



* IN THE HIGH COURT OF DELHI AT NEW DELHI

% Reserved on : 30.11.2023
Pronounced on : 15.03.2024

+ CRL.REV.P. 300/2020

ASIT MUKHERJEE

.....Petitioner

Through: Dr. Amit Mishra and Mr. Amit Rana,
Advocates.

versus

STATE

.... Respondent

Through: Mr. Raghuinder Verma, APP for the
State with Insp. Gianender Singh.
Ms. Astha, Adv. (DHCLSC) for the
prosecutrix.

CORAM:
HON'BLE MR. JUSTICE RAJNISH BHATNAGAR

JUDGMENT

RAJNISH BHATNAGAR, J.

1. The present revision petition U/s 397/401 R/w Section 482 Cr.P.C. has been filed by the petitioner with the following prayers:

- “(a) Set-aside the impugned order dated 14/02/2020 passed by Sh. Sandeep Garg, Ld. ASJ, Saket Court, South, Delhi.
- (b) Discharge the accused Asit Mukherjee for the offence U/s 354/A & 509 IPC and from further prosecution.
- (c) Pass any other order under section of 482 Cr.P.C.
- (d) Pass any other order by this Hon'ble Court may deem fit and proper in the interest of justice and equity.”

2. I have heard the Ld. counsel for the petitioner, Ld. APP for the State



assisted by the Ld. (DHCLSC) counsel for the complainant/prosecutrix and perused the records of this case.

3. It is submitted by the Ld. counsel for the petitioner that there is not even an iota of evidence against the petitioner warranting framing of charges against him U/s 354A/509 IPC. It is further submitted that the allegations made against the petitioner are bereft of details as no specific date time or particulars are stated in regard to the alleged offences. It is further submitted that this Court has power to nip in the bud abuse of process of law and the Ld. Trial Court has simply proceeded on the basis that any specifics are required to be considered at the stage of the trial.

4. It is further submitted that there is a financial dispute between the husband of the complainant and the petitioner and his son. It is further submitted that in the charge sheet it has been mentioned that the husband of the complainant has conceded that he had issued inflated bills earlier which were cancelled by him and new bills for much lesser amount were issued by him. It is further submitted that the version of the victim/complainant is totally unbelievable as she claims to have repeatedly visited the office of the petitioner despite alleged offence having been committed against her by the petitioner and his son. It is further submitted that the charge sheet mentions that on interrogation from the office staff of the petitioner no incriminating evidence/clue against the petitioner came on record. It is further submitted by the Ld. counsel for the petitioner that the victim has not uttered a single word against the petitioner in her statement recorded U/s 164 Cr.P.C and even in supplementary statement recorded thereafter, no specific allegations have been made.



5. On the other hand, Ld. APP for the State ably assisted by the Ld. (DHCLSC) counsel for the complainant/prosecutrix has supported the impugned order and submitted that all the contentions raised are matter of trial. It is further submitted by the Ld. APP that the omission of allegations against the petitioner in the statement of the victim U/s 164 Cr.P.C. will only entitle the petitioner to contradict the victim U/s 145 of the Indian Evidence Act. It is further submitted that the victim in her supplementary statement recorded on 27.02.2018 U/s 161 Cr.P.C. has reiterated her allegations against the petitioner as levelled in her initial complaint/FIR.

6. The relevant para of the impugned order which is essential for the decision of this petition is reproduced as under:

“The veracity or otherwise of the allegations levelled by the complainant can be determined only by conducting trial. Mere omission to mention about allegations against accused Asit Mukherjee in statement under Section 164 Cr.P.C. does not by itself constitute a ground for discharge of accused Asit Mukherjee as the allegations against him have also been reiterated in supplementary statement dated 17.02.2018. From the perusal of complaint, documents annexed along with the chargesheet and statement U/s- 164 Cr.P.C., a prima facie case U/s- 323/342/376 IPC is made out against the accused Arnav Mukherjee and U/s 354A/509 IPC is made out against the accused Asit Mukherjee.

Accordingly, charge U/s- 323/342/376 IPC is framed, read over and explained to accused Arnav Mukherjee and U/s 354A/509 IPC is framed, read over and explained to accused Asit Mukherjee, to which they plead not guilty and claim trial.”

7. The charge framed by the Ld. Trial Court against the petitioner on 14.02.2020 reads as follows:

“That on unknown date and time at your office situated at S-



136, Lower Ground Floor, GK-II, New Delhi within the jurisdiction of PS- C.R. Park, you intending to insult the modesty of complainant/prosecutrix cracked obscene jokes and used obscene language with the complainant/prosecutrix which intrude upon her privacy and made advances involving unwelcome and explicit sexual overtures towards the complainant/prosecutrix by pulling her towards yourself and thereby you committed offences punishable U/s – 354A/509 IPC and within my cognizance.”

8. Section 212 Cr.P.C. reads as follows:

"S. 212. Particulars as to time, place and person.

(1) The charge shall contain such particulars as to the time and place of the alleged offence, and the person (if any) against whom, or the thing (if any) in respect of which, it was committed, as are reasonably sufficient to give the accused notice of the matter with which he is charged.

(2) When the accused is charged with criminal breach of trust or dishonest misappropriation of money or other movable property, it shall be sufficient to specify the gross sum or, as the case may be, describe the movable property in respect of which the offence is alleged to have been committed, and the dates between which the offence is alleged to have been committed without specifying particular items or exact dates, and the charge so framed shall be deemed to be a charge of one offence within the meaning of section 219:

Provided that the time included between the first and last of such dates shall not exceed one year."

9. In the instant case, the FIR was registered on 17.02.2018. The perusal of the FIR shows that the same is bereft of any details like date, time in regard to the alleged offence committed by the petitioner. From the perusal of the FIR it appears that there is a financial dispute between the petitioner and his son on the one side and complainant/victim and her husband on another side in regard to the payments to be made by the petitioner and his



son in respect of the goods purchased by them from the victim and her husband as alleged by the victim. The perusal of the FIR further shows that the victim used to go to the office of the petitioner but as per the charge sheet interrogation was conducted from the office staff of the petitioner but no incriminating evidence/clue came against the petitioner.

10. The statement of the victim/complainant U/s 164 Cr.P.C. was recorded on 19.02.2018 but for the reasons best known to her she has not levelled any allegations against the petitioner in her said statement. When in her first complaint dated 17.02.2018 she made allegations against the petitioner then what transpired between the two days i.e. between 17.02.2018 and 19.02.2018 that she has not made any allegations against the petitioner in her statement recorded U/s 164 Cr.P.C. which clearly shows her malafides against the petitioner. She has even failed to inform her husband regarding the conduct of the petitioner and despite that she kept on visiting the office of the petitioner without making any complaint in regard to his conduct.

11. The supplementary statement of the victim was recorded on 27.02.2018 but what prompted the IO to record the supplementary statement of the victim when her statement U/s 164 Cr.P.,C was already recorded on 19.02.2018. Now in the supplementary statement the victim has stated that the petitioner used to talk loosely with her but she does not remember the context of the talks. Here again the victim fails to mention as to what words were used by the petitioner against her which were offensive and amounted to outrage her modesty. During the course of the arguments, it was also pointed out by the Ld. counsel for the petitioner that as per the CDR analysis



no calls were found to be made by the petitioner to the victim.

12. The petitioner in the present case has been charged with Sections 354A and 509 IPC. It would be appropriate to look into the ingredients of both the Sections and the same reads as follows:-

“S.354A. Sexual harassment and punishment for sexual harassment--(1) A man committing any of the following acts--

(i) physical contact and advances involving unwelcome and explicit sexual overtures; or

(ii) a demand or request for sexual favours; or

(iii) showing pornography against the will of a woman; or

(iv) making sexually coloured remarks,

shall be guilty of the offence of sexual harassment.

(2) Any man who commits the offence specified in clause (i) or clause (ii) or clause (iii) of sub-section (1) shall be punished with rigorous imprisonment for a term which may extend to three years, or with fine, or with both.

(3) Any man who commits the offence specified in clause (iv) of sub-section (1) shall be punished with imprisonment of either description for a term which may extend to one year, or with fine, or with both.”

“S. 509:- Word, gesture or act intended to insult the modesty of a woman

Whoever, intending to insult the modesty of any woman, utters any word, makes any sound or gesture, or exhibits any object, intending that such word or sound shall be heard, or that such gesture or object shall be seen, by such woman, or intrudes upon the privacy of such woman, shall be punished with simple imprisonment for a term which may extend to three years, and also with fine.”

13. Upon careful examination of the aforementioned sections in



conjunction with the FIR and the material available on record, it is evident that the essential elements necessary to charge the petitioner under the said sections are not met and totally missing. The contentions presented within the FIR fail to substantiate the requisite legal criteria for initiating charges against the petitioner. The provisions delineated within the aforementioned sections demand specific factual predicates and elements which, upon scrutiny, are not satisfactorily established within the scope of the FIR. Consequently, the reading of the cited Sections alongside the FIR does not fulfil the fundamental prerequisites vital for charging the petitioner with the alleged offenses therein.

14. Every criminal proceeding demands meticulous attention and prudence, recognizing its profound implications on the accused's life. A judicious adjudication of criminal matters necessitates equilibrium, wherein the judiciary is tasked with impartially weighing the interests of both the complainant and the defendant. This endeavour is particularly intricate when crucial definitions within statutory provisions are lacking. However, historically, courts have discharged this responsibility by drawing upon legal precedents and considering the unique factual circumstances of each case. Likewise, in the present case, it is imperative to strike a balance between the accused's right to a fair trial and the complainant's entitlement to due process, both during the framing of charges and throughout the adjudicatory process.

15. Undoubtedly, each case must be evaluated against the backdrop of its distinctive facts and circumstances, encompassing not only the particulars of the incident but also the individuals involved therein. It is indisputable that



in situations where the allegations outlined in the FIR or complaint, even when taken at face value and embraced in their entirety, fail to *prima facie* establish the purported offense or establish a case against the accused, or where the criminal proceedings exhibit clear signs of malice or are instigated with malevolent intent, motivated by personal vendetta or animosity, the proceedings are susceptible to annulment.

16. The Hon'ble Supreme Court in case of ***Sajjan Kumar v. CBI (2010) 9 SCC 368*** has deliberated on the jurisdiction of courts concerning the framing of charges and discharge, emphasizing that the determination of a *prima facie* case hinges upon the specific facts and circumstances of each case. The pertinent principles outlined in the aforementioned decision are as follows:

“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 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 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.

(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...”

17. The Hon’ble Apex Court in the case of ***Ghulam Hassan Beigh v. Mohd. Maqbool Magrey*** (2022) 12 SCC 657, has observed the law regarding framing of charge as under:

“27. 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...”

18. Hence, the cornerstone for deliberating on the formulation of charges



focuses on ascertaining the presence of sufficient evidence on record to establish, at first glance, the commission of an offense. Establishing a "*prima facie*" case entails having adequate material or evidence that, when examined on its face, raises a reasonable suspicion that the accused could have perpetrated the purported offense.

19. So, keeping in view the discussions mentioned hereinabove, in my opinion, no charge u/s 354A/509 IPC is found to be made out against the petitioner and the continuation of the present criminal proceedings against the petitioner would be an abuse of the process of law and this is a fit case for setting aside the impugned order dated 14.02.2020 by virtue of which the charge U/s 354A/509 IPC was framed against the petitioner, the same is accordingly set aside. The petitioner stands discharged for the offences for which he was charged.

20. The present petition along with pending applications, if any, stands disposed of.

21. The copy of this order be sent to the Trial Court for information and further compliance.

RAJNISH BHATNAGAR, J

MARCH 15, 2024

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