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

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Reserved on: 01.12.2023

Pronounced on: 03.01.2024

+ **CRL.REV.P. 1161/2023 & CRL.M.A. 29631/2023**

X

..... Petitioner

Through: Ms. Samridhi Arora, Ms.
Sanjana and Ms. Tanya Singh,
Advocates

versus

STATE (NCT OF DELHI) AND ANR.

..... Respondents

Through: Mr. Naresh Kumar Chahar,
APP for the State with SI Aarti
Yadav, P.S. Sagarpur.
Mr. Shekhar, Advocate for R-
2.

CORAM:

HON'BLE MS. JUSTICE SWARANA KANTA SHARMA

JUDGMENT

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SWARANA KANTA SHARMA, J.

THE STORY OF THE CASE

1. The case reveals the story of matrimonial discord between two couples and the complications that arose inviting criminality when two different partners of the story fell in love with each other and decided to marry again. The uniqueness of the story is that Ms. 'X' was married to Mr. 'A' and Respondent no. 2 Mr. Singh was married to Ms. 'B'. The complaint reveals that Ms. 'X' was known to Mr. Singh prior to her marriage to 'A' and Mr. Singh's marriage to Ms. 'B' since the year 2011. Their relationship did not culminate into marriage and they were married to different partners in the year 2011 itself. They had parted ways and had become distant not only in terms of any relationship but also became distant in terms of the countries they chose to live in. Petitioner, Ms. 'X' settled in India after marriage with Mr. 'A' and respondent no. 2 settled in Canada after marriage with Ms. 'B'. Unfortunately, their matrimonial lives were unsettled soon and both as per the investigation and complaint were carrying the burden of unhappy marriage with their respective partners.

2. The twist in the story was that the mutual unhappiness experienced by Ms. 'X' and Mr. Singh in their marriage with their respective partners brought about mutual love between them despite still being legally married to their respective partners.

3. Ms. 'X' and her husband Mr. 'A' mutually decided to separate from each other and after extensive deliberations, both the families



collectively decided that after obtaining divorce, the petitioner Ms. 'X' would move to Canada with her children, since her family including her father and brother were planning to settle in Canada.

4. During this time i.e. in the year 2016, Ms. 'X' and Mr. Singh again came in contact with each other by stroke of destiny, through social media i.e. Facebook, and they started talking to each other. As Ms. 'X' and Mr. Singh were going through marital challenges in their respective lives, in November, 2016, from the outset of their resumed conversation and relationship, Mr. Singh had allegedly assured Ms. 'X' of his desire to marry her. Mr. Singh allegedly also gave a commitment to Ms. 'X' and her family, who by now had also been blessed with two children with Mr. 'A'.

5. Ms. 'X' and Mr. Singh while hoping for a happier future together mutually agreed that following divorce granted by the Court to Ms. 'X' with Mr. 'A', Ms. 'X' and Mr. Singh will get married to each other and Ms. 'X's children will also be taken care of by Mr. Singh.

6. On 05.02.2017, Ms. 'X' and Mr. Singh had met, and thereafter, Mr. Singh had begun visiting her on annual basis. Anticipating marriage between themselves, they both had entered into physical relations, which now as per complaint filed by Ms. 'X' was by using deceitful claims of marriage. Ms. 'X' claims that Mr. Singh had lured her into physical relationship at Ideal Apartment, Dwarka which was owned by brother of Mr. Singh. In the meantime, Ms. 'X' and Mr. Singh had jointly decided to initiate divorce proceedings with their



respective martial partners with the aim of ultimately building a lifetime of happiness together.

7. However, on 02.06.2018, Mr. Singh allegedly expressed his preference for only sexual relationship with Ms. 'X' and his inability to commit on a deeper level. Thereafter, on 15.12.2019, Ms. 'X' and her Mr. 'A' had reached an amicable settlement to settle all their disputes related to their marriage, including matters of *stridhan*, permanent alimony, dowry articles, maintenance, etc. They also mutually agreed that both their children born out of their marriage will remain in the custody of Ms. 'X'.

8. During this time, it came to the attention of Ms. 'X' that Mr. Singh had also initiated divorce proceedings with his wife Ms. 'B' in Canada. **Notably**, Mr. 'A' husband of Ms. 'X' and Mr. Singh had also reached a mutual agreement that Mr. Singh and Ms. 'X' are in relationship and plan to marry once their divorce is finalized.

9. On 14.06.2020, a Facebook chat was exchanged between Mr. Singh and Ms. 'X', which revealed Mr. Singh's enthusiastic anticipation of Ms. 'X' becoming his spouse, *which has been filed on record as Annexure P-4*. On 18.06.2020, the first motion petition of divorce was filed by Ms. 'X' and her husband Mr. 'A' under Section 13B (1) of the Hindu Marriage Act. On 02.11.2020, Mr. Singh had travelled to India and had stayed with Ms. 'X' at her flat in Indirapuram for 25 days, and had engaged in physical relations with her allegedly on the false pretext of marriage. *The copy of passport and flight tickets of Mr. Singh have been filed along with the petition as Annexure P-5.*



10. Ms. 'X' argues that another milestone of their relationship was when on 13.11.2020, Ms. 'X' and Mr. Singh intended to get married and as part of preparations of their marriage, had gone to a Jeweler in Indirapuram to select a design for a Mangalsutra. During this visit, Mr. Singh had ordered a Mangalsutra pendant with his initials 'Jas' and he had made the payment for it. *The photograph of the Mangalsutra with initials of Mr. Singh's name along with receipt of jeweler dated 13.11.2020 has been filed as Annexure P-6.*

11. Petitioner Ms. 'X' further places before this Court her contention in support of her claim that on 06.12.2020, a WhatsApp chat was exchanged between her and Mr. Singh which would prove that he had addressed her as his wife, *which has been filed as Annexure P-7.*

12. On 26.02.2021, second motion of divorce proceedings of Ms. 'X' and her husband Mr. 'A' under Section 13B (2) of the Hindu Marriage Act was allowed and divorce was granted by the competent Court in Delhi.

13. On 12.04.2021, in Mr. Singh's divorce case, it was agreed upon that all additional requests for related remedies in Mr. Singh's family lawsuit have been resolved as per the Minutes of Settlement between Mr. Singh and his wife Ms. 'B' in the Supreme Court of British Columbia, Canada.

14. To the shock of Ms. 'X', her plans for a happy future with Mr. Singh were shattered by a call received on 20.05.2021 from Mr. Singh refusing to get married to her on pretext that their relationship had become toxic.



15. While still trying to grapple with the situation and in an effort to still try to save the situation, on 23.05.2021, Ms. 'X' had a conversation with Mr. Singh which turned into confrontation instead of conversation. Mr. Singh acknowledged that they had spoken about their relationship and had also informed their family members and friends. In the course of their discussion, Mr. Singh additionally confirmed that both of them had divorced their previous partners to be together. *The call recording transcript between Ms. 'X' and Mr. Singh dated 23.05.2021 has also been filed on record.*

16. Therefore, on the same day, Ms. 'X' thus, not left with any other option, had filed a complaint against Mr. Singh, who resides in Vancouver, Canada, in the local Police Station Indirapuram.

17. On 24.05.2021, the wife of Mr. Singh and Ms. 'X' had exchanged WhatsApp messages in which they had discussed the situation. In these messages, Mr. Singh's wife had confirmed that Mr. Singh will not marry Ms. 'X'. Ms. 'X' had also informed her about her filing a complaint against Mr. Singh. *This conversation has been filed as Annexure P-10.*

18. On 26.05.2021, Ms. 'X' had confronted Mr. Singh again over phone, as she still had not given up on the situation, questioning as to why he had made false promises about marriage and that she had gone so far as to obtain a divorce from Mr. 'A' in the hope of starting a new life with Mr. Singh and her children. Mr. Singh on the same date admitted that he had threatened Ms. 'X' and Mr. 'A' as well as her brother-in-law. *The call transcripts have been filed as Annexure P-11.*



19. Being left with no other option, on 05.06.2021, the present FIR was registered. In the meantime, on 01.12.2021, the Supreme Court of British Columbia had granted divorce to Mr. Singh and his wife Ms. 'B'.

THE REGISTRATION OF FIR

20. On the complaint lodged by the petitioner Ms. 'X', the police had registered FIR bearing no. 281/2021, registered at Police Station Sagarpur, under Sections 376/506 of Indian Penal Code, 1860 ('IPC').

21. In brief, the allegations against the accused i.e. respondent no. 2, as borne out from the contents of FIR, are that the petitioner had lodged a complaint dated 05.06.2021, whereby she had stated that she was a divorcee and a mother of two kids. The petitioner had disclosed that she had planned to marry respondent no. 2 herein, who was living in Canada, and they had been in relationship since the year 2016. It was stated that respondent no. 2 had promised that he would marry the petitioner, and he had come to India and met her for the first time on 05.02.2017. On the said date, he had met the petitioner in his brother's rental house in Dwarka and had established physical relations with her, and had continued to do so on several occasions. As alleged, whenever the petitioner used to stop respondent no. 2 from establishing physical relations, he used to promise that he would marry her after obtaining divorce from his first partner/wife. It was alleged that the respondent no. 2 had mentally harassed the petitioner,



and his brother was aware of all these incidents. It was also stated that respondent no. 2 had regularly pressurized the petitioner to obtain divorce from her husband, and further that he had even talked to her first husband and had assured him that he would take care of the petitioner and her children. It was alleged that in November, 2020, the respondent no. 2 had come to India and lived with the petitioner at her house for 25 days, where he had sexually harassed her. He had further told the petitioner that he would not marry her if she did not establish physical relations with her. Further, the family of the respondent no. 2 had also initially forced the petitioner to marry their son, however, they had later denied to get their son married to the petitioner. It was alleged that on 20.05.2021, the respondent no. 2 had refused to get married to the petitioner and had also threatened to kill her children. When the petitioner had gone to lodge the complaint, she had called respondent no. 2 in front of investigating officer, and he had assured the petitioner that he would come on 01.06.2021. Later, the respondent no. 2 had again refused to marry the petitioner and had extended threats to her, after which, the present FIR was registered.

THE INVESTIGATION BEGINS

22. Ms. 'X' was medically examined on 07.06.2021 and her statement under Section 164 of Cr.P.C. was recorded before the learned Magistrate on 08.06.2021.

23. Non-Bailable Warrants were issued against respondent no. 2 on 14.12.2021. Pursuant to grant of interim protection, he had joined



investigation, and as per the case of prosecution, he had admitted having physical relations with petitioner. He had also admitted that he had paid for the pendant with the initials 'Jas'. Chargesheet was filed in the present case on 15.05.2022 under Sections 376/506 of IPC.

24. On 08.06.2023, the learned Additional Sessions Judge/Spl. FTC, Patiala House Courts, New Delhi ('Sessions Court'), was pleased to discharge the accused/respondent no. 2 of offence under Sections 376/506 of IPC, observing therein that the consent of the petitioner was given after active and reasoned deliberation and that accused and the petitioner had been in sexual relationship out of love, and consent for sexual relationship was not given out of misconception of fact. **The learned Sessions Court also observed that this case pertains to breach of promise of marriage, rather than a false promise of marriage.** The concluding portion of order dated 08.06.2023 reads as under:

“19. The charge sheet has been filed against the accused for the commission of offence u/s 506 IPC also. In the FIR, the prosecutrix alleged that on 20.05.2021, the accused threatened to kill her and hurt her kids also. In the statement recorded u/s 164 Cr.P.C, it is stated that the accused threatened to kill her. Section 503 IPC defines the offence of criminal intimidation as threaten to cause injury with intend to cause alarm to that person. It is settled proposition of law that any threat sans alarm does not constitute the offence of criminal intimidation. In this case, there are no allegation of alarm being caused after the threat being given by the accused. In addition to that the prosecutrix had approached DCW and thereafter to the police after the alleged threat. In the absence of alarm, no offence of criminal intimidation is made out against the accused.



20. On perusal of the charge sheet and the statement of the prosecutrix, it is very much clear that consent in this case was given after understanding the nature and consequence of the sexual indulgence. Further, the consent of the prosecutrix for sexual relationship was very well reasoned and deliberated act. Admittedly, they entered into the physical relationship despite being married and even after knowing the marital status of the accused also. The consent for sexual relation was not given out of misconception of fact.

21. Therefore, in view of the foregoing reasons, no case of grave suspicion is made out and there is no sufficient ground for proceeding against the accused. The accused Jaspal Singh Kaural is accordingly, discharged for the commission of offences punishable u/s 376/506 IPC, in terms of Section 227 Cr.P.C. He is directed to furnish personal bond in the sum of Rs. 25,000/- with one surety of like amount in terms of Section 437A Cr.P.C. forthwith.”

25. Aggrieved by the order dated 08.06.2023, *vide* which the respondent no. 2 was discharged in the present case, the petitioner Ms. ‘X’ has approached this Court by way of present petition under Section 397/401 of the Criminal Procedure Code, 1973 (‘Cr.P.C.’).

ARGUMENTS ADDRESSED BEFORE THE COURT

26. Notice was issued in the present case. Mr. Naresh Kumar Chahar, learned APP accepted notice on behalf of State. Mr. Shekhar, learned counsel accepted notice on behalf of respondent no. 2.

27. **Learned counsel for the petitioner ‘X’** argues that the learned Session Court has failed to appreciate that the consent of the petitioner, to have sexual intercourse, was obtained under misconception, i.e. it was based on the mistaken belief that the families of petitioner and respondent no. 2 were acquainted and that respondent no. 2 had assured the petitioner that they would marry



soon, leading to the sexual relationship under false pretext of marriage. It is argued that the learned Sessions Court has also failed to appreciate that both the petitioner and respondent no. 2 had agreed to divorce their respective spouses with the intention of being together. It is further stated that the learned Sessions Court has also failed to consider that the petitioner and respondent no. 2 had obtained mutual consent divorce from their respective partners to get married to each other, and that the petitioner had proceeded to get divorce from her husband in 2019. It is stated that in the year 2020, respondent no. 2 had again promised to marry the petitioner, who was in the process of getting a divorce, and he had stayed with her for 25 days in her apartment. It is stated that respondent no. 2 had even selected a *Mangalsutra* pendant, designed with respondent no. 2's initials, for the petitioner. It is also argued that the learned Sessions Court has failed to appreciate that a valid reason must exist for a simple breach of marriage and if the breach is unexplained, it can be considered as an avoided promise. It is stated that the petitioner had sexual intercourse with respondent no. 2 on the representation made by the respondent no. 2 that he will marry her, and had this promise not been given, the petitioner would have not permitted the respondent no. 2 to have sexual intercourse with her. It is, thus, argued that the learned Sessions Court has committed an error while discharging respondent no. 2 and has failed to consider that from the very inception, the respondent no. 2 did not intend to marry the petitioner. It is also stated that the learned Sessions Court could not have conducted a mini trial at the stage of charge, and should have



appreciated the multiple exchange of messages and call records which reflect that respondent no. 2 had obtained consent for sexual relationship based on false pretext of marriage from the very beginning. Therefore, it is prayed that the impugned order be set aside, and charge under Sections 376/506 of IPC be framed against the respondent no. 2.

28. **Learned Additional Public Prosecutor for the State** also submits that the respondent no. 2 has been wrongly discharged in the present case, and a *prima facie* case under Sections 376/506 of IPC is made out against him, and therefore, the impugned order may be set aside.

29. On the other hand, **learned counsel for the respondent no. 2**, who appears on advance notice, argues that the relationship between the petitioner and the respondent no. 2 was consensual in nature, and the learned Sessions Court has committed no error by holding that both the parties were married to their respective partners and that the complainant/petitioner herein had made informed and deliberated upon decision to indulge in sexual relationship with the respondent no. 2. It is submitted that since there was no false promise of marriage given by the respondent no. 2, no offence as alleged is made out against him, and therefore, there is no infirmity with the impugned order.

30. This Court has **heard** arguments addressed on behalf of both the parties, and has perused the material placed on record.



LAW ON CHARGE

31. The statutory law of framing of charge and discharge, as provided in Sections 227 and 228 of Cr.P.C., is extracted hereunder for reference:

“228. Framing of charge.

(1) If, after such consideration and hearing as aforesaid, the Judge is of opinion that there is ground for presuming that the accused has committed an offence which-

(a) is not exclusively triable by the Court of Session, he may, frame a charge against the accused and, by order, transfer the case for trial to the Chief Judicial Magistrate, and thereupon the Chief Judicial Magistrate shall try the offence in accordance with the procedure for the trial of warrant- cases instituted on a police report;

(b) is exclusively triable by the Court, he shall frame in writing a charge against the accused.

(2) Where the Judge frames any charge under clause (b) of sub-section (1), the charge shall be read and explained to the accused and the accused shall be asked whether he pleads guilty of the offence charged or claims to be tried.”

227. Discharge.

If, upon consideration of the record of the case and the documents submitted therewith, and after hearing the submissions of the accused and the prosecution in this behalf, the Judge considers that there is not sufficient ground for proceeding against the accused, he shall discharge the accused and record his reasons for so doing."

A FEW IMPORTANT JUDICIAL PRECEDENTS ON FRAMING OF CHARGE & DISCHARGE

i. For the Period 1979 to 1996



32. In *Union of India v. Prafulla Kumar Samal* (1979) 3 SCC 4, the Hon'ble Apex Court had dealt with the scope of enquiry, a judge is required to make while framing charge against an accused, and the following principles were laid down by the Hon'ble Apex Court:

"10. ...(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 Judge cannot act merely as a Post office or a mouth-piece 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."

33. The Hon'ble Apex Court in *State of Maharashtra v. Som Nath Thapa* (1996) 4 SCC 659, while considering the meaning of the terms 'prima facie' and 'presume', had made the following observations:



“30. In Antulay's case, Bhagwati, CJ., opined, after noting the difference in the language of the three pairs of section, that despite the difference there is no scope for doubt that at the stage at which the Court is required to consider the question of framing of charge, the test of "prima facie" case has to be applied. According to Shri Jethmalani, a prima facie case even be said to have been made out when the evidence, unless rebutted, would make the accused liable to conviction. **In our view, better and clearer statement of law would be that if there is ground for presuming that the accused has committed the offence, a court can justifiably say that a prima facie case against him exists, and so, frame charge against him for committing that offence**".

31. Let us note the meaning of the word "presume". In Black's Law Dictionary it has been defined to mean "to believe or accept upon probable evidence". (Emphasis ours). In Shorter Oxford English Dictionary it has been mentioned that in law "presume" means "to take as proved until evidence to the contrary is forthcoming" , Stroud's Legal Dictionary has quoted in this context a certain judgement according to which "A presumption is a probable consequence drawn from facts (either certain or proved by direct testimony) as to the truth of a fact alleged." (Emphasis supplied). In Law Lexicon by P. Ramanath Aiyer the same quotation finds place at page 1007 of 1987 edition.

32. The aforesaid shows that if on the basis of materials on record, a court could come to the conclusion that commission of the offence is a probable consequence, a case for framing of charge exists. To put it differently, if the Court were to think that the accused might have committed the offence it can frame the charge, though for conviction the conclusion is required to be that the accused has committed the offence. **It is apparent that at the stage of framing of charge, probative value of the materials on record cannot be gone into; the materials brought on record by the prosecution has to be accepted as true at that stage...**"

(Emphasis supplied)

ii. For the Period 2010 to 2019



34. Similarly, the principles laid down by the Hon'ble Apex Court in case of *Sajjan Kumar v. CBI (2010) 9 SCC 368*, on the scope of Section 227 and 228 of Cr.P.C., are extracted hereunder:

“21. On consideration of the authorities about 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 of the 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 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 discloses 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)

35. In *Amit Kapoor v. Ramesh Chander* (2012) 9 SCC 460, the Hon’ble Apex Court had observed that to form an opinion that the accused is certainly guilty of committing an offence is an approach which is impermissible in terms of Section 228 of Cr.P.C. The relevant observations in this regard read as under:

“17. Framing of a charge is an exercise of jurisdiction by the trial court in terms of Section 228 of the Code, unless the accused is discharged under Section 227 of the Code. Under both these provisions, the court is required to consider the “record of the case” and documents submitted therewith and, after hearing the parties, may either discharge the accused or where it appears to the court and in its opinion there is ground for presuming that the accused has committed an offence, it shall frame the charge. Once the facts and ingredients of the Section exists, then the Court would be right in presuming that there is ground to proceed against the accused and frame the charge accordingly. This presumption is not a presumption of law as such. The satisfaction of the court in relation to the existence of constituents of an offence and the facts leading to that offence is a sine qua non for exercise of such jurisdiction. It may even be weaker than a prima facie case. **There is a fine distinction between the language of Sections 227 and 228 of the Code. Section 227 is expression of a definite opinion and judgment of the Court while Section 228 is tentative. Thus, to say that at the stage of framing of charge, the Court should form an opinion that the accused is certainly guilty of committing an offence, is an approach which is impermissible in terms of Section 228 of the Code.**”

(Emphasis supplied)



36. As held by the Hon'ble Apex Court in *State of Tamil Nadu v. N. Suresh Rajan* (2014) 11 SCC 709, if the Court is of the opinion that the accused might have committed offence on the basis of the material placed on record, it can frame charge. The relevant observations in this regard are reproduced 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...**”

(Emphasis supplied)

37. The observations of Hon'ble Apex Court on the limited power of sifting the material on record at the stage of charge, in case of *Dipakbhai Jagdishchandra Patel v. State of Gujarat* (2019) 16 SCC 547, are reproduced as under:



“23. At the stage of framing the charge in accordance with the principles which have been laid down by this Court, what the Court is expected to do is, it does not act as a mere post office. The Court must indeed sift the material before it. **The material to be sifted would be the material which is produced and relied upon by the prosecution. The sifting is not to be meticulous in the sense that the Court dons the mantle of the Trial Judge hearing arguments after the entire evidence has been adduced after a full-fledged trial and the question is not whether the prosecution has made out the case for the conviction of the accused.** All that is required is, the Court must be satisfied that with the materials available, a case is made out for the accused to stand trial...”

(Emphasis supplied)

38. It was observed in *Asim Shariff v. National Investigation Agency (2019) 7 SCC 148* by the Hon’ble Apex Court that at the stage of framing of charge, the trial court is not expected or supposed to hold a mini trial for the purpose of marshalling the evidence on record. The relevant observations in this regard read as under:

“18. Taking note of the exposition of law on the subject laid down by this Court, it is settled that the Judge while considering the question of framing charge under Section 227 CrPC in sessions cases(which is akin to Section 239 CrPC pertaining to warrant cases) 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; where the material placed before the Court discloses grave suspicion against the accused which has not been properly explained, the Court will be fully justified in framing the charge; by and large if two views are possible and one of them giving rise to suspicion only, as distinguished from grave suspicion against the accused, the trial Judge will be justified in discharging him. **It is thus clear that while examining the discharge application filed under Section 227 CrPC, it is expected from the trial Judge to exercise its judicial mind to determine as to whether a case for trial has been made out or not. It is true that in such proceedings, the Court is not supposed to hold a mini trial by marshalling the evidence on record.**”

(Emphasis supplied)



iii. For the Period 2020 to 2023

39. On the aspect of standard of proof at the stage of charge, the Hon'ble Supreme Court in *Bhawna Bai v. Ghanshyam* (2020) 2 SCC 217 has observed as under:

"13. ...At the time of framing the charges, only prima facie case is to be seen; whether case is beyond reasonable doubt, is not to be seen at this stage. At the stage of framing the charge, the court has to see if there is sufficient ground for proceeding against the accused. **While evaluating the materials, strict standard of proof is not required; only prima facie case against the accused is to be seen.**"

(Emphasis supplied)

40. In *Manendra Prasad Tiwari v. Amit Kumar Tiwari* 2022 SCC OnLine SC 1057, the Hon'ble Apex Court, while explaining the well-settled law on exercise of powers under Section 397 and 482 Cr.P.C., had observed as under:

"21. ...The **truthfulness, the sufficiency and acceptability of the material produced at the time of framing of a charge can be done only at the stage of trial.** To put it more succinctly, at the stage of charge the Court is to examine the materials only with a view to be satisfied that prima facie case of commission of offence alleged has been made out against the accused person...

22. ...At the stage of framing of a charge, **the court is concerned not with the proof of the allegation rather it has to focus on the material and form an opinion whether there is strong suspicion that the accused has committed an offence, which if put to trial, could prove his guilt. The framing of charge is not a stage, at which stage the final test of guilt is to be applied.** Thus, to hold that at the stage of framing the charge, the court should form an opinion that the accused is certainly guilty of committing an offence, is to hold something which is neither permissible nor is in consonance with the scheme of Code of Criminal Procedure..."



(Emphasis supplied)

41. This Bench in *State v. Sudershan Kumar 2023 SCC OnLine Del 1647* had expressed as under, on the **meaning and scope of ‘prima facie’ view**:

“ii. Prima Facie View

14. The very foundation of formation of opinion regarding framing of charge is as to whether “there is sufficient material on record to prima facie make out a case of commission of an offence”. Therefore, a duty has been cast on the Trial Court judges to apply their mind carefully to the material before them to form such opinion.

15. The edifice of an order on charge is appreciation of prima facie view of the matter. Therefore, it becomes important to address the pertinent question as to what constitutes a ‘prima facie’ view qua the stage of framing charges.

16. Prima facie refers to something that can be determined at first glance, at first impression, on the surface, or inasmuch as it can be inferred from the initial disclosure. Black's Law Dictionary, 5th Ed. suggests that the prima facie case would mean that the evidence brought on record would reasonably allow the conclusion that the plaintiff seeks. Therefore, ‘prima facie’ would mean the suggestion that comes from having the first glance of anything.

17. According to the Oxford Dictionary of Modern Greek, the literal meaning of prima facie is ‘on/at first viewing’. It will necessarily mean that looking at something at its face value and not going into any intricate or detailed analysis, therefore, the word prima facie when used in terms of prima facie view as far as consideration of charge is concerned would mean there being enough material of substance which will give rise to strong suspicion against the accused and holding of a view in favour of prosecution...”

42. It is thus necessary for the Courts to scrutinize the unique facts and circumstances of each case, with the objective of ascertaining whether a *prima facie* case is made out against an accused. This



determination serves as the litmus test for framing charges against an accused. At the stage of framing of charge, the Courts are required to give due consideration to the material placed on record along with the investigation and the facts determined therefrom. Notably, at this juncture, the Courts are not vested with the authority to delve into the probative value of evidence, nor they are permitted to engage in a mini-trial. The Court's role remains circumscribed, confined to the determination of whether there exists a *prima facie* case and suspicion against the accused that justifies the framing of charges.

43. While taking note of the above-mentioned judicial precedents, this Court has sacrificed the beauty of brevity of this judgment, so that once for all, the entire law on charge and discharge is assimilated in one judgment to work as a guiding judgment, which may be looked into by the judges in the District Courts. This Court has been forced to observe so, since this Court remains flooded with petitions assailing orders *vide* which charges are framed or accused is discharged, while not following the principles of charge and discharge articulated and enumerated in the various judgments of the Hon'ble Apex Court.

ANALYSIS AND FINDINGS

44. In the present case, having heard arguments and having perused the case file and the documents filed before this Court as well as produced before the learned Sessions Court, this Court observes that the parties were known to each other since prior to the year 2011. However, both the petitioner and respondent no. 2 had got



married to their respective partners in the year 2011. Marital discord in the marital union of both the parties with their respective partners had affected their life, and they both had again come into contact with each other through social media in the year 2016 and had again revived their relationship with each other by talking to each other on phone. It is the case of the petitioner herself that due to marital discord between her and her husband, she was going through a rough patch in her life. The respondent no. 2 herein, who was also leading a life of marital discord with his partner, had allegedly given a promise to get married to the petitioner. As per statements filed before the Court, the petitioner clearly mentions that only after the respondent no. 2 herein had promised to marry her after she would obtain divorce from her husband and he would also obtain divorce from his wife, the petitioner had permitted respondent no. 2 to engage in physical relationship.

45. Further, from the statement recorded and the conversations placed on record, it does emerge that respondent no. 2 had promised to marry the petitioner and therefore, divorce proceedings were initiated by both of them against their respective partners and both of them had obtained mutual consent divorce from their respective partners. At this stage itself, documents were also filed on record which reveal that *Mangalsutra*, etc., were also prepared and bought by the respondent no. 2, in anticipation of his marriage with the petitioner herein.

46. Indeed, the present case portrays a very peculiar story, where the parties concerned had not only represented and assured each other



verbally that they will be divorcing their respective partners and will be getting married to each other, but they had also acted upon the promise given to each other to be together in life. The record reveals that the petitioner herein had filed divorce proceedings in the year 2019 and was granted a mutual consent divorce with her husband in the year 2021. Strangely, her husband, and respondent no. 2 who wanted to get married to the petitioner herein, were also engaged in conversation, and the ex-husband of the petitioner was aware about their relationship. The respondent no. 2 had also assured the ex-husband of the petitioner that he will marry the petitioner and will also take care of the children born from the wedlock of the petitioner and her ex-husband. The petitioner herein was also in conversation with the ex-wife of the respondent no. 2, at one stage of their relationship, and therefore strange enough, now the ex-partners of petitioner and respondent no. 2 while being legally married to petitioner and respondent no. 2, knew about the relationship between petitioner and respondent no. 2. As per complainant, respondent no. 2 was also pressurizing her since they had met to divorce her husband.

47. While this Court does not intend to engage in moral policing and commenting on the conduct of petitioner and respondent no. 2 regarding continuing their relationship with each other, though they were still lawfully married to their respective partners, irrespective of the fact that they were allegedly unhappily married, this Court cannot also ignore that their respective partners, now ex-partners, were also aware about their relationship and their intention to get married to each other once they were divorced from them.



48. As this Court has observed in many cases, each case has to be judged on its own peculiar facts and circumstances. Cases as the present one are not commercial cases or business transaction cases, where two plus two may lead to four or there could be straight jacket formula to decide such cases. The cases involving emotional situations where the parties of the story have taken decisions and acted upon them on the basis of peculiar circumstances of their lives, have to be adjudged and adjudicated according to their own peculiarity and situational dissection of facts.

49. When the facts of the present case are adjudged on the said touchstone, this Court comes to a conclusion that the case before the learned Sessions Court was only at the stage of framing of charges and the Court was only authorized, as per law, to form a *prima facie* view of the matter, on the basis of documents placed before it, to reach a conclusion as to whether there was strong suspicion against the respondent no. 2, that he had given a false promise of marriage to the petitioner and acting on the same, the petitioner herein had indulged in sexual relationship with him.

50. The facts of the present case are different from the facts of the case laws cited before this Court on behalf of respondent no. 2 where there are mere allegations of misrepresentation of being divorced or being unmarried to the other party. In the present case as stated above, the parties had in fact decided to marry each other and settle in Canada along with the children of the petitioner after obtaining divorce from their respective partners, and had also obtained divorce to marry each other. However, the respondent no. 2 had later on



refused to marry her, though as per allegations in complaint, he had forced the petitioner to divorce her husband and on pretext of getting married to her had repeatedly engaged her in sexual relationship.

51. While the parties themselves do not deny having not separated from their respective legally married partners and being in relationship prior to that to judge and assess compatibility with each other, the conversation exchanged between the petitioner and respondent no. 2, mutual consent divorces obtained from their respective partners, the conversation between the respondent no. 2 and ex-husband of petitioner, the conversation between the petitioner and the ex-wife of respondent no. 2, presented material before the learned Sessions Court to form an opinion that there was sufficient material on record to give rise to strong suspicion against respondent no. 2 herein that he had in fact assured and given promise to marry the petitioner and the petitioner had entered into sexual relationship with him due to such promise given to her. **Strangely**, as per admitted facts, the respondent no. 2 had given promise of marriage not only to the petitioner but also to her then legally married husband and her family that after divorce from him, he will not only marry her, but also look after the children born to her and her then legally married husband.

52. The *Mangalsutra* which was prepared with the initials of name of the respondent no. 2 herein and for which he had paid for, would also reflect and point out towards his intention and promise to marry the present petitioner. Needless to say, in India, *Mangalsutra* for



many women is not an ornament but a symbol of love, sacred union and assurance for a lifetime of togetherness with their partner.

53. It is thus a case of **twin promise of marriage**, i.e. to the complainant as well as her husband and family. Had he not promised or represented to her, she would not have entered into physical relations with him. It is to be proved during trial whether it was breach of promise to marry or false promise to marry for the purpose of sexual relationship and a mini trial could not have been conducted to reach this decision at the stage of framing of charge itself.

54. The acts of the respondent no. 2, thus, point out at this stage *prima facie* that he had given promise to the petitioner to get married to her and had stayed with her on this promise acting on which she had not only divorced her husband but had also indulged in sexual relationship with him to attract the rigors of Section 376 of IPC.

55. As regards discharge of respondent no. 2 under Section 506 of IPC, this Court notes that there are specific allegations in the FIR that on 20.05.2021, the respondent no. 2 had refused to marry the petitioner and had abused as well as threatened to kill her and her children. The respondent no. 2 had again extended such threats on 01.06.2021, after which the petitioner was compelled to approach Delhi Commission for Women and police. In her statement recorded under Section 164 of Cr.P.C. also, the petitioner has stated that respondent no. 2 had threatened to kill her, after he had denied to get married to her. In one of the transcripts of conversation between petitioner and respondent no. 2 which has been filed on record, the respondent no. 2 admits that he had threatened to get petitioner, her



brother-in-law and her ex-husband killed. Therefore, though the veracity of these allegations can only be tested during the course of trial, the material on record at this stage is strong enough and sufficient to frame charge against respondent no. 2 for commission of offence under Section 506 of IPC.

56. Thus, in view of the foregoing discussion, this Court is of the opinion that there is sufficient material on record to frame charge against respondent no. 2 under Sections 376/506 of IPC. In view thereof, the impugned order dated 08.06.2023 passed by learned Sessions Court by virtue of which the respondent no. 2 was discharged in the present case, is set aside. The learned Sessions Court is directed to frame charge against respondent no. 2 under Sections 376/506 of IPC proceed with the case as per law.

57. Accordingly, the present petition alongwith pending application stands disposed of in above terms.

58. It is however clarified that nothing expressed herein shall tantamount to an expression of opinion on merits of the case.

59. The judgment be uploaded on the website forthwith.

SWARANA KANTA SHARMA, J

JANUARY 3, 2024/zp