suspicion against the accused, if the matter remains in the region of suspicion, cannot take the place of proof of his guilt at the conclusion of the trial. But at the initial stage if there is a strong suspicion which leads the Court to think that there is ground for presuming that the accused has committed an offence then it is not open to the Court to say that there is no sufficient ground for proceeding against the accused. The presumption of the guilt of the accused which is to be drawn at the initial stage is not in the sense of the law governing the trial of criminal cases in France where the accused is presumed to be guilty unless the contrary is proved. But it is only for the purpose of deciding *prima facie* whether the court should proceed with the trial or not. If the evidence which the prosecutor proposes to adduce to prove the guilt of the accused even if fully accepted before it is challenged in cross examination or rebutted by the defence evidence, if any, cannot show that the accused committed the offence, then there will be no sufficient ground for proceeding with the trial....

If the scales of pan as to the guilt or innocence of the accused are something like even at the conclusion of the trial, then, on the theory of benefit of doubt the case is to end in his acquittal. But if, on the other hand, it is so at the initial stage of making an order under Section 227 or Section 228, then in such a situation ordinarily and generally the order which will have to be made will be one under Section 228 and not under Section 227.

23. At the stage of framing the charge in accordance with the principles which have been laid down by this Court, what the Court is expected to do is, it does not act as a mere post office. The Court must indeed sift the material before it. The material to be sifted would be the material which is produced and relied upon by the prosecution. The sifting is not to be meticulous in the sense that the Court dons the mantle of the Trial Judge hearing arguments after the entire evidence has been adduced after a full-fledged trial and the question is not whether the prosecution has made out the case for the conviction of the accused. All that is



required is, the Court must be satisfied that with the materials available, a case is made out for the accused to stand trial. A strong suspicion suffices. However, a strong suspicion must be founded on some material. The material must be such as can be translated into evidence at the stage of trial. The strong suspicion cannot be the pure subjective satisfaction based on the moral notions of the Judge that here is a case where it is possible that accused has committed the offence. Strong suspicion must be the suspicion which is premised on some material which commends itself to the court as sufficient to entertain the prima facie view that the accused has committed the offence.

9.2 The Supreme Court in **Asim Shariff V National Investigation Agency**, (2019) 7 SCC 148 expressed that the trial court is not expected or supposed to hold a mini trial for the purpose of marshalling the evidence on record. The Supreme Court in **State of Karnataka V M.R. Hiremath**, (2019) 7 SCC 515 held that it is a settled principle of law that at the stage of considering an application for discharge the court must proceed on the assumption that the material which has been brought on the record by the prosecution is true and evaluate the material in order to determine whether the facts emerging from the material, taken on its face value, disclose the existence of the ingredients necessary to constitute the offence. The Supreme Court in **Ghulam Hassan Beigh V Mohammad Maqbool Magrey & Others**, Criminal Appeal No. 001041 of 2022 (Arising Out of S.L.P. (Criminal) no 4599 OF 2021) decided on 26th July, 2022 observed as



under:-

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. The coordinate bench of this court in *Mohsin Khan V State (NCT of Delhi)* 2017 SCC Online Del 9315 held that It is settled law that at the time of framing of charge the court is not required to make a roving enquiry into the pros and cons of the matter and weigh evidence as if it is conducting a trial. It is also well settled that 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 charge.



11. Another Co-ordinate bench of this court in judgment titled as **State V Mohd. Javed Nasir & Others**. 2022 SCC Online Del 3974 discussed that the courts during the stage of framing of charge are bound to frame charges where there is a prima facie case to show commission of the offence.

12. It is established on the basis of judgments/decisions delivered by the superior court, the court needs to apply its judicial mind on the material collected during the investigation and recorded before it. The court at the stage of framing charges should frame charge where there is a prima facie case to show that an offence has been committed.

13. The perusal of statements under sections 161 and 164 Cr.P.C reflects that the prosecutrix in her statement under section 161 Cr.P.C has made allegations against the respondent that she was administered a drink “Frooti”, which she after consuming became unconscious and thereafter the respondent forcefully made relationship with her . However the prosecutrix in her statement under section 164 Cr.P.C stated that she had friendly relations with the respondent and her relationship with the respondent was consensual.

14. The prosecutrix has not supported the case of the prosecution as is



reflecting from the statement recorded under section 164 Cr.P.C wherein she stated that her relationship with the respondent was consensual. The trial court has rightly observed that the offences punishable under sections 328/376D IPC are not made out. The impugned order dated 07.11.2016 does not call for any interference. Hence, the present petition is dismissed.

DR. SUDHIR KUMAR JAIN, J

NOVEMBER 28, 2023/j/sd