



2024:DHC:6899



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

Date of decision: 28th AUGUST, 2024

IN THE MATTER OF:

+ **CRL.REV.P. 498/2022**

L KUMARI

.....Petitioner

Through: Mr. Vivek Kumar Gaurav, Advocate.
Mr. Vishwendra Verma, Ms. Shivali
Riya, Mr. Archit Verma and Mr. Ajay
Nagar, Advocates.

versus

STATE OF NCT OF DELHI & ANR.

.....Respondents

Through: Mr. Shoaib Haider, APP for the State.
Mr. Vimal Puggal and Mr. Manobal
Gupta, Advocates for Respondent No.
2.
SI Manoj Kumar, PS Paschim Vihar
West.

CORAM:

HON'BLE MR. JUSTICE SUBRAMONIUM PRASAD

JUDGMENT

1. The Petitioner has approached this Court challenging an Order dated 28.05.2022 passed by the learned Additional Sessions Judge, Tiz Hazari Courts, New Delhi discharging Respondent No.2 for offences under Section 376, 506 IPC.
2. The facts of the case reveal that an FIR being FIR No.64/2021 was registered at Police Station Paschim Vihar West on 01.03.2021 on the complaint of the Petitioner for an alleged incident that took place on 23.02.2021, which has been wrongly mentioned as 23.02.2019.



2024:DHC:6899



3. It is the statement on the Petitioner that the Petitioner came to Delhi on 25.07.2019 and they were residing in Dwarka. It is stated in the FIR that on 23.02.2019 at about 09:00 PM, Respondent No.2 came to their residence on the pretext of repairing a light. It is stated that at that time, the Prosecutrix was preparing food. It is stated that the Respondent No.2/Accused called the Prosecutrix to show some light so that he could do his work and he started touching her inappropriately.
4. It is stated that the Accused pushed the Prosecutrix to bed and pressed her mouth and committed rape. It is stated that the Accused threatened the Prosecutrix that in case she reveals about the incident to anybody else, he would get her husband killed. It is stated that the husband of the Prosecutrix saw the accused leaving the house. It is stated that the Prosecutrix told her husband about the incident and an FIR was registered.
5. A supplementary statement of the Prosecutrix was recorded under Section 161 CrPC wherein it is stated that the date of incident was wrongly mentioned in the first complaint as 23.02.2019, and, in fact, the date of incident is 23.02.2021.
6. On investigation, chargesheet was filed for offence under Section 376, 506 IPC against Respondent No.2/Accused. The arguments were heard on framing of charge. The learned Trial Court was of the view that the Accused was a family friend and there were differences between the family and the learned Trial Court noted the contentions for the learned Counsel for Respondent No.2/Accused that he has been falsely implicated. It is noted by the Trial Court that the Accused and the Prosecutrix had been talking over phone after the incident. However, no CDR of the Accused has been filed by the Police.



2024:DHC:6899



7. Pursuant to a statement under Section 164 CrPC, a statement under Section 161 CrPC was recorded wherein the Prosecutrix has correctly given the date as 23.02.2021.
8. The Trial Court also noted that in a statement under Section 164 CrPC, the Prosecutrix stated that the Accused had closed her mouth whereas in the supplementary statement under Section 164 CrPC, she stated that the Accused pressed her throat. The Trial Court also held that there was a delay in lodging the FIR and the Trial Court was of the opinion that the delay appears to be deliberate and raises an inference that the Prosecutrix manipulated the information to falsely implicate Respondent No.2. The Trial Court was of the opinion that the husband of the Prosecutrix did not show any hint of panic after becoming aware that rape has been committed on his wife and no *prima facie* ground was made against the Accused.
9. Heard learned Counsel for the parties and perused the material on record.
10. Learned Counsel for the Petitioner states that a slight delay in filing the FIR cannot be fatal. He states that in sensitive cases of rape, there is hesitancy on the part of the family to report the incident to the Police because of the fear of the society. He states that minor contradictions as to whether the Prosecutrix's mouth or throat was pressed cannot be fatal and these are matters which have to be seen on trial. He states that the Prosecutrix has been consistent in all statements regarding offence of rape. It is stated that in the initial statement, the Prosecutrix stated that the offence was committed on 23.02.2019, whereas the date of incident was 23.02.2021, which was corrected by supplementary statement under Section 161 CrPC.
11. *Per contra*, learned Counsel for Respondent No.2 states that the entire



2024:DHC:6899



complaint is to implicate Respondent No.2. He states that the Petitioner and her husband are wise enough and there is no reason forthcoming as to why they kept quiet for 6-7 days. The Prosecutrix has been in touch with Respondent No.2/Accused even after the incident and the Police had withheld the CDR of the Prosecutrix and the Accused.

12. Learned APP for the State supports the case of the Prosecutrix and submits that the State has also filed a petition challenging the order impugned herein.

13. The principles which have to be kept in mind by a Court while framing charges have been laid down by the Apex Court in a number of judgments. Undoubtedly, a Judge while considering the question of framing charges under Section 227 CrPC has power to sift and weigh the evidence for the limited purpose of finding out whether or not a *prima facie* case against the accused is made out and only when the material placed before the Court disclose the grave suspicion against the accused which has not been properly explained, the Court will be justified in framing charge and proceeding with the trial. It is also held that if there are two views possible and if the Judge is satisfied that the evidence produced before him gives rise to some suspicion but not grave suspicion, the Judge is fully within his rights to discharge the accused.

14. The Apex Court in Union of India v. Prafulla Kumar Samal & Anr., 1979 (3) SCC 4, has observed as under:-

“10. Thus, on a consideration of the authorities mentioned above, the following principles emerge:

(1) That the Judge while considering the question of framing the charges under Section 227 of the Code 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.

(2) 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.

(3) The test to determine a prima facie case would naturally depend upon the facts of each case and it is difficult to lay down a rule of universal application. By and large however if two views are equally possible and the Judge is satisfied that the evidence produced before him while giving rise to some suspicion but not grave suspicion against the accused, he will be fully within his right to discharge the accused.

(4) That in exercising his jurisdiction under Section 227 of the Code the Judge which under the present Code is a senior and experienced 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 appearing in the case and so on. This however does not mean that the Judge should make a roving enquiry into the pros and cons of the matter and weigh the evidence as if he was conducting a trial."

The said judgment has been followed by the Apex Court in Dilawar Balu Kurane v. State of Maharashtra, (2002) 2 SCC 135.

15. The Apex Court in State of Tamil Nadu v. N Suresh Rajan & Ors., (2014) 11 SCC 709, has observed as under:-

"29... 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.

30. *Reference in this connection can be made to a recent decision of this Court in Sheoraj Singh Ahlawat v. State of U.P. [(2013) 11 SCC 476 : (2012) 4 SCC (Cri) 21 : AIR 2013 SC 52] , in which, after analysing various decisions on the point, this Court endorsed the following view taken in Onkar Nath Mishra v. State (NCT of Delhi) [(2008) 2 SCC 561 : (2008) 1 SCC (Cri) 507] : (Sheoraj Singh Ahlawat case [(2013) 11 SCC 476 : (2012) 4 SCC (Cri) 21 : AIR 2013 SC 52] , SCC p. 482, para 15)*

“15. ‘11. It is trite that at the stage of framing of charge the court is required to evaluate the material



*and documents on record with a view to finding out if the facts emerging therefrom, taken at their face value, disclosed the existence of all the ingredients constituting the alleged offence. At that stage, the court is not expected to go deep into the probative value of the material on record. What needs to be considered is whether there is a ground for presuming that the offence has been committed and not a ground for convicting the accused has been made out. At that stage, even **strong suspicion** founded on material which leads the court to form a presumptive opinion as to the existence of the factual ingredients constituting the offence alleged would justify the framing of charge against the accused in respect of the commission of that offence.’ (Onkar Nath case [(2008) 2 SCC 561 : (2008) 1 SCC (Cri) 507] , SCC p. 565, para 11)”*
(emphasis in original)

31. *Now reverting to the decisions of this Court in Sajjan Kumar [Sajjan Kumar v. CBI, (2010) 9 SCC 368 : (2010) 3 SCC (Cri) 1371] and Dilawar Balu Kurane [Dilawar Balu Kurane v. State of Maharashtra, (2002) 2 SCC 135 : 2002 SCC (Cri) 310] , relied on by the respondents, we are of the opinion that they do not advance their case. The aforesaid decisions consider the provision of Section 227 of the Code and make it clear that at the stage of discharge the court cannot make a roving enquiry into the pros and cons of the matter and weigh the evidence as if it was conducting a trial. It is worth mentioning that the Code contemplates discharge of the accused by the Court of Session under Section 227 in a case triable by it; cases instituted upon a police report are covered by Section 239 and cases instituted otherwise than on a police report are dealt with in Section 245. From a reading of the aforesaid sections it is evident that they contain somewhat different provisions with*



regard to discharge of an accused:

31.1. Under Section 227 of the Code, the trial court is required to discharge the accused if it “considers that there is not sufficient ground for proceeding against the accused”. However, discharge under Section 239 can be ordered when “the Magistrate considers the charge against the accused to be groundless”. The power to discharge is exercisable under Section 245(1) when, “the Magistrate considers, for reasons to be recorded that no case against the accused has been made out which, if unrebutted, would warrant his conviction”.

31.2. Section 227 and 239 provide for discharge before the recording of evidence on the basis of the police report, the documents sent along with it and examination of the accused after giving an opportunity to the parties to be heard. However, the stage of discharge under Section 245, on the other hand, is reached only after the evidence referred in Section 244 has been taken.

31.3. Thus, there is difference in the language employed in these provisions. But, in our opinion, notwithstanding these differences, and whichever provision may be applicable, the court is required at this stage to see that there is a prima facie case for proceeding against the accused. Reference in this connection can be made to a judgment of this Court in R.S. Nayak v. A.R. Antulay [(1986) 2 SCC 716 : 1986 SCC (Cri) 256] . The same reads as follows : (SCC pp. 755-56, para 43)

“43. ... Notwithstanding this difference in the position there is no scope for doubt that the stage at which the Magistrate is required to consider the question of framing of charge under Section 245(1) is a preliminary one and the test of ‘prima



2024:DHC:6899



facie' case has to be applied. In spite of the difference in the language of the three sections, the legal position is that if the trial court is satisfied that a prima facie case is made out, charge has to be framed."

A perusal of the judgment indicates that if on the basis of the material on record, a court can come to the conclusion that commission of offence is a probable consequence, a case for framing of charge exists. At the time of framing of charge, probative value of the material on record cannot be gone into and the material brought on record by the prosecution has to be accepted at this stage.

16. Applying the law laid down by the Apex Court to the facts of the present case, this Court is of the view that the present case is one for an offence of rape. The fact that there is a delay of 6-7 days in filing the FIR alone cannot be fatal, leading to discharge of the Accused. Families are generally hesitant to rush to the Police Station to file a case of rape as it attracts attention of people and people are hesitant in acknowledging the fact that an offence of rape has been committed on the lady of the house for the reason that a social stigma is attached to the lady.

17. The Trial Court seems to have been swayed by a contradiction in the statement made by the Prosecutrix under Section 161 CrPC and Section 164 CrPC inasmuch as the statement under Section 161 CrPC it was stated by the Prosecutrix that her mouth was pressed whereas in the statement under Section 164 CrPC she stated that her throat was pressed by the Accused. These are matters which have to be seen in trial and the fact that as to whether the mouth was pressed or throat has been pressed is not of vital importance at the time of framing of charge.



2024:DHC:6899



18. It is well settled that though the Trial Court cannot act as a mouthpiece of the prosecution but as stated in the aforesaid judgments, if there is material to indicate that the commission of offence is a possible conclusion and there is grave suspicion that the accused has committed that offence, trial must continue. This Court cannot ignore that for an accused there are several stages at which he can get acquitted but for a victim if the accused is discharged, then that is the end of the matter. This Court is therefore of the opinion that the Trial Court has erred in discharging Respondent No.2/Accused for offences under Section 376 & 506 IPC.

19. In view of the foregoing, the order impugned herein is set aside. This Court is of the opinion that there is sufficient material on record to frame charges against Respondent No.2 for offences under Section 376 & 506 IPC. The courts below are directed to proceed further in the matter.

20. With these observations, the petition is disposed of along with pending application(s), if any.

SUBRAMONIUM PRASAD, J

AUGUST 28, 2024

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