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

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Reserved on: 02.05.2024
Pronounced on: 06.05.2024

+ **CRL.REV.P. 596/2024**

ARADHANA

..... Petitioner

Through: Mr. Dinesh Kothari & Mr.
B.S. Randhawa, Advocates
with petitioner in-person.

versus

THE STATE (GOVT. OF NCT OF DELHI) Respondent

Through: Mr. Naresh Kumar Chahar,
APP for the State with Ms.
Nishi Chaudhary, Ms. Shweta
& Mr. Sahil Vidhuri,
Advocates, with SI Divya
Gehlot, P.S.: Kishangarh.

CORAM:

HON'BLE MS. JUSTICE SWARANA KANTA SHARMA

JUDGMENT

SWARANA KANTA SHARMA, J.

1. The present criminal revision petition under Section 397/401 read with Section 482 of the Code of Criminal Procedure, 1973 ('Cr.P.C.') has been filed by the petitioner seeking setting aside of the impugned order dated 15.03.2024, passed by learned Additional Sessions Judge-01, Patiala House Courts, New Delhi, in SC No. 206/2020, wherein charges were framed against the petitioner under Sections 328/509/34 of the Indian Penal Code, 1860 ('IPC') read



with Section 12/21 of The Protection of Children from Sexual Offences Act, 2012 (*POCSO Act*).

2. Learned counsel appearing on behalf of the petitioner argues that the impugned order suffers from serious infirmities and that even if all the allegations are deemed to be correct, no case under Section 328 of IPC is made out, and there is no allegation of mixing any substance in the drink and there is no medical evidence of mixing to frame the charge under Section 328 of IPC. It is further submitted that there is no allegation against the petitioner that she was instrumental in insulting the modesty of the victim in this case and as such, charge under Section 509 of IPC framed against the petitioner is without any evidence. It is further argued that in her complaint to the police on which FIR was registered and also in her statement under Section 164 of Cr.P.C., the victim has specifically stated that she wants action against accused Gaurav Singh Parmar and not against the present petitioner. Therefore, it is prayed that this petition be allowed and the petitioner be discharged in the present case.

3. At the outset, this Court would deem it appropriate to extract the impugned order hereunder, for reference:

“ Arguments on charge heard. Court has perused the record, including the chargesheet, documents filed and statements of the witnesses.

Prima facie case for framing of charges as aforesaid is made against the following accused in view of the allegations of the victim and the subsequent investigation conducted by the IO.

under section 354, 354 A, 509, 506 IPC & 10/12



POCSO Act is made out against the accused Gaurav Singh Parmar.

under section 328/34 IPC is made out against the accused Gaurav Singh Parmar and accused Aradhana.

under section 21/12 POCSO Act and 509 IPC is made out against the accused Aradhana.

under section 21 POCSO Act is made out against the accused Sumit Puri.”

4. The importance and significance of the stage of framing of charge is writ large, since in a criminal case, it is a stage where the incriminating material collected by the investigating agency against an accused is considered by the Court, and the Court is required to apply its mind to reach a conclusion as to whether the charges, that an accused has to face or defend, are made out *prima facie* against him or not.

5. In this regard, it will be crucial to refer to the provisions of Cr.P.C. which deals with framing of charge and discharge. The same read as under:

“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, and thereupon the Chief Judicial 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.”

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.”

6. In other words, it also connotes that it is, at this stage, when the Judge applies its judicial mind to the material on record to make out a *prima facie* view as to whether on the basis of documents placed before him, there is enough incriminating material to make out a charge for conducting a trial. Conversely, in case a Court reaches a conclusion that there is no material on record to even *prima facie* make out a case of commission of alleged offence against the accused, the accused is entitled to be discharged. In both the cases, the judicial precedents of the Hon’ble Apex Court as well as this Court have time and again emphasized that the order on charge should reflect as to whether the concerned Trial Court has applied its mind to the material placed before it.

7. It will also be crucial to discuss and refer to succinctly, the judicial precedents that emphasize upon the importance of application of mind at the stage of charge and the need of passing an order which will reflect the reasons which form the basis of the opinion of the Trial Court, to either discharge an accused or to frame



charge against the accused.

8. In case of *Sajjan Kumar v. CBI (2010) 9 SCC 368*, the Hon'ble Apex Court had laid down principles on the scope of Section 227 and 228 of Cr.P.C. The relevant observations are extracted hereunder:

“21. On consideration of the authorities about 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 of the Cr.P.C. **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 discloses 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)

9. Further, the observations of Hon’ble Apex Court in case of *Dipakbhai Jagdishchandra Patel v. State of Gujarat (2019) 16 SCC 547*, are reproduced as under:

“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...”

(Emphasis supplied)

10. Most importantly, the observations of the Hon’ble Apex Court in case of *R.S. Mishra v. State of Orissa (2011) 2 SCC 689* are reproduced hereunder for guidance:

“21. As seen from Section 227 above, while discharging an accused, the Judge concerned has to consider the record of the case and the documents placed therewith, and if he is so convinced after hearing both the parties that there is no



sufficient ground to proceed against the accused, he shall discharge the accused, but he has to record his reasons for doing the same. Section 228 which deals with framing of the charge, begins with the words "If after such consideration". Thus, these words in Section 228 refer to the 'consideration' under Section 227 which has to be after taking into account the record of the case and the documents submitted therewith. These words provide an inter-connection between Sections 227 and 228. That being so, while Section 227 provides for recording the reasons for discharging an accused, although it is not so specifically stated in Section 228, it can certainly be said that when the charge under a particular section is dropped or diluted, (although the accused is not discharged), some minimum reasons in nutshell are expected to be recorded disclosing the consideration of the material on record. This is because the charge is to be framed 'after such consideration' and therefore, that consideration must be reflected in the order.

24. Further, as observed later in paragraph 6 of a subsequent judgment of this Court in *Niranjan Singh Vs. Jitendra Bhimraj* [1990 (4) SCC 76], **at the stage of the framing of the charge, the Judge is expected to sift the evidence for the limited purpose to decide if the facts emerging from the record and documents constitute the offence with which the accused is charged. This must be reflected in the order of the judge.**

25. Thus it cannot be disputed that in this process the minimum that is expected from the Judge is to look into the material placed before him and if he is of the view that no case was made out for framing of a charge, the order ought to be clear and self-explanatory with respect to the material placed before him..."

(Emphasis supplied)

11. Therefore, what flows from a reading and understanding of the aforesaid judicial precedents is that it is important to pass an order giving brief reasons for the purpose of framing charge or discharging an accused, for the reason that in India, we have a hierarchical system of Courts, where orders passed by the Magisterial Courts can be



challenged before the revisional/appellate courts, at the level of Session Court, and thereafter before the High Court and the Hon'ble Apex Court, as per law. In case, no reasons are reflected in the order for framing of charge against an accused or discharging him, a revisional/appellate court will not be able to know as to what was the basis of a court reaching the conclusion, which it has reached.

12. However, it is not to be laid down by this judgment that the order on charge has to be as detailed as an order passed after trial to reach a conclusion regarding guilt of an accused, since at the stage of framing of charge, only a *prima facie* view of the matter is to be taken. It will thus be important to understand the *prima facie* view. This Bench in *State v. Sudershan Kumar* 2023 SCC OnLine Del 1647 had expressed as under, on the meaning and scope of '*prima facie*' view:

“ii. Prima Facie View

14. The very foundation of formation of opinion regarding framing of charge is as to whether “there is sufficient material on record to prima facie make out a case of commission of an offence”. Therefore, a duty has been cast on the Trial Court judges to apply their mind carefully to the material before them to form such opinion.

15. The edifice of an order on charge is appreciation of prima facie view of the matter. Therefore, it becomes important to address the pertinent question as to what constitutes a “prima facie” view qua the stage of framing charges.

16. Prima facie refers to something that can be determined at first glance, at first impression, on the surface, or inasmuch as it can be inferred from the initial disclosure. Black's Law Dictionary, 5th Ed. suggests that the prima facie case would mean that the evidence brought on record would reasonably allow the conclusion that the plaintiff seeks. Therefore, „prima



facie“ would mean the suggestion that comes from having the first glance of anything.

17. According to the Oxford Dictionary of Modern Greek, the literal meaning of prima facie is “on/at first viewing”. It will necessarily mean that looking at something at its face value and not going into any intricate or detailed analysis, therefore, the word prima facie when used in terms of prima facie view as far as consideration of charge is concerned would mean there being enough material of substance which will give rise to strong suspicion against the accused and holding of a view in favour of prosecution...”

13. At the stage of framing of charge, it is not for the learned Trial Court to reach the conclusion or be satisfied that the trial in the case will end in conviction of the accused, but only a strong suspicion against the accused regarding the commission of offence by him.

14. In such circumstances, after hearing arguments addressed on behalf of accused and the prosecution, the application of mind by the learned Trial Court for the purpose of passing order on charge assumes great importance. In absence of any reasons provided in the order on charge, an appellate court would be unable to construe as to why the learned Trial Court has framed an opinion that *prima facie* case of commission of offence, as alleged by prosecution, is made out or not made out against the accused.

15. The order impugned before this Court, is totally silent on the reasons which formed the basis of opinion of the learned Trial Court. The impugned order, which has been reproduced in paragraph no. 3 only states that the Court has gone through the charge-sheet and documents, however, it does not discuss even in brief, as to what material it has gone through and why on the basis of that material, it



has reached a conclusion that the charge under Sections 328/34 of IPC and Sections 21/12 of POCSO Act was made out against the petitioner herein, or even other accused persons.

16. In such circumstances, this Court is inclined to remand back the case for hearing arguments afresh and passing an order afresh, by the learned Trial Court, within a period of one month.

17. Learned counsel for the accused/petitioner will not seek any adjournment and will conclude his arguments within one hour, since he has already addressed arguments in the present case.

18. The parties are directed to appear before the learned Trial Court on the date already fixed, when instead of recording evidence, the learned Trial Court will hear arguments on charge.

19. No further relief is prayed for.

20. With the above direction, the present petition is accordingly disposed of.

21. The Judgment be uploaded on the website forthwith.

SWARANA KANTA SHARMA, J

MAY 6, 2024/at