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

% **Date of decision: August 21, 2023**

+ **CRL.REV.P. 722/2017**

STATE

..... Petitioner

Through: Mr. Pradeep Gahalot, APP for
State with SI Seema, P.S. Najaf
Garh.

versus

RAVINDER @ BITTOO

..... Respondent

Through: Mr. N.K. Aggarwal,
Mr. Paramjeet Dabas,
Ms. Sanjana Antil and
Ms. Amanpreet Kaur,
Advocates with respondent in
person.

CORAM:

HON'BLE DR. JUSTICE SUDHIR KUMAR JAIN

J U D G M E N T (oral)

CRL.M.A.32301/2018 (by respondent for calling the TCR)

1. The application stands disposed of being infructuous as the
TCR is already on record.

CRL.REV.P. 722/2017, CRL.M.As. 15897/2017 & 32310/2018

2. The present petition is filed under section 397 read with section
482 Cr.P.C. to impugn the order dated 19.10.2016 passed by the court
of Additional Sessions Judge (SFTC), Dwarka Courts, New Delhi in
FIR bearing no.0256/2016 registered under sections 328/376/506/509



IPC at P.S. Najaf Garh whereby the respondent was ordered to be discharged for the offences punishable under sections 376/328 IPC.

3. FIR bearing no.0256/2016 was got registered on the basis of complaint made by “R” under sections 328/376/506/509 at P.S. Najaf Garh on allegations as stated in the FIR. During the investigation, the statement of the complainant “R” was also recorded under section 164 Cr.P.C. vide proceedings dated 02.06.2016. After completion of investigation, the charge-sheet was filed under sections 328/376/506/509 IPC.

4. The court of Additional Sessions Judge (SFTC), Dwarka Courts, New Delhi vide order dated 19.10.2016, discharged the respondent for the offences punishable under sections 376/328 IPC, primarily by observing that there was a delay of about 05 years in lodging the abovementioned FIR. The trial court was also swayed by the facts that the respondent and the complainant “R” were known and in regular touch with each-other and the respondent was using mobile number which was having the SIM issued in the name of the complainant “R”. The trial court also observed that the Investigating Officer did not make any efforts to recover the alleged obscene



photos/videos from the mobile phone of the respondent. The relevant portion of the order dated 19.10.2016 is reproduced as under:-

12. 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 because of following reasons:

(a) There is delay in lodging the FIR which has not been adequately explained.

(b) In view of the judgment - Sanjay Singh (supra), ingredients of Section 328 IPC are not attracted to the present case.

(c) The evidentiary value of the medical evidence is zero.

(d) No effort was made by the prosecution to recover the alleged obscene photos/video from the mobile phone of the accused.

(e) As per CDRs, accused and prosecutrix were in regular touch with each other.

(f) The accused was using the mobile number, the SIM of which was in the name of the prosecutrix.

13. 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 328/376 IPC. Accordingly, accused in the present case is discharged for the offences u/s 376/328 IPC. Other offences are triable by the Court of Ld.MM. Accused is directed to appear before the Court of concerned Ld.MM, Dwarka Courts, New Delhi on 21.10.2016 who shall proceed further in the matter in accordance with law.



5. The respondent subsequently has compounded with the complainant “R” for the offences punishable under sections 506/509 IPC vide order dated 12.11.2016 passed by Dr. Jagminder Singh, Judge, National Lok Adalat, Delhi.

6. The Additional Public Prosecutor for the petitioner/State argued that the court of Additional Sessions Judge (SFTC), Dwarka Courts, New Delhi while passing order dated 19.10.2016 has not considered the contents of FIR as well as the statement of the complainant “R” recorded under section 164 Cr.P.C., which was the material and vital piece of evidence collected during the investigation. The trial court should have considered the allegations as made by the complainant “R” in FIR as well as in the statement under section 164 Cr.P.C.

7. The counsel for the respondent argued that the order dated 19.10.2016 was passed after considering the relevant material collected during the investigation.

8. 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.

9. 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.

10. 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.

11. 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.

11.1 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.

11.2 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).

12. 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.

13. 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.

14. 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.

15. The perusal of impugned the order dated 19.10.2016 reflects that the respondent was discharged for the offence punishable under section 328 IPC as there was no material to substantiate the offence punishable under section 328 IPC. The portion of the order dated 19.10.2016 dealing with the offence punishable under section 328 IPC is based on strong reasoning and cannot be interfered.

16. However, the concerned trial court while dealing with the offence punishable under section 376 IPC, primarily considered the delay of 05 years in lodging of the FIR. The trial court did not refer the contents of the FIR as well as the statement of the complainant “R” under section 164 Cr.P.C. The trial court should not have ignored the contents of the FIR as well as the statement of the complainant “R” under section 164 Cr.P.C. The order dated 19.10.2016 pertaining to the discharge of the respondent for the offence punishable under section 376 IPC cannot be sustained and is accordingly, set aside.



17. The case is remanded back to the concerned trial court for re-consideration of framing of the charge for the offence punishable under section 376 IPC after giving due consideration to the allegations as made in the FIR as well as the statement of the prosecutrix/complainant "R" under section 164 Cr.P.C and other material collected during the investigation.

18. The respondent is directed to appear before the concerned trial court on 14.09.2023 at 2:30 PM for further directions.

19. The present petition along with pending applications, if any, stands disposed of.

20. Copy of this order be sent to the concerned trial court for information and compliance.

(DR. SUDHIR KUMAR JAIN)
JUDGE

AUGUST 21, 2023

N/SD