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

+ **CRL.REV.P. 592/2023**

STATE

.....Petitioner

Through: Mr. Manoj Pant, APP for
the State.
SI Dhananjay Gupta (P.S.
Kirti Nagar).

versus

SANJEEV BHATIA

.....Respondent

Through: Mr. Dharmesh Thanai,
Advocate.

CORAM:

HON'BLE MR. JUSTICE AMIT MAHAJAN

ORDER

13.12.2024

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1. The present petition is filed against the order dated 24.05.2022 (hereafter '**impugned order**') passed by the learned Additional Sessions Judge ('**ASJ**'), West, Tis Hazari Courts, Delhi.

2. By the impugned order, the respondent was discharged of the offences under Sections 376/354/354A/506 of the Indian Penal Code, 1860 ('**IPC**').

3. The brief facts of the present case are that the complainant/prosecutrix and the respondent were in mercantile relations. Subsequently, certain disputes arose between them, and for the same the respondent invited the complainant to meet him in person. It is alleged that on 14.05.2018, the complainant went to meet the respondent at his office at about 1:00PM. The complainant was accompanied by her 3-year-old daughter and

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husband. It is alleged that the respondent met the complainant at about 3:30PM. During such deliberations, the complainant refused to continue to transact with the respondent and allegedly requested him to refund the outstanding money to her.

4. It is alleged that thereafter, in the midst of the deliberations, the daughter of the complainant started crying due to which the husband of the complainant carried the child out of the office in order to pacify her. Subsequently, it is alleged that when the husband of the complainant left, the respondent approached the complainant, and allegedly caressed her private organs by putting his hand on the complainant's chest. It is further alleged that the respondent untied the knot of the salwar of the complainant, and also inserted his finger in her private organs. It is alleged that when the complainant resisted, the respondent threatened her of dire consequences.

5. It is alleged that thereafter upon the realisation that someone was at the door, the complainant pushed the respondent and came out of the room. It is further alleged that when the complainant came out, the respondent asked her to come over the following day and also threatened her with loss of money should she fail to come. It is alleged that the complainant, out of shock, could not inform about the incident that took place on 14.05.2018, and the complaint to the police was given on 29.05.2018.

6. By the impugned order, the learned ASJ discharged the respondent of the charged offences. It was noted that the material on record, on objective analysis, did not lead to the inference that the respondent did commit the alleged offences. It was noted that the information to the police was delayed by 15 days, and such delay makes it objectively reasonable to infer that there existed



opportunity to manipulate the information. It was noted that in the information made to the police, the complainant stated that she was accompanied to the office of the respondent by her husband and child. It was however noted that in her statement under Section 164 of the Code of Criminal Procedure, 1973 ('CrPC'), the complainant stated that her brother was also present along with her husband and child.

7. It was noted that in the CCTV footage seized by the IO, the brother of the complainant is seen to have entered the office of the respondent. It was noted that the same was a manifest concealment on the part of the complainant since there cannot be an inference as to the seclusion of the complainant and the respondent in the office of the respondent in the presence of her brother. It was noted that the complainant had put forth the existence of a relevant fact regarding the opportunity afforded to the respondent to commit the alleged offence in seclusion when she stated that such seclusion was created when her husband left the office to comfort their child. It was consequently noted that the fact that the brother of the complainant was present at the site is inconsistent with the fact that the respondent had opportunity of seclusion to commit the alleged offence.

8. The learned ASJ also considered the CCTV footage wherein the complainant, her brother and husband were seen leaving the office of the respondent to note that from the demeanour and appearance of the complainant, it did not appear that anything untoward had happened in the office of the respondent. It was further noted that in the site plan prepared by the IO, the IO failed to identify the place of sitting/chair of the complainant, respondent, the husband, the child and the brother of the complainant. Upon a consideration of the aforesaid, the



learned ASJ discharged the respondent of the charged offences.

9. The learned Additional Public Prosecutor for the State submits that the learned ASJ wrongly discharged the respondent of the charged offences. He submits that the learned ASJ failed to consider that specific allegations were made against the respondent. He submits that the delay in lodging the FIR is not fatal to the case of the prosecution since the same has been properly explained.

10. He submits that the statement of the complainant has been consistent, and the minor contradictions, if any, ought to be ignored. He submits that the CCTV footage relied upon does not cover the place of the offence, that is, the cabin of the respondent. He consequently submits that learned ASJ erred in discharging the respondent of the charged offences.

11. At the outset, it is relevant to note that the scope of interference by High Courts while exercising revisional jurisdiction in a challenge to order framing charge is well settled. The power ought to be exercised sparingly, in the interest of justice, so as to not impede the trial unnecessarily. It is not open to the Court to misconstrue the revisional proceedings as an appeal and reappreciate the evidence unless any glaring perversity is brought to its notice.

12. Since the State has assailed the impugned order whereby the respondent was discharged of the offences under Sections 376/354/354A/506 of the IPC, it will be apposite to succinctly discuss the statutory law with respect to framing of charge and discharge as provided under Section 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, [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 subsection (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.”

13. 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)

14. In a recent decision in ***State of Gujarat v. Dilipsinh Kishorsinh Rao* : 2023 SCC OnLine SC 1294**, the Hon’ble Apex Court has discussed the parameters that would be appropriate to keep in mind at the stage of framing of charge/discharge, as under:

“7. It is trite law that application of judicial mind being necessary to determine whether a case has been made out by the prosecution for proceeding with trial and it would not be necessary to dwell into the pros and cons of the matter by examining the defence of the accused when an application for discharge is filed. At that stage, the trial judge has to merely examine the evidence placed by the prosecution in order to determine whether or not the grounds are sufficient to proceed against the accused on basis of charge sheet material. The nature of the evidence recorded or collected by the investigating agency or the documents produced in which prima facie it reveals that there are suspicious circumstances against the accused, so as to frame a charge would suffice and such material would be taken into account for the purposes of framing the charge. If there is no sufficient



ground for proceeding against the accused necessarily, the accused would be discharged, but if the court is of the opinion, after such consideration of the material there are grounds for presuming that accused has committed the offence which is triable, then necessarily charge has to be framed.

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12. The primary consideration at the stage of framing of charge is the test of existence of a prima-facie case, and at this stage, the probative value of materials on record need not be gone into. This Court by referring to its earlier decisions in the State of Maharashtra v. Som Nath Thapa, (1996) 4 SCC 659 and the State of MP v. Mohan Lal Soni, (2000) 6 SCC 338 has held the nature of evaluation to be made by the court at the stage of framing of the charge is to test the existence of prima-facie case. It is also held at the stage of framing of charge, the court has to form a presumptive opinion to the existence of factual ingredients constituting the offence alleged and it is not expected to go deep into probative value of the material on record and to check whether the material on record would certainly lead to conviction at the conclusion of trial.”

15. 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 offence. Thus, while framing of charges, the Court ought to look at the limited aspect of whether, given the material placed before it, there is grave suspicion against the accused which is not properly explained. Though, for the purpose of conviction, the same must be proved beyond reasonable doubt.

16. From a perusal of the impugned order, it is apparent that the learned ASJ took into consideration the factors emphasised upon by the State before this Court. Now what remains to be seen is whether there is any infirmity in the impugned order whereby the learned ASJ discharged the respondent of the charged offences.

17. From a perusal of the record, it is apparent that the complainant, in her statement to the police under Section 161 of the CrPC, did not state that her brother was also present at the



site of the incident. Contrastingly, in her statement under Section 164 of the CrPC, the complainant stated that her brother was also present along with her husband and child.

18. It is the case of the complainant herself that they met the respondent at 3:30 PM. The CCTV footage seized by the IO, and viewed before the learned Court of Sessions in the presence of the respondent and the complainant, indicate that the brother of the complainant entered the office of the respondent at 3:28:43 PM.

19. Given that it is the case of the complainant that the respondent committed the alleged offences in seclusion after her husband left the office of the respondent to pacify their child, the concealment regarding the presence or absence of the brother of the complainant is not trivial in nature. For this reason, the learned ASJ rightly observed that in the light of such concealment, there cannot be an inference with regard to the seclusion of the respondent and the complainant in the respondent's office, in the presence of the brother of the complainant.

20. The presence of such concealment comes in the way of there being a grave suspicion against the respondent which is not properly explained. For this reason, the learned ASJ rightly observed that it cannot be inferred that the respondent had the occasion to commit the alleged offence, that too, in the presence of the brother of the complainant.

21. The cabins inside the office of the respondent are further stated to have transparent glasses thereby making it possible to see the events that transpire inside the office of the respondent. In the period between 3:41:37 PM to 3:41:51 PM, all four persons went out of the office. The learned ASJ, upon a perusal of the



CCTV footage, noted that the complainant was clad in a *burqa* and head-scarf. It was noted that when the brother and the husband of the complainant were leaving the office of the respondent with the complainant, she did not appear to be dishevelled or shocked as an aftermath of the incident.

22. It was noted that the attire of the complainant did not appear to be messy to any degree. It was noted that the complainant did not appear to be in grief/ shock, and that all the three persons appeared to be composed and well oriented while leaving the office of the respondent. It was noted that the complainant, her brother and her husband further did not appear to be leaving the office in haste. Consequently, the learned ASJ noted that no inference that anything untoward happened in the office of the respondent as alleged could be drawn.

23. It is not the case of the prosecution that any sound/ sign of protest was seen or heard while the complainant was in the office of the respondent at the time when the alleged offence took place.

24. It is also the case of the complainant herself that upon hearing someone at the door, she pushed the respondent and came out of the office. In that backdrop, the learned ASJ rightly noted that had the respondent untied the salwar of the complainant as alleged, she would have needed time to tidy herself. It was noted that in the information to the police, there is no such fact that would suggest or lead to infer that the complainant tidied her dress. It was further noted that there were other persons present in the office of the respondent as seen in the CCTV footage, however, despite that, no evidence/testimony regarding the appearance or demeanour of the complainant was made.

25. It was further noted that the failure of the IO, whether



inadvertent or not, to identify the place of sitting/chair of the complainant, the respondent, her husband and her brother further cast a blow in understanding the incident by the Court. Consequently, the learned ASJ discharged the respondent of the charged offences.

26. It is not in doubt that in offences such as the ones in the present case, the sole testimony of the victim alone can lead to the conviction of the accused without the need of further corroboration provided that the same inspire confidence. From the perusal of the material as rightly appreciated by the learned Trial Court, the allegation does not inspire confidence or raise grave suspicion.

27. In the present case, from a perusal of the impugned order, and the material on record, it is apparent that there is no grave suspicion against the respondent which was not properly explained. The grave suspicion is dispelled by the discrepancies in the evidence coupled with the delay in lodging the FIR. In the opinion of this Court, no *prima facie* case is made out against the respondent under Sections 376/354/354A/506 of the IPC.

28. In view of the above discussion, I do not find any infirmity in the impugned order, and the same cannot be faulted with.

29. The present petition is dismissed in the aforesaid terms.

AMIT MAHAJAN, J

DECEMBER 13, 2024

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