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

+ CRL.REV.P. 809/2023 & CRL.M.A. 20424/2023

THAN SINGH DAHIYA & ANR. Petitioners
Through: Mr. Mukul Sharma,
Advocate.

Versus

THE STATE (GOVT OF NCT DELHI) Respondent
Through: Mr. Raj Kumar, APP for
the State with Mr. Kunal
Singh & Mr. Rishi Grover,
Advocates & SI Deeksha
(P.S. Raj Park).
Mr. Hemant Singh & Ms.
Urvashi Jain, Advocates
for Complainant.

CORAM:
HON'BLE MR. JUSTICE AMIT MAHAJAN

% **ORDER**
03.05.2024

1. The present petition is filed under Section 397 read with 401 of the Code of Criminal Procedure, 1973 ('CrPC') challenging the order on point of charge dated 01.03.2023 (hereafter '**impugned order**'), passed by Additional Sessions Judge, Rohini Courts, Delhi, in SC No.908/2019 arising out of FIR No. 337/2019 dated 14.04.2019, registered at police station Raj Park, for offences under Sections 376/506 of the Indian Penal Code, 1860 ('IPC').

2. The learned Trial Court, by the impugned order, after hearing the arguments on charge came to the conclusion that *prima facie* there was sufficient material to frame formal charges
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for the offences under Section 376(2)(n)/506 of the IPC against Petitioner No.1 and for the offence under Section 376 read with Section 109 of the IPC against Petitioner No.2.

3. Formal charges for the aforesaid offences were framed against the petitioners/ accused persons by the learned Trial Court *vide* separate orders on charge dated 21.03.2023.

4. The brief facts of the case are as follows:

4.1. It is alleged that the victim's husband was working as a night guard at the farm house of Petitioner No.1. It is alleged that Petitioner No.1 asked the victim's husband to shift to a room at the farm house as it takes him a long time to commute from his residence, whereafter, the victim and her family shifted to the farm house.

4.2. It is alleged that Petitioner No.1 used to make untoward advances towards the victim. On finding out about the conduct of Petitioner No.1 from the victim, her husband told her that he will quit his job in a couple days and find work elsewhere.

4.3. It is alleged that on 07.04.2019, at about 9AM, when her husband had gone in search of work, Petitioner No.1 called the victim to come to his house to explain as to why her husband had stopped working for him. It is alleged that Petitioner No.1 dragged her to the bathroom and forcefully established sexual relations with her. It is alleged that Petitioner No.1 also threatened to kidnap the victim and her family members and to kill them if she told about the incident to anyone. The victim/ complainant lodged the present FIR on 14.04.2019.

4.4. The victim, in her statement recorded under Section 164 of the CrPC, reiterated the allegations against



Petitioner No.1. She stated that when her husband had gone in search of work, Petitioner No.2 (wife of Petitioner No.1) called her and forcibly took her to Petitioner No.1. She further stated that Petitioner No.1 handed over the younger daughter of the victim to Petitioner No.2 and asked her to stand outside and keep a watch. Thereafter, Petitioner No.1 forcibly established sexual relations with the victim twice and also made a nude video of the victim.

5. The learned counsel for the petitioners submits that the learned Trial Court passed the impugned order in a mechanical manner only on the basis of the statement of the complainant.

6. The main contention raised by the learned counsel for the petitioners is that the learned Trial Court erred in not perusing the footage from the CCTV cameras installed at the alleged place of the incident, that is, the house of the petitioners. He submits that even a cursory look at the footage would destroy the case of the prosecution and show that nothing untoward happened with the complainant on the alleged day of occurrence.

7. He submits that the footage from the CCTV cameras is a crucial piece of evidence, and is relied upon in the chargesheet. He submits that the learned Trial Court also did not peruse the video grabs/ still photographs from the CCTV footage that were filed by the petitioners.

8. He submits that the footage shows that the complainant on the date of the incident was normally conversing with the petitioners. He submits that the footage shows that Petitioner No.2 and the complainant went inside the sitting room. It also shows the complainant exiting and re-entering the room voluntarily. It shows that the children of the complainant were



playing outside the said room. The footage does not show that Petitioner No.2 dragged the complainant as alleged. Instead, the complainant can be seen smiling in the footage and she showed no emotion of such nature to suggest that she had been raped or threatened by Petitioner No.1.

9. He submits that the time of incident is mentioned as 9AM in the FIR, however, a bare perusal of the CCTV footage would show that nobody came to the house of the petitioners at that time.

10. He submits that the complainant trespassed into the residential premises of the petitioners for checking whether they were home after the date of the alleged incident. He submits that such conduct of the complainant shows her *mala fides*.

11. The learned Additional Public Prosecutor for the State contests the averment of the petitioners that the learned Trial Court did not peruse the footage at all.

12. He submits that the footage came to the notice of the Investigating Officer after the same was produced by the petitioners at the time of consideration of their anticipatory bail applications.

13. He submits that the learned Trial Court had adequately appreciated that the same is in nature of defence evidence. He submits that it is settled law that defence evidence is not to be considered at the stage of framing of charges.

14. He submits that the defences of the petitioners, if any, will be adjudicated during the course of the trial.

15. I have heard the counsel for the parties and perused the record.

16. It appears that the petitioners are essentially aggrieved by the non-consideration of the CCTV footage before the framing of



the charges in the present case.

17. While it is trite law that the Trial Court, at the stage of framing charges under Section 228 of the CrPC, is not required to conduct a mini trial, however, it is incumbent on the Court to sift and weigh the material on record to ascertain whether the ingredients constituting the alleged offence are *prima facie* made out against the accused persons (Ref. **Sajjan Kumar v. CBI: (2010) 9 SCC 368**).

18. In such circumstances, at the outset, it is pertinent to note as to what has been observed by the learned Trial Court regarding the footage of the CCTV cameras. The relevant portion of the impugned order is reproduced hereunder:

“As regards the arguments that the CCTV footage of the cameras installed at the place of incident, there is nothing incriminating against the accused. It is pertinent to observe that the said arguments are in the nature of plea of defence and can only be considered after the victim deposes in the court and not at this stage.”

19. It is clear from the impugned order that the learned Trial Court did not peruse the footage or the video-grabs/ still photographs excerpted from the CCTV footage. It is not disputed that the CCTV footage was collected by the prosecution during the course of investigation and was part of chargesheet.

20. It is settled law that an accused person has no right to call upon the learned Trial Court to examine any material placed by him pertaining to his defence. Hence, the learned Trial Court committed no error in not perusing the synopsis of the video grabs placed on record by the petitioners.

21. In so far as the CCTV footage that was part of the chargesheet is concerned, the Hon'ble Apex Court in the case of **State of Gujarat v. Dilipsinh Kishorsinh Rao : 2023 SCC**



OnLine SC 1294 has discussed in detail as to whether the material, that is part of the chargesheet, is to be considered at the stage of framing of charges. The relevant portion of the judgment is reproduced hereunder:

“8. At the time of framing of the charge and taking cognizance the accused has no right to produce any material and call upon the court to examine the same. No provision in the Code grants any right to the accused to file any material or document at the stage of framing of charge. The trial court has to apply its judicial mind to the facts of the case as may be necessary to determine whether a case has been made out by the prosecution for trial on the basis of charge-sheet material only.

9. If the accused is able to demonstrate from the charge-sheet material at the stage of framing the charge which might drastically affect the very sustainability of the case, it is unfair to suggest that such material should not be considered or ignored by the court at that stage. The main intention of granting a chance to the accused of making submissions as envisaged under Section 227 of the Cr. P.C. is to assist the court to determine whether it is required to proceed to conduct the trial. Nothing in the Code limits the ambit of such hearing, to oral hearing and oral arguments only and therefore, the trial court can consider the material produced by the accused before the I.O.

10. It is settled principle of law that at the stage of considering an application for discharge the court must proceed on an assumption that the material which has been brought on record by the prosecution is true and evaluate said material in order to determine whether the facts emerging from the material taken on its face value, disclose the existence of the ingredients necessary of the offence alleged. This Court in State of Tamil Nadu v. N. Suresh Rajan, (2014) 11 SCC 709 adverting to the earlier propositions of law laid down on this subject has held:

29. We have bestowed our consideration to the rival submissions and the submissions made by Mr. Ranjit Kumar commend us. True it is that at the time of consideration of the applications for discharge, the court cannot act as a mouthpiece of the prosecution or act as a post office and may sift evidence in order to find out whether or not the allegations made are groundless so as



to pass an order of discharge. It is trite that at the stage of consideration of an application for discharge, the court has to proceed with an assumption that the materials brought on record by the prosecution are true and evaluate the said materials and documents with a view to find out whether the facts emerging therefrom taken at their face value disclose the existence of all the ingredients constituting the alleged offence. At this stage, probative value of the materials has to be gone into and the court is not expected to go deep into the matter and hold that the materials would not warrant a conviction. In our opinion, what needs to be considered is whether there is a ground for presuming that the offence has been committed and not whether a ground for convicting the accused has been made out. To put it differently, if the court thinks that the accused might have committed the offence on the basis of the materials on record on its probative value, it can frame the charge; though for conviction, the court has to come to the conclusion that the accused has committed the offence. The law does not permit a mini trial at this stage.”

11. The defence of the accused is not to be looked into at the stage when the accused seeks to be discharged. The expression “the record of the case” used in Section 227 Cr. P.C. is to be understood as the documents and articles, if any, produced by the prosecution. The Code does not give any right to the accused to produce any document at the stage of framing of the charge. The submission of the accused is to be confined to the material produced by the investigating agency.”

(emphasis supplied)

22. In view of the above, without commenting on the merits of the case, since the learned Trial Court evidently did not peruse the CCTV footage and did not consider the submissions of the petitioners in relation to the same, this Court considers it apposite to set aside the impugned order and remand the matter to the learned Trial Court for the purpose of consideration of the CCTV footage before passing any order for framing of the charges.

23. It will be open to the parties to address arguments on this limited aspect before the Trial Court at the time of framing of



charges as well.

24. The petition is disposed of in the aforesaid terms.

25. A copy of this order be sent to the learned Trial Court for necessary compliance.

AMIT MAHAJAN, J

MAY 3, 2024/‘Aman’