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

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Reserved on: 22.03.2023
Pronounced on: 05.04.2023

+ **CRL.REV.P. 674/2018**

STATE

.....Petitioner

Through: Mr. Naresh Chahar, APP for
State with SI Hawa Singh and
ASI Manita, PS Mangolpuri

versus

ASHOK KUMAR VERMA

.....Respondent

Through: Mr. Bharat Singh, Advocate

CORAM:

HON'BLE MS. JUSTICE SWARANA KANTA SHARMA

JUDGMENT

SWARANA KANTA SHARMA, J.

1. The State, by way of present revision petition filed under Section 397/482 of Code of Criminal Procedure, 1973 ('Cr.P.C.'), assails the order dated 23.05.2018 passed by learned Additional Sessions Judge-01, Special Court-POCSO, North-West, Rohini, Delhi ('learned ASJ') in case FIR bearing no. 1125/2016, registered at Police Station Mangolpuri for offences punishable under Section 354 of Indian Penal Code, 1860 ('IPC') and Section 10 of Prevention of Children from Sexual Offences Act, 2012 ('POCSO Act'), whereby the respondent/accused was discharged of commission of aforesaid offences.

2. The facts of the case, as unfolded from the charge sheet, are that on 17.12.2016, at about 9.15 AM, upon receipt of information, the concerned police officer had reached Govt. Co-ed. Senior Secondary School, Sultan Pur Mazra, Delhi, where complainant, aged around 15 years, her parents and her family members were present. The case of prosecution is that upon enquiry, the complainant stated that on 16.12.2016, her class teacher had caught hold of her hands after she had refused to give her mobile number and had told her "I like you" and had also put his hand under her waist and neck and thereafter, had pushed her towards the wall. Considering the nature of allegations, the complainant was counseled through an NGO. She had thereafter given a handwritten complaint, on the basis of which present FIR was lodged on 17.12.2016. In the handwritten complaint, the complainant had stated that on 16.12.2016, she had gone to the examination room of her school to meet and to inform her class teacher i.e. respondent herein, that she did not wish to be the monitor of the class. It was alleged that the accused had insisted that she be the monitor and had caught hold of her hand. It was further alleged that the accused had asked the complainant for her mobile number and upon refusal, he had kept his hand on her waist and neck, due to which complainant had become scared. The complainant had also stated that she had disclosed the entire incident to her mother, subsequent to which her parents had come to the school and had spoken to the principal, and in the meanwhile, someone had called the police.

3. During investigation, the complainant was medically examined at SGM Hospital, Mangolpuri *vide* MLC No. 23339/16 where she had

refused to undergo internal examination. On 17.12.2016, the statement of complainant under Section 164 Cr.P.C. was also recorded before learned Metropolitan Magistrate.

4. The learned ASJ, *vide* impugned order dated 23.05.2018, discharged the accused for commission of offence punishable under Section 354 IPC and Section 10 of POSCO Act, with the following observations:

“ 7. ...The victim in her hand written complaint had stated that on 16.12.2016, she went to the accused for telling that she does not want to be monitor, but the accused insisted for that and caught her hand. This fact in itself does not constitute any offence as a teacher can caught hold of a student by his or her hand and merely by that act, no sexual intention is made out. The victim, however, further clarified that accused asked for her mobile number, which she refused and he touched her neck and back due to which she got scared. In her statement u/s 164 Cr.P.C, she did not mention these facts at all. There, she simply stated that she went to the accused being a class monitor to complaint about other students and the accused patted on her shoulder and said it does not matter, he will talk to those students. This act of a teacher of patting a shoulder of a student, to encourage that student to remain monitor of the class by no means and by no stretch of imagination can be said to be an act done with sexual intent. A teacher can always encourage the student by patting the shoulder of the student. No offence is made out against the accused, if the statement u/s 164 Cr.P.C is read either in pieces or as a whole.

11. In the present case, statement of victim given to the Ld. M.M. u/s 164 Cr.P.C, does not disclose commission of any offence even prima facie.

12. From the material on record, no strong suspicion against accused having committed any sexual assault upon the victim, is made out. Accordingly, accused Ashok Kumar Verma is discharged...”

5. Aggrieved by the aforesaid, the State has preferred the present petition on the ground that the learned ASJ has failed to appreciate that a prima facie case was made out against the accused/respondent from bare perusal of the FIR and statement of complainant under Section 161 Cr.P.C., and that the accused has been erroneously discharged by completely relying on the statement of the complainant recorded under Section 164 Cr.P.C. Learned APP for the State also argues that the learned Trial Court has failed to appreciate that the handwritten complaint given by the complainant, wherein it was categorically stated by her that the accused had caught hold of her hand and thereafter had touched her neck and back. It is stated that learned ASJ did not take the supplementary statement of the complainant into consideration, wherein she had clarified that she was unable to give proper statement before the learned Magistrate due to nervousness. It is also stated that contradiction among the statements, if any, is a matter of trial and cannot be looked into at the stage of framing of charge.

6. On the other hand, learned counsel for the accused/respondent argues that the impugned order suffers from no illegality, and learned ASJ had rightly discharged the accused/respondent by taking note of the statement of complainant under Section 164 Cr.P.C., whereby she had completely exonerated the respondent. It is stated that there is no allegation in the FIR that the accused/respondent committed any act of sexual harassment or did any act with sexual intent. It is also stated that charges cannot be framed against the accused on the basis of vague statement recorded under Section 161 Cr.P.C., when no prima facie case or grave suspicion is made out. It is also argued that the contention of

petitioner/State that the complainant had clarified in her supplementary statement under Section 161 Cr.P.C. that she could not give proper statement before learned Magistrate due to nervousness is completely false and no such averment was made by the complainant in her supplementary statement.

7. The arguments addressed on behalf of both the sides have been heard and the impugned order and case file has been perused by this Court.

8. The complainant's statement under Section 164 Cr.P.C. was recorded on 17.12.2016, i.e. on the same day of registration of present FIR, whereby she had given a different account of the incident in question. In her statement, the complainant stated that she was class monitor of her class and on 16.12.2016, she had gone to the accused to complaint against the children, on which, the accused had patted on her shoulder and had told her that she should not worry and that he would talk to the students. She further stated that on that day, in the evening, she had told her mother that she did not want to be the monitor of the class and thereafter, on 17.12.2016, in the morning, she and her mother had gone to the school to talk to the accused, so that he would remove her from the post of class monitor. It was further stated that at school, her mother had called her father, and her father had reached the school alongwith some of his friends, after which she was sent to the class room. She further stated that after some time, she had come to know that police had been called at the spot.

9. This Court has also perused the MLC of the complainant, placed on record by the respondent. The MLC records as under:

"...H/o given by xxx (Victim Herself);

A/H/O - Teacher has touched the victim on the shoulder yesterday in school.

- Someone has called on 100 for complain.

- Victim does not give any other H/o of physical or sexual assault.

- Mother has come along with victim..."

"...Alleged h/o attempt of molestation by her teacher in her school yesterday as told by B/B & self..."

10. Under such circumstances, this Court also deems it apposite to take note of the offences under Section 354 of IPC and Section 10 of POCSO Act, which have been respectively reproduced as under:

"354. Assault or criminal force to woman with intent to outrage her modesty.—Whoever assaults or uses criminal force to any woman, intending to outrage or knowing it to be likely that he will thereby outrage her modesty, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both."

"10. Punishment for aggravated sexual assault.—Whoever, commits aggravated sexual assault shall be punished with imprisonment of either description for a term which shall not be less than five years but which may extend to seven years, and shall also be liable to fine."

11. The complainant in her medical examination conducted on 17.12.2016 at 12:16 PM had stated that the accused that 'touched her on the shoulder'. Further, in her statement under Section 164 Cr.P.C. on 17.12.2016 also, she had stated that when she had gone to the accused to complain about students and tell him that she did not wish to continue as class monitor, the accused had patted on her shoulder and had told her that he would talk to the students. During preparation of the MLC as well as in her statement under Section 164 Cr.P.C., the complainant has

only averred that accused had patted on her shoulder. In such circumstances, this Court is unable to agree with the arguments of learned APP for the State that accused could not have been discharged in the present case since allegations were levelled against him by the complainant in the initial complaint which culminated into the present FIR. There is no allegation of use of criminal force or assault with intent to outrage her modesty.

12. As far as contention of petitioner/State that complainant was unable to give proper statement before learned Magistrate due to nervousness is concerned, this Court takes note of a supplementary statement of complainant recorded under Section 161 Cr.P.C. on 17.12.2016 itself which has been placed on record by the learned counsel for respondent and not by the State though they want to rely on the same. In the said supplementary statement, the complainant has merely stated that she agrees with her previous statement and that her MLC was conducted and that she did not want to get her internal medical examination conducted on that day, after which her statement was also recorded before the Court. She has nowhere stated that she was unable to state correct or complete facts before the learned Magistrate due to nervousness. The State has also not placed on record any such statement and reference to such a statement has also not been made in the chargesheet, and thus, the contention in this regard is bereft of any merit.

13. The law on framing of charge and discharge under Section 227 and 228 of Cr.P.C. has been elaborately discussed by the Hon'ble Apex Court in catena of judgments. It is a settled law that at the stage of

charge, it is necessary for the Court to look into the facts and circumstances of the case and the Court is bound to duly consider the material placed on record. The Court is required from the material so placed to reach a conclusion as to whether the essential ingredients of the alleged offence are prima facie made out or not. Though a mini-trial or a roving inquiry into the pros and cons of the case is not permitted at this stage, the Court is also not supposed to act merely as a postman of the prosecution and there must be strong suspicion against the accused [See *Sajjan Kumar v. C.B.I.* (2010) 9 SCC 368; *Amit Kapoor v. Ramesh Chander* (2012) 9 SC 460; *Asim Shariff v. National Investigation Agency* (2019) 7 SCC 148; and *Dipakbhai Jagdishchandra Patel v. State of Gujarat* (2019) 16 SCC 547].

14. In the present case, this Court is of the view that the material placed on record does not make out any offence, even prima facie to frame charge against the accused. In the statement recorded under Section 164 Cr.P.C. before the learned Magistrate, the complainant did not give account of any incident of sexual assault against the respondent. There is no reason to disbelieve her statement given before the learned Magistrate which has been certified to be voluntarily made is false.

15. In the given facts and circumstances of the case, the reliance placed by learned ASJ on the decision of this Court in *State v. Dr. Giriraj Singh* 2017 SCC OnLine Del 6672 and in *Shyam Kumar v. State (NCT of Delhi)* 2017 SCC OnLine Del 7349, does not seem to be misplaced as contended by the State. There is no denying the fact that some contradictions between the statements under Section 161 and 164

Cr.P.C. are a matter of trial and cannot be a sole ground for discharge if the other material on record discloses prima facie case against an accused. However, considering the statement of the complainant recorded under Section 164 Cr.P.C. as well as her MLC, no grave and strong suspicion arises against the accused/respondent to frame charge under Section 354 of IPC against him as the allegations is of patting on her shoulder to assure her that she will not be made monitor of the class.

16. Thus, in view of the foregoing discussion, this Court finds no reasons to interfere with the impugned order.

17. Accordingly, the present petition stands dismissed.

18. The judgment be uploaded on the website forthwith.

SWARANA KANTA SHARMA, J

APRIL 05, 2023/zp

