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IN THE HIGH COURT OF DELHI AT NEW DELHI

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Reserved on 03.08.2023***Pronounced on 16.08.2023***

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CRL.REV.P. 470/2018

STATE OF NCT DELHI

..... Petitioner

Through: Appearance not given.

versus

LAXMI NARAYAN @ LALLA & ORS Respondents

Through: Mr. Manoj Pant, APP for the State
 Insp. Bijender, PS Vijay Vihar
 Ms. Arpita & Mr. Ashish Sharma, Advocates for R- 1 to 6.

CORAM:**HON'BLE MS. JUSTICE SWARANA KANTA SHARMA****JUDGEMENT****SWARANA KANTA SHARMA, J.**

1. The instant revision petition has been filed on behalf of the petitioner under Sections 397/401 read with 482 of the Code of Criminal Procedure, 1973 ('Cr.P.C.') assailing the order on charge dated 24.02.2018 passed by learned ASJ/Special Court POCSO, North West District, Rohini Court, New Delhi, arising out of FIR bearing no. 595/2016 registered at Police Station Vijay Vihar, North West District, Rohini Court, Delhi for offences punishable under

CRL.REV.P.470/2018



Sections 376(n)/341/506/323/363/120B of Indian Penal Code, 1860 ('IPC') and Sections 4/17 of Protection of Children from Sexual Offences Act, 2012 ('POCSO').

2. Brief facts of the case are that respondent no.1 had kidnapped prosecutrix near Budh Vihar, Delhi and had forcibly established physical relations with her several times during the course of time in the year 2015 and had taken her to the house of respondent no. 4 in Dehgawan Village, Badayun, Uttar Pradesh and had kept prosecutrix locked in a room for 6 months and had thereafter locked herein the house of respondent no. 3 in Budh Vihar Phase-II. Further, again after 3 months, respondent no. 1 had brought prosecutrix to his own house in Budh Vihar Phase-II. Thereafter, prosecutrix had returned to her house on 09.05.2016, however, respondent no. 1 continued to visit prosecutrix and had again forcibly established physical relations with her. Further, the brother of prosecutrix had refused to send her with respondent no. 1, whereafter, respondent no. 1 had shot at the brother of prosecutrix on 03.06.2016, against which, a separate FIR bearing No. 443/16 was registered under Sections 307/34 of IPC read with Section 27 Arms Act, 1959 and a chargesheet was filed. Accordingly, the present FIR dated 29.07.2016 was registered and respondent no. 1 was arrested on 31.08.2016 on the complaint of prosecutrix.

3. Learned APP for State has stated that MLC was conducted on 29.07.2019. It is also stated that the learned Trial Court had recorded statement of prosecutrix on 01.08.2016 and of other witnesses on 28.11.2016, wherein the prosecutrix revealed that respondent no. 1



had impregnated her and respondent no. 1 along with respondent no. 2 who was his mother had aborted the fetus and there was another girl being held captive along with prosecutrix in the house of respondent no. 1.

4. *Per contra*, learned counsel for respondents states that there are no specific roles assigned relating to the involvement and conduct of respondent nos. 3 and 4 who are the sisters of respondent no.1. It is also stated that respondent no. 2 has unfortunately passed away on 20.06.2018.

5. I have heard arguments addressed on behalf of both and perused material on record.

6. As regards the settled law on exercise of powers under Section 397 of Cr.P.C. in a case challenging an order on charge, it will be relevant to take note of the observations of Hon'ble Apex Court in case of **Manender Tiwari v. Amit Kumar Tiwari** 2022 22 SCC OnLine SC 1057, whereby it has been held as under:

"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."

7. In the present case, this court notes that prosecutrix had levelled specific allegations against respondent no.1 that he had kidnapped prosecutrix and had repeatedly raped her throughout the year 2015 by keeping her locked in the house of respondent nos. 3 and 4 for a significant period of time. The respondent no. 1 had also shot at the brother of prosecutrix after he had objected to demand of respondent no.1 for taking prosecutrix with him and a separate FIR was registered and chargesheet was also filed for the same. The present FIR was registered, and MLC was conducted wherein it was revealed that last forcible physical relation was established 3 months back. The learned Trial Court had recorded statement of prosecutrix on 01.08.2016 and of other witnesses on 28.11.2016, wherein the prosecutrix had revealed that respondent no. 1 had impregnated her and respondent no. 1 along with respondent no. 2 who is the mother of respondent no. 1 had aborted the fetus. As per statement of the prosecutrix recorded under Section 164 Cr.P.C. dated 01.08.2016, it was revealed that there was another girl who was being held captive along with prosecutrix however, there is no further information provided regarding the same. The Respondent no. 1 was arrested on 31.08.2016 the complaint of the prosecutrix. In view thereof, the



learned Trial Court had rightly framed charges against respondent no. 1 under Sections 323/341/363/365/506 of IPC and Section 6 POCSO and against respondent no. 5 under Sections 376(2) of IPC and Section 6 POCSO *vide* order dated 24.02.2018 and had rightly discharged respondent nos. 3 and 4 due to lack of details in assigning specific roles to them on behalf of the prosecutrix. In case any fresh specific evidence emerges on record against them, the learned Trial Court will proceed as per law at that stage of trial. The victim was a minor at the time of incident who was being raped repeatedly and was being held captive against her will by respondent nos. 1 and 5. There are specific allegations of aborting the fetus of prosecutrix and beating her, against respondent no. 2 who was the mother of respondent no. 1, however, she has passed away on 20.06.2018. There is no gainsaying that prosecutrix has gone through a traumatic and unfortunate series of events.

8. It is a settled law that at the stage of framing of charge, it is only to be seen whether a prima facie case exists on the basis of the material on record. In the present case, the prosecutrix has levelled specific defence against respondent nos. 1 and 5 for the offences for which the respondent nos. 1 and 5 have been charged with. As far as the contentions raised on behalf of petitioner are concerned the same are all probable allegations which can be raised and adjudicated upon as per law during the course of trial.

9. Thus, in the aforesaid facts and circumstances, this Court finds no reasons to interfere with the impugned order framing charges only



against respondent nos. 1 and 5 and simultaneously discharging respondent nos. 3 and 4.

10. Accordingly, the present petition stands dismissed.

11. It is, however, clarified that the observations made by this Court are only for the purpose of deciding the present petition and the same shall not have any bearing on the merits of the case during the trial.

12. The judgment be uploaded on the website forthwith.

SWARANA KANTA SHARMA, J

AUGUST 16, 2023/dk



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