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

% ***Date of decision: August 17, 2023***

+ **CRL.REV.P. 372/2017&CRL.M.A. 8478/2017**

STATE GNCT OF DELHI

..... Petitioner

Through: Mr. Utkarsh, APP for the State
with SI Varun, PS GK-I.

versus

DEEPAK MALHOTRA AND ANR

..... Respondents

Through: Mr. N. P Nehra, Advocate for
R-1.
Mr. Harish Kumar Gupta,
Advocate for R-2.

CORAM:

HON'BLE DR. JUSTICE SUDHIR KUMAR JAIN

J U D G M E N T (oral)

1. The present Revision Petition is filed under section 397(1) Cr.P.C against the order dated 12.02.2016 passed by the Court of Shri Sanjiv Jain, Additional Sessions Judge, Fast Track Court, South-East District, Saket Courts, New Delhi in FIR bearing no. 0482/2015 at PS Greater Kailash for the offence punishable under sections 376/384 IPC.

2. The present FIR bearing no. 0482/2015 was got registered on the basis of complaint made by the complainant "P" on the allegations as mentioned in the FIR bearing no. 0482/2015 at PS Greater Kailash under sections 376/384 IPC. After conclusion of investigation, charge sheet was filed wherein the respondent no.1 was charged for the offences punishable under sections 376/384 IPC and the respondent



no. 2 was charged for the offence punishable under section 384 IPC.

3. The Court of Shri Sanjiv Jain, Additional Sessions Judge, Fast Track Court, South-East District, Saket Courts, New Delhi vide order dated 12.02.2016 ordered for framing of the charges under sections 376 and 417/376 IPC against the respondent no. 1. The respondents were ordered to be discharged for the offence punishable under section 384 IPC. The order dated 12.02.2016 reads as under:-

On 12.10.2015, the prosecutrix gave a complaint alleging therein that she runs spa parlour at East of Kailash. On 30.06.2015, she met the accused Deepak Malhotra and Satyabhan Singh in a gym near her parlour. She and Deepak Malhotra came close. On 11.07.2015, they stayed in Allure Hotel where the accused forcibly committed sexual intercourse with her. He thereafter promised to marry her. She came to know that accused is already married. He then promised to take divorce from his wife. She paid Rs.25,000/- cash to the accused Satyabhan and Rs.2 lacs each on two occasions to Satyabhan to pay to Deepak Malhotra. Satyabhan also took Rs.50,000/- from her for a function of his son. She alleged that thereafter the accused persons started blackmailing her that they have prepared her video.

During investigation, no video was recovered from the possession or at the instance of the accused persons. From the complaint and the documents, it cannot be inferred that the said money was taken by Satyabhan after blackmailing the prosecutrix. The dispute between the prosecutrix and accused Satyabhan appears to be of civil nature. It has been given a colour of criminal case against the accused Satyabhan. Prima facie no case is made out against accused Satyabhan. He is discharged of the offence. His bail bond be cancelled. His surety be discharged. He is, however, directed to furnish bail bond in the sum of Rs. 20,000/- in compliance of Section 437A IPC.

Prima facie case under section 376 and 417/376 IPC is made out against the accused Deepak Malhotra. Let charge



be framed. Charge framed. Accused pleads not guilty and claims trial.

4. The Additional Public Prosecutor appearing on behalf of the petitioner/State stated that on the basis of material collected during the investigation the offence punishable under section 384 IPC is made out against the respondents and referred to the contents of FIR. The arguments as advanced by the Additional Public Prosecutor are controverted by the respective counsel for the respondents.

5. 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 288 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 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.

6. 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 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 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.

7. 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.

7.1 The Supreme Court **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.

7.2 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).

8. The perusal of the impugned order dated 12.02.2016 reflects that the Trial Court has taken into consideration all the relevant facts and observed that no video was recovered from the possession or at the instance of the respondents. It is also not appearing that the respondent no. 2 had taken money from the complainant after black mailing her. The Trial Court has passed the order dated 12.02.2016 on the basis of material collected during the investigation and does not call for any interference. The impugned order dated 12.02.2016 is well reasoned. There is no merit in the present petition, hence dismissed along with pending applications, if any.

9. The petitioner/State shall be at liberty to file an appropriate application under section 319 Cr.P.C on the basis of the evidence to be led by the prosecution in case any incriminating material for any other offence is made out against the respondents or any of the respondent.

10. The Trial Court Record if summoned in physical form be sent back to the Trial Court.

(DR. SUDHIR KUMAR JAIN)
JUDGE

AUGUST 17, 2023

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