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

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Reserved on: February 08, 2024

Decided on: February 15, 2024

+ **CRL.REV.P. 94/2017 & CM APPL. 1543/2017**

STATE

..... Petitioner

**Through: Mr. Utkarsh, APP for State
with SI Manoj Kumar,
Crime Branch,
Chanakyapuri.**

V

NARESH YADAV

..... Respondent

**Through: Mr. Tanmay Nagar,
Advocate.**

CORAM

HON'BLE DR. JUSTICE SUDHIR KUMAR JAIN

J U D G M E N T

CM APPL. 1543/2017 (condonation of delay)

1. The present application is filed under section 5 of the Limitation Act, 1963 for condonation of delay of 31 days in filing the present revision petition.

2. For the reasons stated in the application, the delay of 31 days in filing the present revision petition is condoned.



3. The application stands disposed of.

CRL.REV.P. 94/2017

1. The present revision petition is filed under sections 397/401 of the Code of Criminal Procedure, 1973 (hereinafter referred to as “**the Code**”) read with section 482 of the Code to impugn the order dated 17.09.2016 (hereinafter referred to as “**the impugned order**”) passed by the court of Sh. Ramesh Kumar-II, ASJ/SFTC-2, Central, Tis Hazari Courts, Delhi (hereinafter referred to as “**the trial court**”) in case bearing no.28703/2016 arising out of FIR bearing no.03/2010 dated 04.01.2010 registered under sections 498A/495 IPC at P.S. Darya Ganj whereby the respondent was discharged for the offence punishable under section 376 IPC.

2. Briefly stated, the facts of the present case are that FIR bearing no. 03/2010 was got registered under sections 498A/495 IPC at P.S. Darya Ganj on the basis of the complaint made by ‘R’ (hereinafter referred to as “**the complainant**”) wherein she alleged that her marriage was solemnized with Naresh Yadav s/o Sh. Lakhmi Chand (hereinafter referred to as “**the respondent**”) in May 2007 according to Hindu rites and ceremonies. Sometime after the marriage, the



respondent and his family members started to harass the complainant mentally and physically and demanded dowry. The complainant was thrown out of the matrimonial home and was forced to live with her parents. The complainant was even threatened by the respondent and his cousin brother namely Naresh Yadav r/o New Ashok Nagar, Delhi to give dowry i.e. a car and cash amount of Rs.1,00,000/- when staying with her parents but her poor parents were not in a position to fulfil these demands. The respondent asked her to come near Golcha Cinema Hall, Darya Ganj. The complainant went to Golcha Cinema Hall and found that the respondent and his cousin brother namely Naresh Yadav who was then posted as Head Constable in Delhi Police, were present there and they asked the complainant about the dowry demands. The complainant showed inability of her parents to fulfil these demands, then both of them abused her and her family members. The respondent also slapped her and threatened to ruin her life as his cousin was posted in Delhi Police.

The complainant in a subsequent complaint also alleged that the respondent had concealed about his previous marriage while marrying her. Accordingly, the present FIR was got registered.



2.1 The investigation was entrusted to Inspector Prem Chandra who during investigation examined the complainant and recorded her statement. The complainant supported her earlier statement and further alleged that she on 27.11.2007, along with the respondent, her brother namely Hemant and his wife namely Dolly had gone to Jammu from New Delhi by train. In Jammu, the respondent tried to kill her by pushing her down from the stairs due to which the complainant sustained serious injuries and was treated by Dr. Noor Ali, Assistant Professor, Govt. Medical College, Jammu. The complainant also produced photocopy of the treatment slip and 04 photographs of her marriage with the respondent. The complainant also alleged that the respondent during 2007-2008, in connivance with the staff of Lake View Nursing Home, Pandav Nagar aborted her child without her knowledge after making her unconscious. The complainant also alleged that SI Pratibha, P.S. Malviya Nagar was conducting enquiry regarding rape allegation against her brother Hemant and SI Pratibha obtained her written consent after pressurizing her to withdraw her complaint against the respondent



pending in the CAW Cell and also demanded Rs.2,60,000/- from her family for closing the complaint against Hemant.

2.2 The Investigating Officer interrogated the respondent and HC Naresh Yadav who denied the allegations levelled against them by the complainant. The respondent admitted that he knew the complainant but denied marrying her. The Investigating Officer also found during investigation that the complainant had withdrawn her complaint against the respondent pending in CAW Cell, Central District after submitting an application along with an affidavit dated 23.09.2008.

2.3 The investigation was transferred to Crime Branch on 08.04.2010 and was entrusted to SI Ajeet Malik. The Investigating Officer during investigation found that there was no entry in the name of the complainant during 30.06.2007 to 30.06.2008 in Lake View Nursing Home, Pandav Nagar and no such patient was found to be admitted there. The Investigating Officer also collected details from the office of the Chief Reservation Supervisor, IRC Building, New Delhi and found that the respondent, the complainant, Hemant Bhardwaj and Doli had booked tickets in train from New Delhi



Railway Station to Jammu Tawi scheduled to depart on 27.11.2007. The Investigating Officer as per inquiry made from Dr. Noor Ali, Assistant Professor, Govt. Medical College, Jammu came to know that the complainant came to him with complaint of chest pain and pain on deep respiration and was prescribed medicines for respiratory tract infection.

2.4 The subsequent investigation was assigned to SI Sanjay Neolia who collected Call Detail Record (CDR) of the respective mobiles of the complainant and the respondent which reflected incoming and outgoing phone calls and SMSs between them. The Investigating Officer also interrogated the respondent's cousin namely HC Naresh Yadav who stated that he was posted in P.S. Parliament Street during the years 1986-91 and came in contact with Smt. Shanti Devi who was then posted in CGHS Dispensary, Vithal Bhal Patel Marg, Delhi. HC Naresh Yadav developed family relations with her. The respondent in the year 1990, met with an accident and was admitted in J.P.N. Hospital. Smt. Shanti on the request of HC Naresh Yadav, helped the respondent during his treatment who after recovery developed friendly relations with Shanti and her family members.



The respondent and HC Naresh Yadav attended the marriage of Hemant in the year 2007. The respondent was only a good friend of the complainant but he never got married to the complainant. The complainant never visited or stayed at his house. He never made any offer/proposal to the family of the complainant for marriage of the respondent with the complainant. Neither he nor his family members extended any threat to the complainant or her family members.

2.5 The Investigating Officer also examined the respondent. The respondent stated that he came in contact with Shanti through his cousin HC Naresh Yadav who was posted in Delhi Police and Shanti helped him in his treatment at J.P.N. Hospital. The respondent developed a friendly relationship with Shanti and her family members. The respondent got married in the year 1990 at Village Hoshiarpur. The respondent along with HC Naresh Yadav attended the marriage of Hemant in the year 2007. The respondent along with Hemant, his wife Dolly and the complainant travelled to Vaishno Devi, Jammu by train. The respondent booked two rooms during their visit to Katra and Jammu and one room was shared by him and Hemant and the other room was shared by the complainant and



Dolly. The respondent never got married with the complainant and was only a good friend of the complainant. The respondent had advanced a loan to O.P. Bhardwaj i.e. father of the complainant. The complainant filed a false complaint at P.S. Darya Ganj and CAW Cell, Central District against him when he asked O.P. Bhardwaj to return the money and the complainant alleged that the respondent married her and harassed her physically and mentally for dowry demands. The complainant subsequently withdrew her complaint. The complainant got married to Sunder Sharma on 30.05.2009. The respondent also stated that he had developed a money dispute with Inspector Puran Singh Mehra, who was posted as inspector in U.P. Police and who was also known to O.P. Bhardwaj. Puran Singh hatched a conspiracy with O.P. Bhardwaj and filed false complaints against him. The respondent never got married with the complainant or had any sexual relationship with the complainant.

2.6 The Investigating Officer also examined the complainant. The complainant stated that HC Naresh Yadav who is the cousin brother of the respondent, came to her house in January, 2007 and offered the marriage proposal of the respondent with the complainant. The



parents of the complainant agreed to the said marriage proposal. The respondent on 25.05.2007, took the complainant to the house of his uncle (HC Naresh Yadav's house) where the respondent forcibly made sexual relation with her. The respondent also took her, her brother Hemant and his wife Dolly to Vaishno Devi and stayed in hotels at Jammu and Katra. The respondent again made sexual relations with her forcibly on false promise of marriage. The respondent also made her obscene CD and gave beatings to her. The respondent after coming back to Delhi, left the complainant at her parental home. The complainant narrated all facts to her parents who then contacted the respondent. The respondent came to house of the complainant and threatened the complainant and her parents to make the obscene CD of the complainant public and also extorted Rs.1,30,000/- from the parents of the complainant.

2.7 The Investigating Officer also examined the father of the complainant namely O.P. Bhardwaj, mother of the complainant namely Shanti and brother of the complainant namely Hemant who also stated the same facts as stated by the complainant during investigation and detailed hereinabove. The Investigating Officer on



the basis of investigation, added the offence punishable under section 376 IPC and removed the offences punishable under sections 498A and 495 IPC. The complainant during investigation, also produced her photograph with the respondent which was stated to be taken at Prabhat Studio, near Raghu Nath Temple, Jammu. The complainant also submitted that during their visit to Vaishno Devi, the respondent booked room at Hotel Vaishnavi Palace, Katra & Hotel Surya Excellency, Jammu. The Investigating Officer could not collect any documentary proof pertaining to these facts.

2.8 The Investigating Officer also examined SI Pratibha Sharma who denied the allegations levelled against her by the complainant and stated that she never pressurized the complainant to withdraw her complaint. The Investigating Officer also made enquiry from local residents of New Ashok Nagar regarding the allegations levelled by the complainant regarding her stay and molestation at the house of HC Naresh Yadav but those allegations could not be substantiated. The allegations of the complainant regarding her forcible abortion and attempt on her life by the respondent could not be substantiated. The allegations against HC Naresh Yadav and SI Pratibha Sharma



could not be established. The Investigating Officer after conclusion of investigation, filed charge sheet for the offence punishable under section 376 IPC before the concerned court of Metropolitan Magistrate.

3. The court of Sh. Manish Yaduvanshi, ACMM-01, Central, Tis Hazari Courts, Delhi vide order dated 06.08.2012 observed that the complainant gave different statements to police pending investigation which were recorded as her supplementary statement on 01.03.2011. The perusal of the original complaint of the complainant dated 08.04.2008 addressed to the SHO, P.S. Daryaganj and supplementary statement dated 13.01.2010 reveal that she has tried to controvert her earlier stand in respect of her marriage with the respondent. It was also observed that it is not clear from the charge sheet as to why the origin of the marriage photographs produced by the complainant was not investigated which led to dropping of sections 498A and 495 IPC. It was also observed that no investigation was conducted in respect of the averment regarding the factum of marriage of complainant with the respondent *vis-a-vis* the earlier marriage of the respondent. The court also sought clarification in respect of non-examination of



Inspector Prem Chandra regarding proof of marriage of the complainant and the respondent. The court also sought clarification regarding investigation conducted against HC Naresh Yadav who was not chargesheeted. The court also sought clarification in respect of the investigation regarding the allegation of extortion. The court of Sh. Manish Yaduvanshi, ACMM-01, Central, Tis Hazari Courts, Delhi vide order dated 15.09.2012 had directed for further investigation as per section 173(8) of the Code.

3.1 SI Shivraj Singh, ARC/Malviya Nagar, Crime Branch, New Delhi was assigned with conducting further investigation. The Investigating Officer made efforts to trace out the origin of the marriage photographs produced by the complainant but the same could not be traced as the complainant did not provide any reply to the notices under section 91 of the Code served to her and her father. The father of the complainant provided two Compact Discs (CDs) in relation to the ring ceremony and marriage of the complainant and the respondent and said that he would produce the original source of the contents of those CDs in court. The Investigating Officer sent the said CDs to FSL Rohini for forensic examination and as per expert



opinion, “there was no indication of alteration in the video shots on the basis of frame by frame examination.” The father of the complainant also did not produce the mobile handset containing SMSs sent by the respondent to the complainant. The respondent during further investigation, stated that no photography or videography had taken place in his earlier marriage in 1990. During investigation, the co-accused HC Naresh Yadav was found to be involved only in introducing the respondent with Shanti. The complainant was not found to have made allegations of sexual assault/harassment or attempt on her life by the respondent and did not disclose any such fact to the doctor in Jammu. The complainant in her previous complaints never alleged the fact of extortion by the respondent. The complainant and her parents did not join further investigation despite notices. The supplementary charge sheet was submitted after completion of further investigation.

4. The court of Sh. Sudhanshu Kaushik, ACMM-01, Central vide order dated 14.05.2015 observed that the chargesheet *prima facie* discloses commission of the offence punishable under section 376 IPC and the respondent was accordingly summoned for the offence



punishable under section 376 IPC. The respondent being aggrieved by the summoning order dated 14.05.2015, filed a criminal revision bearing no. 35/2015 which was dismissed vide order dated 03.11.2015 passed by the court of Sh. Vinay Kumar Khanna, Special Judge-CBI (PC Act)-06, Central, Tis Hazari Courts, Delhi by observing that there is no illegality, procedural irregularity or impropriety in the summoning order dated 14.05.2015.

5. The trial court vide impugned order, discharged the respondent for the offence punishable under section 376 IPC. The relevant para of the impugned order dated 17.09.2016 is reproduced as under:-

In the light of all the above facts and circumstances, it is clearly ascertained that the complainant ropes in new and contradictory facts from time to time to influence the investigation process. In absence of MLC of prosecutrix and her statement u/s 164 Cr.P.C., allegations of prosecutrix cannot be appreciated. Her allegations of sexual assault cannot be relied upon as none of the medical reports produced by Sh. O.P. Bhardwaj supports or even mention about the allegations of sexual assault. Moreover, there is no incriminating evidence on record to proceed against accused u/s 376IPC.

Since there is no corroborative evidence available on record, hence, further trial would not serve any purpose. Mere statement of prosecutrix is not sufficient for trial. Hence, in these circumstances, prima facie there is no sufficient material on record to proceed further with this case. Accordingly, accused Naresh Yadav is discharged from the offences punishable under section 376 IPC.



6. The petitioner/State being aggrieved by the impugned order, filed the present criminal revision petition for setting aside the impugned order on the grounds that impugned order is based on imagination, presumption, conjectures and surmises and cannot stand the scrutiny of law being not based factual matrix of the case. The complainant did not know that the respondent was already married and was having children when she made first complaint dated 04.08.2008 which was referred to the CAW Cell, Central District. The complainant subsequently came to know about previous marriage of the respondent and then promptly made a fresh complaint to the Commissioner of Police, Delhi but the police registered FIR on her previous complaint which did not contain the factum of previous marriage of the respondent. The trial court completely disregarded and overlooked the supplementary statement of the complainant dated 01.03.2011. The trial court was not supposed to examine and assess the case in detail at time of consideration of framing of charge. The petitioner/State also raised other grounds to challenge the impugned order.



7. The Additional Public Prosecutor for the petitioner/State advanced oral arguments and submitted written submissions. He argued that the trial court has conducted a mini trial at the stage of framing of charge and has discharged the respondent. The supplementary chargesheet was filed in continuation of the original chargesheet and the trial court should have perused the chargesheet as well as the supplementary chargesheet, statements of the witnesses and documents filed by the Investigating Officer and then arrive at an independent conclusion. The complainant had filed the first complaint in the police station on 08.04.2008 but in her subsequent complaint dated 07.05.2008, besides reiterating the allegations as stated in the first complaint, the complainant also stated about role of HC Naresh Yadav i.e. cousin of the respondent in giving wrong information to her and her family members. The complainant has stated that the respondent was already married but said fact was concealed from her and her family members. It was the duty of the trial court to apply its mind at the time of framing of charge. The trial court should not rely upon the endorsement on the chargesheet presented by the investigating agency without application of judicial



mind. The trial court was not expected or supposed to hold a mini trial for the purpose of marshalling the evidence on record. The revision petition filed by the respondent against the summoning order dated 14.05.2015 was dismissed by the concerned court and as such the present case is fit for framing of charge against the respondent. The conviction of the accused can be based on the sole testimony of the complainant. The court is duty bound to deal with cases involving allegations of sexual harassment, molestation, rape etc. with utmost sensitivity and minor contradictions or insignificant discrepancies in the statement of the complainant should not be a ground for throwing out an otherwise reliable prosecution case. The Additional Public Prosecutor cited **Union of India V Prafulla Kumar Samal and Another**, (1979) 3 SCC 4; **Dipakbhai Jagdishchandra Patel V State of Gujarat and Another**, (2019) 16 SCC 547; **Sajjan Kumar V CBI**, (2010) 9 SCC 368; **Asim Shariff V National Investigation Agency**, (2019) 7 SCC 148; **State of Karnataka V M.R. Hiremath**, (2019) 7 SCC 515; **Bhawna Bai V Ghanshyam**, (2020) 2 SCC 217; **State of Punjab V Gurmit Singh**, (1996) 2SCC 384. It was argued that the impugned order be set aside and the trial court be directed to



frame the charge for the offence punishable under section 376 (2)(n) IPC against the respondent.

7.1 The counsel for the respondent advanced oral arguments and also submitted written submissions. He argued that the complainant did not make single allegation of sexual assault in the previous complaint but after a gap of two years, alleged that rape was committed without mentioning the time and date. The allegations of rape and sexual assault could not be proved in absence of MLC or cogent incriminating material on record. The complainant did not appear before the court for recording of statement under section 164 of the Code which reflects that the allegations levelled against the respondent are false. The allegation regarding the forcible abortion at Lake View Hospital, Pandav Nagar, Delhi could not be established. The counsel for the respondent referred **Prashant Bhaskar V State**, 2014 1 JCC 750 wherein the accused was discharged for the offence under section 302 IPC on the ground that the ingredients of the offence are not made out and there are material contradictions in the statements which renders the same as unsafe and cannot be relied upon. The counsel for the respondent also referred **Prashant Bharti**



V State (NCT of Delhi) (2013) 9 SCC 293. It was argued that present petition be dismissed.

8. Chapter XVIII of the Code deals with trial before a Court of Sessions. Section 227 deals with situation when the accused shall be discharged. Section 228 deals with framing of charge. Sections 227 and 228 of the Code read 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.

8.1 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* case before a charge can be framed. The Supreme Court in **Union of India V Prafulla Kumar Samal and Another**, (1979) 3 SCC 4 considered scope of inquiry at the stage of framing of charge as per section 227 of the Code in a Court of Session 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.

8.2 The Supreme Court in Onkar Nath Mishra and Others V State (NCT of Delhi) and Another, Appeal (Crl.)1716 of 2007 decided on 14.12.2007 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.

8.3 The Supreme Court in Dipakbhai Jagdishchandra Patel V State of Gujarat and Another, (2019) 16 SCC 547 discussed the 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.

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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.

8.4 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 and Others**, Criminal Appeal No. 001041 of 2022 (arising out of S.L.P. (Criminal) no. 4599 of 2021) decided on 26.07.2022 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).

8.5 The Supreme Court in *State of Gujarat V Dilip Singh Kishor*

Singh Rao, 2023 SCC OnLine SC 1294 also observed as under:-

8. At the time of framing of the charge and taking cognizance the accused has no right to produce any material and call upon the court to examine the same. No provision in the Code grants any right to the accused to file any material or document at the stage of framing of charge. The trial court has to apply its judicial mind to the facts of the case as may be necessary to determine whether a case has been made out by the prosecution for trial on the basis of chargesheet material only.

9. If the accused is able to demonstrate from the charge-sheet material at the stage of framing the charge which might drastically affect the very sustainability of the case, it is unfair to suggest that such material should not be considered or ignored by the court at that stage. The main intention of granting a chance to the accused of making submissions as envisaged under Section 227 of the Cr. P.C.



is to assist the court to determine whether it is required to proceed to conduct the trial. Nothing in the Code limits the ambit of such hearing, to oral hearing and oral arguments only and therefore, the trial court can consider the material produced by the accused before the I.O.

10. It is settled principle of law that at the stage of considering an application for discharge the court must proceed on an assumption that the material which has been brought on record by the prosecution is true and evaluate said material in order to determine whether the facts emerging from the material taken on its face value, disclose the existence of the ingredients necessary of the offence alleged.

8.6 It is established on the basis of various judgments/decisions delivered by the Supreme Court that 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 a charge where there is a *prima facie* case to show that an offence has been committed. As observed in **Dipakbhai Jagdishchandra Patel V State of Gujarat and Another** (*supra*), the court is not expected to act a mere Post Office at the time of framing of the charge and must indeed sift the material produced and relied upon by the prosecution. The sifting of the evidence should not be meticulous and the court should not don the mantle of trial judge hearing argument after full-fledged trial. The court must be satisfied



with the material available on record that the case is made out for the accused to stand trial. A strong suspicion founded on the relevant material would suffice which can be translated into evidence at the stage of trial.

9. It is reflecting that the complainant made a complaint on 08.04.2008 before CAW Cell, Central District wherein no allegation of sexual assault was made against the respondent. The complainant claimed herself to be the legally wedded wife of the respondent having been married to him in May, 2007 and alleged infliction of cruelty physical and mental for dowry demands. The complainant in her subsequent complaint dated 07.05.2008, alleged that the respondent at the time of marrying her, had concealed about his previous marriage and children from his previous marriage. However, the complainant during investigation could not produce convincing material which could establish that the respondent married her in May, 2007. Although the complainant submitted few photographs of her marriage with the respondent and father of the complainant namely O.P. Bhardwaj submitted two CDs stated to be containing videos of ring ceremony and marriage of the complainant



with the respondent. However, during investigation and further investigation, origin of the said photographs and CDs could not be traced. The complainant in statement recorded by the Investigating Officer Inspector Prem Chandra stated that she along with the respondent, her brother namely Hemant and his wife namely Dolly on 27.11.2007, had gone to Vaishno Devi and stayed in hotels at Jammu and Katra. The respondent in Jammu tried to kill her but again, the said allegation could not be established during investigation. The complainant also alleged her forceful abortion at instance of the respondent in Lake View Nursing Home, Pandav Nagar but the allegation of abortion also could not be established during investigation. The complainant also withdrew complaint made by her before CAW Cell on 23.09.2008. The complainant during subsequent investigation conducted by Crime Branch, stated that she was taken to Vaishno Devi by the respondent along with her brother Hemant and his wife Dolly which is also not disputed by the respondent and stayed in hotels at Jammu and Katra and alleged that the respondent on false promise of marriage, made forcible sexual relations with her and the respondent also made her obscene CD.



However, the complainant never made allegations of forceful sex with her by the respondent in her previous complaints. The allegation of the complainant regarding forceful sexual relation by the respondent at residence of HC Naresh Yadav in May, 2007 also could not be established during investigation. The complainant did not turn up for recording of her statement under section 164 of the Code to substantiate her allegation of forcible sexual relation by the respondent with her. The complainant took contradictory stands during investigation and in her multiple complaints. The complainant could not furnish any convincing material to substantiate her marriage with the respondent. It is reflecting that the respondent only developed friendly relations with the family of the complainant and the complainant out of her own free will and consent also developed relations with the respondent. The Additional Public Prosecutor argued that the revision petition filed by the respondent against the summoning order dated 14.05.2015 was dismissed by the concerned court and as such the present case is fit for framing of charge against the respondent. However, this is not the settled proposition of law. The accused can be discharged by the concerned court even after



cognizance of the offence has been taken and the accused has been summoned. The argument as advanced by the Additional Public Prosecutor does not have legal force.

10. It is an accepted legal proposition that the prosecution is required to establish a *prima facie* case before a charge can be framed. However, the court has the 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. If the materials placed before the Court disclose grave suspicion against the accused, then the court is justified in framing a charge and to proceed with the trial but and the court is not expected to go deep into the probative value of the material on record. The court is also not expected or supposed to hold a mini trial for the purpose of marshalling the evidence on record. However, 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 material collected during investigation is not sufficient to make out a *prima facie* case against the respondent for the offence punishable under section 376 IPC. The arguments advanced by the Additional Public



Prosecutor as detailed hereinabove are without any legal basis. There is no infirmity in the impugned order which calls for any interference by this Court.

11. Accordingly, the present revision petition is dismissed along with pending applications, if any.

**DR. SUDHIR KUMAR JAIN
(JUDGE)**

FEBRUARY 15, 2024
AM/SD