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

+ CRL.REV.P. 693/2023 & CRL.M.A. 16865/2023

KHUSHI RAM @ HAPPY Petitioner

Through: Mr. Parvesh Choudhary,
Mr. Saksham Kathuria,
Mr. Bhim Kishan & Mr.
K.P. Singh, Advs.

versus

THE STATE (GOVT OF NCT OF
DELHI)

..... Respondent

Through: Mr. Pradeep Gahalot, APP
for the State with Mr. Ajay
Gautam and Ms. Naina
Kushwaha, Advs.
SI Ajit Krishna, PS-
Gokulpuri
Mr. Ashutosh Kaushik,
Adv. (DHCLSC) for
prosecutrix
Mr. Amit Kumar
Srivastava, Adv. for
prosecutrix

CORAM:

HON'BLE MR. JUSTICE AMIT MAHAJAN

ORDER

08.05.2024

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1. The present petition is filed under Section 397/401 of the Code of Criminal Procedure, 1973('CrPC') challenging the order dated 03.02.2023 (hereafter '**impugned order**'), passed by the learned Additional Sessions Judge ('**ASJ**'), North-East District, Karkardooma Courts, Delhi, in SC No. 58/2021 arising out of FIR No.453/2020, registered at Police Station Gokul Puri, for the offences under Sections 8/17 of the Protection of Children from Sexual Offences Act, 2012 ('**POCSO Act**') and Section



354 of the Indian Penal Code, 1860 ('IPC').

2. The learned ASJ, by the impugned order, framed charges against the petitioner for the offences under Section 354 of the IPC read with Section 8 and Section 7 of the POCSO Act. The learned ASJ noted that there is a specific allegation that the petitioner had held the hand of the victim and grabbed her. It is also specially alleged that he had asked for a sexual favour from her. The learned ASJ also took note of the fact that the complainant/prosecutrix was seventeen years old at the time of commission of the offence.

3. The present FIR was lodged on a complaint made by the prosecutrix. It is stated that the prosecutrix used to work at a cosmetic shop at Seelempur where she got acquainted with a girl named Neha who tried to lure the prosecutrix into immoral acts (prostitution). The prosecutrix, however, rejected the proposal. It is alleged that about a week before the complaint was made, Neha gave the phone number of the petitioner to the prosecutrix and instructed her to talk to him. It is alleged that the petitioner called the prosecutrix to Bhajanpura Petrol Pump on 22.09.2020 at about 8AM.

4. It is alleged that when the prosecutrix came to the Petrol Pump, the petitioner took her on a motorcycle to the property being G-35, Ganga Vihar. It is alleged that the petitioner asked the prosecutrix to walk inside a room and the moment the prosecutrix entered the room, the petitioner grabbed her hand. It is alleged that when the prosecutrix tried to release herself from the hold of the petitioner, he gripped her. It is alleged that the prosecutrix then went to the bathroom and started calling Neha, however, she did not pick the call. The prosecutrix thus dialled 100 number for the police. It is alleged that the petitioner kept



incessantly knocking the door after which the prosecutrix came out and left on foot for Gokalpur Pulia.

5. The MLC of the prosecutrix showed no signs of physical or sexual assault.

6. On 23.09.2020, the prosecutrix in her statement recorded under Section 164 of the CrPC stated that she used to work in a cosmetic shop where she befriended Neha. She stated that Neha told her that she used to 'supply girls' and asked the prosecutrix to work for her. She stated that Neha had called her and told her to go and give drinks to the petitioner. She stated that she had called the petitioner who asked to meet her at the Bhajanpura Petrol Pump. She stated that the petitioner had taken her to G-35, Ganga Vihar, where he asked her for sexual favours. She stated that she refused the petitioner's advances and told him that Neha had sent her to entrap him. She stated that the petitioner asked her to leave from there whereafter she went to the washroom and called Neha, however, Neha did not pick the call. She stated that she called the police as Neha had instructed her previously to do so and had told her that she will handle the rest. She also stated that she wanted to take no action.

7. The learned counsel for the petitioner submits that the learned Trial Court erroneously passed the impugned order without taking into consideration the statement of the prosecutrix under Section 164 of the CrPC.

8. He submitted that the learned Trial Court failed to appreciate that the petitioner is also a victim at the hands of the prosecutrix and Neha who tried to honey trap him for extorting money.

9. He submitted that the prosecutrix voluntarily came to the house of the petitioner. He submitted that the petitioner made no



illegal demands of any kind from the prosecutrix.

10. He submitted that the prosecutrix explicitly admitted in the statement under Section 164 of the CrPC that Neha had sent her to entrap the petitioner.

11. He submitted that the MLC of the prosecutrix mentions no history of physical assault or sexual assault.

12. The prosecutrix is present through video-conferencing.

13. On the last date of hearing, that is, on 24.01.2024, the prosecutrix requested that a counsel be provided to her. Considering her request, this Court directed the Delhi High Court Legal Services Committee ('**DHCLSC**') to appoint a counsel to assist the prosecutrix in the present proceedings.

14. Today, the prosecutrix is represented through counsel-Mr. Amit Kumar Srivastava.

15. In view of the above, Mr. Ashutosh Kaushik who was appointed by DHCLSC seeks discharge from the present matter. Mr. Ashutosh Kaushik is thus discharged in the present proceedings.

16. The learned counsel for the prosecutrix states that no such incident has ever happened pursuant to which the FIR was registered.

17. He submits that FIR was registered at the instance of one person, namely, Neha, who wanted to falsely implicate the petitioner.

18. He submits that the prosecutrix had also given the statement before the learned Magistrate under Section 164 of the CrPC to the said effect.

19. The learned Additional Public Prosecutor for the State vehemently opposes the present petition. He submits that specific allegations have been levelled against the petitioner. He submits



that the discrepancies in the versions of the complainant, if any, have to be seen during the course of the trial.

20. I have heard the counsel and perused the record.

21. Before delving into the facts of the present case, it is important to note that it is a settled law that the scope of interference by High Courts while exercising revisional jurisdiction against order on charge is limited and ought to be exercised sparingly, in the interest of justice, so as to not impede the trial unnecessarily. In the case of ***Amit Kapoor v. Ramesh Chander* : (2012) 9 SCC 460**, the Hon'ble Supreme Court, advertent to a catena of precedents, noted that the test for quashing of charge in exercise of revisional jurisdiction is whether the allegations, as made from the record of the case, taken at their highest, constitute the offence or not.

22. It is also trite law that the trial court, at the stage of framing of charges, is not required to conduct a mini trial and has to merely weigh the material on record to ascertain whether the ingredients constituting the alleged offence are *prima facie* made out against the accused persons. The Hon'ble Apex Court, in the case of ***Sajjan Kumar v. CBI* : (2010) 9 SCC 368**, has culled out the following principles in regards to the scope of Sections 227 and 228 of the CrPC:

“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)

23. In view of the above, it is clear that this Court, at this stage, is not required to reevaluate the evidence or hold a mini trial as the same would be tantamount to this Court assuming



appellate jurisdiction. Thus, all that has to be seen is whether the learned Trial Court has adequately appreciated the material on record and whether on the material placed before it, the Court could form an opinion that there is *grave suspicion* against the accused.

24. In the present case, the learned counsel for the petitioner has contended that the learned ASJ has not sifted the evidence on record and has not taken into account the discrepancies in the statements of the prosecutrix and her shifting stance.

25. The learned ASJ noted that the arguments of the petitioner as to the discrepancies and falsehood of the complaint are unsustainable and cannot be appreciated at the stage of framing of charges. The relevant portion of the impugned order is reproduced hereunder:

“The argument of Ld. counsel for defence as to the discrepancies and falsehood of the complaint, is unsustainable at this stage as this Court cannot appreciate the statement of the victim recorded by the police or her statement recorded U/s 164 Cr. P.C against each other as evidence. The same is a matter of trial to be adjudged upon recording of evidence.”

(emphasis supplied)

26. While it is trite law that the Court need not meticulously examine the nuances of evidence at the stage of framing of charges, however, in case there are material changes in the version of the prosecutrix that are evident without a roving or fishing enquiry, the benefit of the same has to be accrued to the accused person.

27. It is relevant to note that at the stage of framing charges as well, when the primary material on record is only the statement of the prosecutrix, the Court has to consider whether the same inspires such confidence so as to give rise to grave suspicion



against the accused person of having committed the crime.

28. From a bare perusal of the record, the shifty stance of the prosecutrix goes to the very heart of the case in the absence of any other evidence. It seems improbable that the prosecutrix after being propositioned by the petitioner would continue to voluntarily remain in his proximity and go to the washroom for making a call rather than leaving the premises. It is also odd that the prosecutrix felt so threatened that she made a call to the police, but then was able to leave the premises on her own with no difficulty thereafter. No cogent explanation has been provided for the same and instead the prosecutrix is actively contesting that she had only lodged the FIR at the instance of Neha.

29. In such circumstances, this Court is of the opinion that the statement of the petitioner does not inspire confidence and the material on record does not point towards commission of the alleged crime.

30. The case of the prosecution is solely based on a statement given by the prosecutrix. In her statement recorded under Section 161 of the CrPC, she alleged that the petitioner held her hand and groped her. However, even at that stage, it was not alleged that when the prosecutrix wanted to leave the place of incident, the petitioner tried to stop her.

31. The statement under Section 164 of the CrPC was recorded immediately on the next date before the learned Magistrate, wherein the prosecutrix stated that she is aged about seventeen and a half years. The only allegation made against the petitioner was that he asked the prosecutrix whether he can have physical relations with her to which she refused. It is specifically mentioned that the petitioner then asked her to leave after he was told that she had been sent by Neha to falsely implicate him. She



categorically stated that she does not want to pursue any proceedings.

32. The charges under Sections 8 and 17 of the POCSO Act have been framed against the petitioner. Section 8 of the POCSO Act is attracted when the accused, with a sexual intent, touches the vagina, penis, anus or breast of a child or does any other sexual act which involves physical contact. Charges have also been framed under Section 354 of the IPC. Even though, charges have been framed under the provisions of POCSO Act, it is not alleged, at any stage, that the petitioner was aware that the prosecutrix was a minor.

33. The statement given by the prosecutrix under Section 164 of the CrPC indicates that the prosecutrix had herself called the petitioner and when she refused to have any physical relations, he asked the prosecutrix to leave. She categorically stated that she had been sent by Neha to implicate the petitioner in a false case. Admittedly, no investigation has been done by the prosecution in that regard. No allegation has also been made to that effect that the petitioner had physical contact with the prosecutrix with the sexual intent.

34. The prosecutrix was present in person on 24.01.2024 and is, today, represented by learned counsel who supports the case of the petitioner. It is apparent that the prosecutrix does not wish to pursue any proceedings against the petitioner after having realised that the petitioner had been unnecessarily implicated in the case.

35. In the peculiar circumstances of this case, it is unlikely that the present FIR will result in a conviction when Respondent No.2 is not supporting the case of the prosecution.

36. Allowing the proceedings to continue in the facts as noted



above, would be an abuse of the process of the Court and would only cause harassment to, not only the petitioner but also to the prosecutrix.

37. In view of the above, this Court finds it appropriate to set aside the impugned order and discharge the petitioner of the offences.

38. The present petition is allowed in the aforesaid terms. Pending application also stands disposed of.

39. Since serious allegations have been made against Neha that the prosecutrix was induced to go to the petitioner's place to falsely implicate him in the offence, the State is directed to take appropriate action in that regard.

AMIT MAHAJAN, J

MAY 8, 2024
"SS"