



2024:DHC:6417



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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**% *Date of Decision: 05th August, 2024*+ **CRL.REV.P. 76/2017**

STATE

.....Petitioner

Through: Mr. Naresh Kumar
Chahar, APP for the State
along with Mr. Shriyaan
Gupta, Mr. Mohit, Ms.
Sanya Munjal, Mr.
Sushant Pandey, Mr.
Abhishek Anand & Ms.
Sunitaa Kumari, Adv.
SI Sudhir Dahiya, PS
Aman Vihar.

versus

SHATRUGHAN

.....Respondent

Through:

CORAM:**HON'BLE MR. JUSTICE AMIT MAHAJAN****JUSTICE AMIT MAHAJAN, J. (Oral)**

1. The present petition is filed challenging the order dated 21.07.2016 (hereafter '**the impugned order**') passed by the learned Additional Sessions Judge ('**ASJ**'), Rohini Courts, Delhi in FIR No. 1503/2015, registered at Police Station Aman Vihar, for offences under Sections 363/376 of the Indian Penal Code. 1860 ('**IPC**') and Section 6 of the Protection of Children from Sexual Offences Act, 2012 ('**POCSO**').

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CRL.REV.P. 76/2017**Page 1 of 9**



2024:DHC:6417



2. The learned ASJ, by the impugned order, had discharged the respondent for the offences punishable under Sections 363/376 of the IPC and Section 6 of the POCSO.

3. Briefly stated, it is the case of the prosecution that on 13.10.2015, one 'P' purportedly a minor, had left her parents' house following some animosity and started living at a rented accommodation. Thereafter, after a month she went to Bihar with a friend seeking prospects for marriage, but returned after a few days. It is alleged that upon returning to Delhi on 18.11.2015, she called the respondent - who she alleges to have known since 13.10.2015, as he was occupying the same rented accommodation and accompanied the respondent to the accommodation, where she was allegedly sexually assaulted by the respondent. The call to make a complaint for the same was made by the victim's father on 29.11.2015.

4. Upon conducting the medical examination of the victim, the Doctor *vide* MLC No. 276 mentioned as under :

" Acc. To victim, P, she ran away from her home on 13.10.15 because of problems at home. She was beaten up by her parents. She was staying in a room on rent. Where she met a male (Shatrughan) because friends with him. On around 18.1.15 she shifted with him & had sexually intercourse with him (Shatrughan) on her will."

5. On 01.12.2015, the victim's statement was recorded under section 164 of the CrPC before the learned Metropolitan Magistrate wherein she stated that she has not been sexually assaulted by the respondent and there is no sexual relationship between the victim and respondent. She further stated that the respondent is her boyfriend.

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17:53:49



2024:DHC:6417



6. After the completion of the investigation, chargesheet was filed against the respondents for offences under Sections 363/376 of the IPC and Section 6 of POCSO.

7. As noted above, the learned ASJ by the impugned order discharged the respondents for offences punishable under sections 363/376 of IPC and section 6 of POCSO, and held as under:

“In her statement recorded U/S 164 CrPC the prosecutrix did not say a word against the accused. On the contrary she stated that the accused was her boy friend. She was in love with him and they were willing to get married. She further stated that she had abandoned her home and had voluntarily lived alone for some time and thereafter had shifted to the house of accused. She categorically stated that the accused had not committed any kind of sexual assault upon her. ...

xxx

There is no document on record with regard to the age of prosecutrix issued by either MOD or any other statutory authority. Therefore, even charges for the commission of offence punishable U/S 6 of POCSO Act are also not made out.

xxx

Accordingly accused Shatrughan stands discharged for the offences in this case.”

8. Aggrieved by the aforesaid order, the petitioner has preferred the present petition.

9. The learned Additional Public Prosecutor for the State submits that the impugned order is based on imagination, presumption, conjectures and surmises and cannot stand the scrutiny of law being not based on facts of the case.

10. He submits that the learned Trial Court has failed to appreciate that according to the school certificate of the prosecutrix, her age was around 14 years, and hence her consent was immaterial.

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17:53:49



2024:DHC:6417



11. He submits that the learned Trial Court had erringly inferred that the prosecutrix refused the internal gynecological examination because no sexual assault had occurred.

12. He further submits that the learned ASJ failed to consider that there was sufficient *prima facie* evidence to frame charges against the accused persons.

13. I have heard the learned counsel for the parties and perused the record.

14. Since the petitioner has assailed the impugned order dated 04.08.2016 whereby, the learned ASJ discharged the respondent, it will be apposite to succinctly discuss the statutory law with respect to framing of charge and discharge as provided under Sections 227 and 228 of the CrPC. The same is set out below:

“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, 1 [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



2024:DHC:6417



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."

15. The Hon'ble Apex Court, in the case of ***Sajjan Kumar v. CBI : (2010) 9 SCC 368***, has culled out the following principles in respect of the scope of Sections 227 and 228 of the CrPC while observing that a *prima facie* case would depend on the facts and circumstances of each case. The relevant paragraphs read 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.”

(emphasis supplied)

16. The Court at the stage of framing of charge is to evaluate the material only for the purpose of finding out if the facts constitute the alleged offence, given the ingredients of the



2024:DHC:6417



offence. Though, for the purpose of conviction, the same must be proved beyond reasonable doubt.

17. In the present case, the chargesheet was filed under Sections 363/376 of the IPC and also Section 6 of the POCSO Act. At the stage of hearing arguments on charge, the learned Trial Court after noting the evidence collected by the prosecution, and the version of the prosecutrix recorded under Section 164 of the CrPC held that not even a *prima facie* case is made out against the respondent.

18. The first and foremost ingredient to be satisfied before a person can be convicted for an offence under Section 363 of the IPC, is that the minor has been enticed and removed from the lawful guardianship without consent. Although the consent of a minor is legally irrelevant, the prosecutrix clearly stated that she left her maternal home because she did not want to stay with her parents, who allegedly mistreated her. She further asserted that she lived with the respondent for 15 days of her own accord and that he did not sexually assault her.

19. On a bare perusal of the complaint, it cannot be concluded that the prosecutrix was enticed away from lawful guardianship, or coerced into illicit intercourse. The complaint merely indicates that she voluntarily left her parents' lawful guardianship, met the respondent, and engaged in a consensual relationship with him. She further stated that no sexual relations occurred between the respondent and her.

20. The Hon'ble Apex Court in *Mafat Lal v. State of Rajasthan* : (2022) 6 SCC 589 held as under :

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7. The High Court although records all such facts, appears to have been swayed with the fact that the abductee was a minor at the time when she left her home and that the appellant had evaded the investigation and had been successful in keeping away from the process of law for several years. The High Court further proceeded on the assumption that the appellant had actually kidnapped/abducted the minor daughter of the complainant.

8. Before this Court, also the abductee has joined the accused as Appellant 2. Once again similar stand has been taken as was taken before the High Court. Both the appellants have filed separate affidavits. Appellant 2 has specifically stated before the High Court as also before this Court that she had left her parental home on her own free volition. The appellants are married since December 2006 and have been living happily. They have also been blessed with a son in the year 2014 who would now be 8 years old. No fruitful purpose would be served by relegating the matter for conducting the trial as the same would not be conducive for either of the appellants. It would be a futile exercise.

21. It is further relevant to note that even though the chargesheet has also been filed alleging offence under Section 376 of the IPC, however, no complaint has been made by anyone, be it the complainant or the prosecutrix that the accused has established any sexual relationship with the prosecutrix. Even though the prosecutrix stated that she was in a consensual relationship with the accused and lived with him for some time, no allegation has been made that she was also subjected to any sexual or physical assault. Sexual intercourse cannot be presumed in a relationship *sans* any allegation to that extent.

22. From the facts as noted above and the evidence of the prosecutrix, it is apparent that no allegation in regard to offence of kidnapping/ abduction or sexual intercourse was made by the



2024:DHC:6417



prosecutrix.

23. Thus, without going into the issue as to whether the school certificate was a conclusive evidence of the date of birth of the prosecutrix, this Court is of the opinion that the accused has not committed any offence. It is trite law that the Court does not have to act merely as a post office or a mouthpiece of the prosecution but has to consider the broad probabilities of the case.

24. From the material/ evidence as brought on record, it can safely be said that no *prima facie* case is made out against the accused.

25. In view of the above, the present petition is dismissed.

AMIT MAHAJAN, J

AUGUST 5, 2024

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CRL.REV.P. 76/2017

Page 9 of 9