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

**Date of Decision: 09<sup>th</sup> July, 2024**

+ CRL.REV.P. 470/2024

STATE

.....Petitioner

Through: Mr. Manoj Pant, APP for the State  
with Ms. Mayanka Chaudhary, Ms.  
Anushttha Rastogi and Mr. Akshat  
Golia, Advocates with SI Anugraha,  
P.S.: Welcome.

versus

DANISH & ANR.

.....Respondents

Through:

**HON'BLE MR. JUSTICE ANUP JAIRAM BHAMBHANI**  
**J U D G M E N T**

**ANUP JAIRAM BHAMBHANI J.**

**CRL.M.A. 10687/2024**

By way of the present application filed under section 5 of the Limitation Act 1963 read with section 482 of the Code of Criminal Procedure 1973 ('Cr.P.C.'), the petitioner/State seeks condonation of 110 days delay in filing the present revision petition.

2. For the reasons stated in the application, which is duly supported by an affidavit, the application is allowed.
3. Delay in filing the revision petition is condoned.
4. The revision petition is taken on Board.
5. The application is disposed of.



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6. By way of the present criminal revision petition filed under section 397 read with section 401 of the Cr.P.C., the State impugns order dated 25.05.2023 made by the learned ASJ, Karkardooma Courts, Delhi in SC No.149/2023, thereby discharging respondents Nos.1 and 2 for the offences under sections 376(2)(n) and 323 of the Indian Penal Code, 1860 ('IPC') respectively, arising from case FIR No.412/2022 dated 24.06.2022 registered at P.S.: Welcome, New Delhi.
7. Upon completion of investigation, charge-sheet dated 19.08.2022 was filed in the matter.
8. Mr. Manoj Pant, learned APP appearing for the State contends that the learned trial court has erroneously discharged both the accused persons in the matter on the basis of the complainant's/prosecutrix's statement dated 24.06.2022 recorded under section 164 Cr.P.C.
9. Mr. Pant submits, that at the stage of framing of charge, the learned trial court ought not to have entered upon the task of appreciating evidence. To support his submission, Mr. Pant places reliance upon order dated 06.01.2022 made by the Supreme Court in ***Hazrat Deen vs. The State of Uttar Pradesh & Anr.*** in SLP (Crl.) No.9552/2021, to submit that in the said case, the Supreme Court has observed that discrepancies between the FIR and any subsequent statement under section 164 of Cr.P.C. may be a ground of defence; however, such discrepancies cannot be a ground for discharge of the accused without initiation of trial.



10. A perusal of the impugned order shows that, at the stage of framing of charge, the learned trial court has considered the fact that in her statement recorded under section 164 Cr.P.C., the prosecutrix has completely belied and negated the allegations that she had made against the respondents in the FIR. The relevant extract of the impugned order, where the learned trial court deals with the discrepancies, reads as follows :

*“Before delving into the merits of the arguments, I deem it fit to elucidate facts mentioned in the charge-sheet. The gist of the present FIR has been that the accused Mohd. Kaif is the husband of the prosecutrix with whom she solemnized love marriage at Karkardooma Court and performed nikah on 14.12.2021. It is further asseverated in the complaint of the prosecutrix that on one fine day, when she was alone at her matrimonial home as her in laws had gone to attend a marriage, her brother in law (jeth) i.e. accused Danish came into her room and started misbehaving with her but he did not succeed. It is further asserted that thereafter, she told the aforesaid incident to her husband i.e. co accused Mohd. Kaif but her husband told her that "jaisa keh rahe hai, vesa kar lo". It is further alleged by the prosecutrix in her police complaint that on 02.01.2022, accused Danish made forceful sexual relations with her and further he also made forceful sexual relations with her 9-10 times. Thereafter, prosecutrix went to her parental home on 28.02.2022 and on 15.05.2022, her husband i.e. accused Mohd. Kaif brought her to one rented accommodation i.e. H.no. XX, Janta Majdoor Colony, Delhi. It is further asseverated that prosecutrix called her mother to the said rented accommodation on 23.06.2023 and told her that she did not wish to live with her husband i.e. Mohd. Kaif anymore and called at 112 number. Pursuant to the receiving of said complaint, the instant FIR was registered and the investigation commenced.*

*“However, when the prosecutrix was called upon to give the statement recorded u/s 164 Cr.P.C, she negated about the occurrence of any such alleged incident of forceful sexual*



intercourse and stated that she had lodged the present complaint in a fit of anger. The prosecutrix in her statement recorded u/s 164 Cr.PC stated that her in laws had ousted her from the matrimonial home within three months of her love marriage and her husband also was disowned by his family. She was annoyed with her husband as he kept on meeting his family members despite being disowned by them. Thus, in vague of such anger and annoyance, she lodged the present complaint against her husband and brother in law. It is further stated that she wishes to withdraw her case.

“I have perused the entire charge-sheet. It becomes further apposite to mention that the prosecutrix was summoned at this stage of charge also wherein she again reiterated that she lodged the present police complaint in a moment of anger and frustration and that no wrong act was committed against her by the accused persons.”

(emphasis supplied)

11. Based on the aforesaid observations, the learned trial court has proceeded to observe as follows :

“As an upshot of the aforesaid discussion, in my considered opinion, there appears to be lack of inculpatory material on record which could be said to be constituting grave strong suspicion so as to frame charges upon both the accused persons. Accordingly the accused Mohd. Kaif is hereby discharged from the offence u/s 323 IPC and accused Danish is hereby discharged from the offences u/s 376(2)(n) IPC.”

(emphasis supplied)

12. A copy of the prosecutrix’s statement recorded under section 164 Cr.P.C. has been placed on record. This court has perused that statement and it is found that the observations made by the learned trial court are borne-out by the contents of such statement.
13. Furthermore, it is observed that in the impugned order, the learned trial court has also referred to the extant position of law as laid down



by the Supreme Court with regard to discharge of an accused, including its judgment in ***Sajjan Kumar vs. Central Bureau of Investigation***<sup>1</sup>, the relevant extract whereof may be reproduced below:

*“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 cases 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.*

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<sup>1</sup> (2010) 9 SCC 368



(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)

14. Insofar as the observations of the Supreme Court in order dated 06.01.2022 aforesaid, as relied upon by the learned APP, are concerned, suffice it to say that those observations have been made in the context of the factual matrix obtaining in that case, where the accused had been charged not only under the Protection of Children from Sexual Offences Act, 2012 but also under various provisions of IPC; and it was argued that the FIR did not disclose the offence under section 376 IPC. It is in this backdrop, that the Supreme Court has observed that the FIR is only an ‘initial document’; and since in the statement given under section 164 Cr.P.C. the prosecutrix had categorically made allegations which tantamount to the offence under section 376 IPC, discrepancies between the FIR and the statement under section 164 of Cr.P.C. could not be ground to discharge the accused without initiation of trial, though such discrepancies may be subject-matter of defence.



15. Upon an overall consideration of the matter, it is seen, that in essence and substance, the learned trial court has discharged the respondents on the basis that in her statement recorded under section 164 Cr.P.C., the prosecutrix has *completely negated* the allegations made in the FIR; and that furthermore, when the prosecutrix was summonsed at the stage of framing charge, *she has reiterated that she had lodged the FIR in a moment of anger and frustration and that no wrong had been committed against her* by the accused persons. In the circumstances, the learned trial court has opined that there is no material on record on the basis of which charge could be framed against the accused persons.
16. The learned trial court has thereby followed the precepts of the Supreme Court in para 21(vi) and (vii) of *Sajjan Kumar* (supra), namely that whilst considering a plea under sections 227 and 228 Cr.P.C., the court is *required* to evaluate the material and documents on record, in order to find out if the facts emerging therefrom, even if taken at their face value, disclose the existence of all the ingredients constituting the offence alleged. The court is not to accept what the prosecution says as being true, and must sift the evidence, though for the limited purpose of evaluating the broad probabilities of the case. Also, if two views are possible and one of them gives rise to *suspicion only*, as distinguished from *grave suspicion*, the court is empowered to discharge the accused.
17. In the above view of the matter, this court is unable to discern anything remiss as to the correctness, legality or propriety of order



dated 25.05.2023 made by the learned trial court, discharging the respondents in the case.

18. The revision petition is accordingly dismissed.
19. Pending applications, if any, also stand disposed-of.

**ANUP JAIRAM BHAMBHANI, J**

**JULY 9, 2024/ak**

Signature Not Verified

Digitally Signed By: ANJALI  
KAUSHIK

Signing Date: 17.07.2024  
17:00:02

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