



**339 IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

CRR-143-2010

Date of decision: 24.05.2024

MANISHA

...PETITIONER

V/S

KARAMBIR@KARMA@KAMMI AND OTHERS

...RESPONDENTS

CORAM: HON'BLE MR. JUSTICE HARPREET SINGH BRAR

Present: Mr. R.S. Budhwar, Advocate for the petitioner.

Mr. A.S. Virk, Advocate for respondent Nos.1 to 4.

None for respondent Nos.5 and 6.

HARPREET SINGH BRAR J. (ORAL)

1. The instant revision petition is preferred against the order dated 09.09.2009 passed by learned Addl. Sessions Judge, Kurukshetra vide which, the respondents/accused stood discharged.

2. The FIR was lodged on the allegations that on 22.10.2003 at about 5:00 AM, when the complainant was sweeping the floor outside her house, Vidya Devi and Babli (respondent Nos.3 and 4 herein) took her with them on the pretext of some talk. When they reached near the turn of road, Karambir and Dharambir (respondent Nos.1 and 2 herein) were already standing there with a car. All of them (respondent Nos.1 to 4) forcibly put the complainant in car and something was smelled to her by respondent No.1-Karambir and she became unconscious. When she regained consciousness, she found herself in a room at Jalandhar. Respondent Nos.1 and 2 were present there in the room. Respondent No.2-Dharambir threatened her to live with respondent No.1-Karambir, as per his directions and in case, she refuses to do so, they will kill



her. Respondents No.1 and 2 kept the complainant in a room at Jalandhar. After two days, respondent No.2-Dharambir left the place. Respondent No.1-Karambir raped the complainant repeatedly. Whenever, she protested, respondent No.1-Karambir threatened her to kill. In this manner, she was kept confined in a room and was raped by respondent No.1-Karambir time and again against her wishes. Whenever, respondent No.1-Karambir left the room, he used to lock the room from outside and the complainant was not permitted to see any person. Respondent No.1 also got her signatures on some blank papers. He kept her confined in the same room for two months. One day, through a neighbour, she contacted her father and then her father along with police came to Jalandhar and got her released from the custody of respondent No.1. The complainant further stated that when she was confined in the room, respondent No.5 and 6-Surjit and Jasmer Singh respectively also threatened her on the telephone and directed her to act as per the wishes of respondent No.1. She was further threatened with dire consequences if she uttered a single word before the police and she made statement in the Court in favour of respondents under pressure and threats given by them and the said statement was not made by her free will, rather under pressure and threats of the accused. She never went with respondents on her own and was taken forcibly. Hence the complaint.

3. Learned counsel for the petitioner *inter alia* contends that the respondents have kidnapped the petitioner and took her forcibly in a car and thereafter, gave her some intoxicant due to which, she became unconscious. The petitioner was taken to Jalandhar, where, respondent No.1 committed rape upon her repeatedly against her wishes. It is further argued that at the time of framing of charges, the degree of assessment is only to ascertain a *prima facie*



case and the charges can be framed only on the basis of suspicion. The Court is not required to go into the probative value of the evidence and moreover, the accused cannot invoke the provisions of Section 91 Cr.P.C. for producing any other evidence in support of his defence at the stage of framing of charges and probable defence of the accused cannot be looked into. Learned counsel further relies upon judgments passed by the Hon'ble Supreme Court in ***State of Orissa vs. Debendra Nath Padhi, 2005(1) R.C.R. (Criminal) 297*** and the judgment passed by this Court in ***State of Punjab vs. Ravi Bedi and others*** in case bearing Criminal Revision No.370 of 1990 decided on 15.02.2008.

4. Per contra, learned counsel for respondent Nos.1 to 4 submits that in fact, FIR (supra) was registered on the same set of allegations in which, the veracity of the allegations made by the petitioner was examined and the investigating agency has concluded that her allegations are false and she was produced before learned Judicial Magistrate Ist Class, Kurukshetra and her statement was recorded under Section 164 Cr.P.C., where she has clearly stated that she is in love with respondent No.1-Karambir and at the time of alleged offence i.e. on 27.11.2003, she was major and she further stated that she had gone with respondent No.1 with her own free will. Even one affidavit allegedly given by the petitioner was produced at the time of framing of the charges. Learned counsel further submits that it is not a case that the respondents have sought reliance on some fresh evidence, the discharge application filed by the prosecution was already on record and the statement of the petitioner made under Section 164 Cr.P.C. is also on record and there is nothing to suggest that it was not made voluntarily before the learned Judicial Magistrate Ist Class, Kurukshetra. As such, the learned Court below has passed a well-reasoned order and even if the affidavit dated 02.12.2003, is kept away from the



consideration of the trial Court even then it is clearly established on record that petitioner has gone with respondent No.1 with her own consent and she has refused to stay with her parents when she made her statement under Section 164 Cr.P.C. and thereafter, it was proved that under the pressure of her parents, a criminal complaint was filed after the prosecution has sought discharge of the respondents. The learned Addl. Sessions Judge, Kurukshetra has rightly concluded that no *prima facie* case is made out against the respondents.

5. Having heard learned counsel for the parties and after perusing the record of the case with their able assistance, this Court finds no merit in the arguments raised by the petitioner. The present case is squarely covered by the ratio of law laid down by Hon'ble Supreme Court in ***Dilawar Balu Kurane vs. State of Maharashtra, 2002(1) R.C.R.(Criminal) 451***, wherein it has been held that under the Judge is justified to discharge the accused under Section 227 Cr.P.C., the suspicion incited by the material available is not grave in nature.

6. A two Judge Bench of the Hon'ble Supreme Court in ***Union of India vs. Prafulla K Samal (1979) 3 SCC 4*** speaking through Justice S.M. Fazal Ali, has held as under:-

“10. Thus on consideration of the authorities mentioned above, the following principles emerge:

(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.”

7. While dealing with similar controversy, a two Judge Bench of the Hon’ble Supreme Court **Vishnu Kumar Shukla and another Vs. The State of Uttar Pradesh and another** in Criminal Appeal No.3618 of 2023 decided on 28.11.2023, speaking through Justice Ahsanuddin Amanullah, has held as under:-

*“19. In **Rumi Dhar v State of West Bengal, (2009) 6 SCC 364**, this Court held that the Judge concerned with an application under Section 239, CrPC has to ‘... go into the details of the allegations made against each of the accused persons so as to form an opinion as to whether any case at all has been made out or not as a strong suspicion in regard thereto shall subserve the requirements of law.’*

*20. In **State of Tamil Nadu v N Suresh Rajan, (2014) 11 SCC 709**, it was observed notwithstanding the difference in language of Sections 227 and 239, CrPC, the approach of the Court concerned is to be common under both provisions. The principles holding the field under Sections 227 and 228, CrPC are wellsettled, courtesy, inter alia, **State of Bihar v Ramesh Singh, (1977) 4 SCC 39**; **Union of India v Prafulla K Samal, (1979) 3 SCC 4**; **Stree Atyachar Virodhi Parishad v Dilip N Chordia, (1989) 1 SCC 715**; **Niranjan Singh Karam Singh Punjabi v Jitendra B Bijaya, (1990) 4 SCC 76**; **Dilawar B Kurane v State of Maharashtra, (2002) 2 SCC 135**; **Chitresh K Chopra v State (Government of NCT of Delhi), (2009) 16 SCC 605**; **Amit Kapoor v Ramesh Chander, (2012) 9 SCC 460**; **Dinesh Tiwari v State of Uttar Pradesh, (2014) 13 SCC 137**; **Dipakbhai Jagdishchandra Patel v***



*State of Gujarat, (2019) 16 SCC 547; and State (NCT of Delhi) v Shiv Charan Bansal, (2020) 2 SCC 290. We need only refer to some, starting with **Prafulla K Samal (supra)**, where, after considering **Ramesh Singh (supra)**, **K P Raghavan v M H Abbas, AIR 1967 SC 740** and **Almohan Das v State of West Bengal, (1969) 2 SCR 520**, it was laid down as under:*

‘10. Thus, on a consideration of the authorities mentioned above, the following principles emerge:

(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 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 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. (emphasis supplied)

*21. In **Niranjan Singh Karam Singh Punjabi (supra)**, this Court was alive to reality, stating that ‘... it cannot be expected even at the 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.’ If a view gives rise to suspicion, as opposed to grave suspicion, the Court concerned is empowered to discharge the accused, as pointed out in **Sajjan Kumar v Central***

*Bureau of Investigation, (2010) 9 SCC 368. The Court, in **Dinesh Tiwari (supra)** had reasoned that if the Court concerned opines that there is ground to presume the accused has committed an offence, it is competent to frame a charge even if such offence is not mentioned in the Charge Sheet. As to what is ‘strong suspicion’, reference to **Dipakbhai Jagdishchandra Patel (supra)** is warranted, where it was explained that it is ‘... 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.’”*

8. Merely because the prosecution has presented its version couched in verisimilitude, the trial Court is not supposed to act like a postmaster. If the allegations are so absurd and explicitly implausible that no prudent man would entertain any suspicion regarding the commission of the offence, the trial Court must apply its judicial mind and ascertain the existence of factual ingredients breaching the threshold of the alleged offence for the purpose of framing charges. The assessment of the trial Court, in such a scenario, must satisfy the objective standard of reason and prudence. Reliance in this regard can be placed on the judgment rendered by this Court in **Krishan @ Tiwari vs. State of Haryana 2024(1) PLR 406.**
9. In view of the discussion above, the present petition stands dismissed.

May 24, 2024
manisha

(HARPREET SINGH BRAR)
JUDGE

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| (i) | Whether speaking/reasoned | Yes/No |
| (ii) | Whether reportable | Yes/No |