



2024:DHC:4286



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

Date of decision: 24.05.2024

+ **CRL.M.C. 4829/2022 & CRL.M.A. 19398/2022**
MANOJ RANA

..... Petitioner

Through: Ms.Shakti Chaturvedi, Adv.

versus

THE STATE GOVT OF NCT OF DELHI & ANR.

..... Respondents

Through: Mr.Shoaib Haider, APP along
with Mr.Akash Awana, Adv.

SI Mohd Intzar, PS IP Estate
Delhi.

Mr.Kunal Mittal & Mr.Shiv
Dutt Kaushik, Advs. for R-2.

CORAM:
HON'BLE MR. JUSTICE NAVIN CHAWLA

NAVIN CHAWLA, J. (ORAL)

1. This petition has been filed under Article 227 of the Constitution of India read with Section 482 of the Code of Criminal Procedure, 1973 (in short, 'Cr.P.C.') challenging the order dated 14.07.2022 passed by the learned Additional Sessions Judge-03, Central-District, Tis Hazari Courts, Delhi (hereinafter referred to as the 'Additional Sessions Judge') in Criminal Revision No.422/2019 titled as *Ms. M v. The State*



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(Govt. of NCT of Delhi) & Anr., allowing the said Revision Petition filed by the victim.

2. The said Revision Petition was filed challenging the order dated 05.01.2019 passed by the learned Metropolitan Magistrate-03, Central-District, Tis Hazari Courts, Delhi (hereinafter referred to as the 'Trial Court') in the case arising from FIR No.393/2014 for offence under Sections 509/506/34 of the Indian Penal Code, 1860 (in short, 'IPC'), Police Station: I.P. Estate, Delhi, whereby the learned Trial Court discharged the petitioner herein for offence under Sections 506/509/34 of the IPC.

Factual Background

3. Briefly stated, the above FIR had been filed on the complaint of the victim, stating that she is a gymnast trainee at the stadium. The petitioner here was her gymnastics coach. On 02.09.2014, at about 6:45 PM, the petitioner along with a co-accused, mentally harassed her by making remarks about her inner-wear and made fun of her by uttering words which outraged her modesty. They also made several gestures towards her and continued to make fun of her in abusive slang which offended her dignity and self-respect. When she proceeded to file the complaint to the Chief Coach, instead of apologizing for his conduct, the petitioner threatened her by saying '*Tune galat aadmi se panga liya hai, tujhe to mai batunga*'.

4. As noted hereinabove, the learned Metropolitan Magistrate proceeded to discharge the petitioner herein of



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offences under Sections 506/509/34 of the IPC. The same was challenged by way of a Revision Petition by the victim. The learned Additional Sessions Judge allowed the said Revision Petition by observing that while the intention is one of the main ingredients of the offence under Section 509 of the IPC, it has to be gathered from the surrounding circumstances and is, in any case, a matter of evidence which can be proved during the trial. The learned Additional Sessions Judge, therefore, held that there is *prima facie* evidence to proceed under Section 506 and Sections 509/34 of the IPC against the petitioner herein. The learned Additional Sessions Judge directed for the Trial Court to proceed with the proceedings in accordance with law.

Submissions of the learned counsel for the petitioner

5. The learned counsel for the petitioner submits that there was no evidence on record that would suggest the invocation of Section 509 of the IPC against the petitioner. She submits that even the words that are attributed to have been spoken, were by the co-accused and not by the petitioner.

Submissions of the learned counsel for the complainant and the learned APP

6. On the other hand, the learned counsels for the respondents submit that no fault can be found in the Impugned Order. They submit that the allegations made in the FIR clearly drew the offence under Section 509 of the IPC. They submit that both the accused were standing together and were passing



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the comments alleged against the victim. They are also alleged to have made other gestures against the victim.

7. They submit that, in any case, these were matters of trial and the learned Trial Court had erred in discharging the petitioner at the stage of framing of charge itself.

Analysis and Findings

8. I have considered the submissions made by the learned counsels for the parties.

9. I would first remind myself of the test to be applied at the stage of framing of the charge. At the stage of framing charge/considering the application filed by the accused seeking discharge, the detailed analysis of the evidence is not to be carried out by the Court. The only test to be applied is whether there is sufficient cause made out by the prosecution to proceed against the accused. As the Supreme Court has held in its judgment in *State of Gujarat v. Dilipsinh Kishorsinh Rao*, 2023 SCC OnLine SC 1294, what is required while considering framing of charge and discharge, is only the satisfaction of the court as to whether a *prima facie* case is made out against the accused to stand trial with the material available. I may quote from the judgment as under:

“7. It is trite law that application of judicial mind being necessary to determine whether a case has been made out by the prosecution for proceeding with trial and it would not be necessary to dwell into the pros and cons of the matter by examining the defence of the accused when an application for discharge is filed. At that stage, the trial judge has to



merely examine the evidence placed by the prosecution in order to determine whether or not the grounds are sufficient to proceed against the accused on basis of charge sheet material. The nature of the evidence recorded or collected by the investigating agency or the documents produced in which prima facie it reveals that there are suspicious circumstances against the accused, so as to frame a charge would suffice and such material would be taken into account for the purposes of framing the charge. If there is no sufficient ground for proceeding against the accused necessarily, the accused would be discharged, but if the court is of the opinion, after such consideration of the material there are grounds for presuming that accused has committed the offence which is triable, then necessarily charge has to be framed.

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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.*

12. *The primary consideration at the stage of framing of charge is the test of existence of a prima-facie case, and at this stage, the*



probative value of materials on record need not be gone into. This Court by referring to its earlier decisions in the State of Maharashtra v. Som Nath Thapa, (1996) 4 SCC 659 and the State of MP v. Mohan Lal Soni, (2000) 6 SCC 338 has held the nature of evaluation to be made by the court at the stage of framing of the charge is to test the existence of prima-facie case. It is also held at the stage of framing of charge, the court has to form a presumptive opinion to the existence of factual ingredients constituting the offence alleged and it is not expected to go deep into probative value of the material on record and to check whether the material on record would certainly lead to conviction at the conclusion of trial.”

10. Section 509 of the IPC reads as under:-

“509. Word, gesture or act intended to insult the modesty of a woman.—Whoever, intending to insult the modesty of any woman, utters any words, 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.”

11. A reading of the above provision would show that an essential ingredient of the offence is the “*intention*” to insult the modesty of any woman. Such intention is to be assessed on the basis of numerous factors including the act itself, the context in which the action occurred, choice of words or gestures, surrounding circumstances, the background of the accused, the complainant’s perspective, etc..



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12. In the present case, the victim had stated that the words spoken were referring to her inner-wear and were accompanied by various other gestures. These are clearly a matter of trial and same could not have been determined by the learned Trial Court at the stage of framing of the charge by discharging the petitioner. The learned Additional Sessions Judge has, therefore, rightly intervened in the matter and has directed framing of charge under Sections 506/509/34 of the IPC against the petitioner. I find no infirmity in the said order.

Conclusion

13. Accordingly, the present petition and the pending application are dismissed.

14. Needless to state that any observation made in the present order shall in no manner prejudice the trial.

NAVIN CHAWLA, J

MAY 24, 2024/rv/ss

[Click here to check corrigendum, if any](#)