



\$~44

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ **CRL.M.C. 5977/2024**

N

.....Petitioner

Through: Mr. Saumn Kapoor, Adv.

versus

STATE NCT OF DELHI
AND ANR.

.....Respondents

Through: Ms. Richa Dhawan, APP
for the State
W/SI Khushbu, PS- Laxmi
Nagar

CORAM:
HON'BLE MR. JUSTICE AMIT MAHAJAN

ORDER
14.11.2024

%

1. The present petition is filed against the order dated 02.03.2024 (hereafter '**impugned order**') passed by the learned Additional Sessions Judge ('**ASJ**'), Karkardooma Courts, Delhi in CR No. 114/2023 titled *Subhash Jain v. State &Anr.*

2. By impugned order, the learned ASJ set aside the order dated 20.03.2023 passed by the learned Metropolitan Magistrate ('**MM**'), Mahila Court, East Delhi and discharged Respondent No. 2 of the offences under Sections 498A/34 and Section 354 of the Indian Penal Code, 1860 ('**IPC**').

3. The FIR No. 615/2018 dated 20.12.2018 was registered on a complaint given by the petitioner. It is averred that the marriage between the petitioner and accused – Sachin Jainwas solemnized on 24.01.2007. It is alleged that the petitioner, right from the very beginning, was constantly subjected to torture by her husband –

CRL.M.C. 5977/2024

Page 1 of 9



Sachin Jain and Respondent No. 2. Respondent No. 2 is the father of Sachin Jain. It is alleged that the petitioner was also subjected to taunts over the items received in dowry. It is alleged that in April 2011, the accused persons forcibly took the petitioner to the hospital to get her abortion done as they did not want to have a second child. It is alleged that thereafter in July 2016, Respondent No. 2 misbehaved with the petitioner, and also indecently touched the petitioner in the absence of the accused – Sachin Jain.

4. The learned MM, *vide* order dated 20.03.2023, noted that the offences under Sections 498A/34 of the IPC and Section 354 of the IPC were *prima facie* attracted against Respondent No. 2. It was noted that from a perusal of the complaint, the statement of the complainant under Section 164 of the Code of Criminal Procedure, 1973 ('CrPC'), and the statement before the police, it transpired that specific allegations attracting offences under Sections 498A and 354 of the IPC were made against Respondent No. 2.

5. The learned ASJ, in a revision petition, preferred by Respondent No. 2, discharged Respondent No. 2 of the offences under Sections 498A/34 of the IPC and Section 354 of the IPC. In regard to the offence under Section 354 of the IPC, the learned ASJ noted that at different stages of the investigation, different versions of the incident were narrated by the petitioner. The learned ASJ, considering the vast difference in the statements of the petitioner, discharged Respondent No. 2 of the offence under Section 354 of the IPC.

6. In regard to the offence under Section 498A of the IPC, the learned ASJ, noting that the allegations against Respondent No. 2



were general and not specific in nature, discharged Respondent No. 2.

7. The learned counsel for the petitioner submits that the learned ASJ erred in discharging Respondent No. 2 of the offences under Sections 498A/34 and Section 354 of the IPC. He submits that categorical allegations have been made against Respondent No. 2. He further submits that right from the initial complaint on 11.04.2018 to her statement under Section 164 of the CrPC, the petitioner has consistently maintained that Respondent No. 2 misbehaved with the petitioner.

8. Since the petitioner has assailed the impugned order dated 02.03.2024 whereby Respondent No. 2 was discharged of the offences under Sections 498A/34 of the IPC and Section 354 of the IPC, it is apposite to succinctly discuss the statutory law with respect to framing of charge and discharge as provided under Section 227 and 228 of the CrPC. The same is set out below:

“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.

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, 1 [or any other Judicial Magistrate of the first class and direct the accused to appear before the Chief Judicial Magistrate, or, as the case may be, the Judicial Magistrate of the first class, on such date as he deems fit, and thereupon such 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 subsection (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.”

9. The Hon’ble Apex Court, in the case of ***Sajjan Kumar v. CBI : (2010) 9 SCC 368***, has culled out the following principles in respect of the scope of Sections 227 and 228 of the CrPC while observing that a prima facie case would depend on the facts and circumstances of each case. The relevant paragraphs read as under:

“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 CrPC 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 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.”

(emphasis supplied)

10. In a recent decision in ***State of Gujarat v. Dilipsinh Kishorsinh Rao*** : 2023 SCC OnLine SC 1294, the Hon’ble Apex Court has discussed the parameters that would be appropriate to keep in mind at the stage of framing of charge/discharge, 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.

xxx

xxx

xxx

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.”

11. The Court at the stage of framing of charge is to evaluate the material only for the purpose of finding out if the facts constitute the alleged offence, given the ingredients of the offence. Thus, while framing of charges, the Court ought to look at the limited aspect of whether, given the material placed before it, there is grave suspicion against the accused which is not properly explained. Though, for the purpose of conviction, the same must be proved beyond reasonable doubt.

12. In the present case, the learned ASJ noted that in the initial complaint on the basis of which the FIR was registered, the allegation against Respondent No. 2 was that in July 2016, Respondent No. 2 attempted to misbehave with the petitioner when the accused – Sachin Jain was not at home, and held the petitioner tightly. Subsequently, in another complaint dated 08.10.2018, made to the ACP, Crime against Women Cell, the petitioner alleged that Respondent No. 2 sexually molested the petitioner. It is alleged that Respondent No. 2, while the petitioner was working in the kitchen, hugged her. It is further alleged that when the petitioner objected, Respondent No. 2, while going away, allegedly stated that he would come back in the evening and that the petitioner should be ready by then.

13. Subsequently, in her statement dated 27.06.2019, under Section 164 of the CrPC, the petitioner stated that Respondent No. 2 misbehaved with the petitioner.



14. It is not in doubt that in cases of such nature, mere testimony of the victim can be sufficient for the purpose of conviction of the accused as long as the same inspires confidence. From a perusal of the record, however, it is evident that there are inconsistencies in the case of the petitioner. Further, a perusal of the initial complaint and the statement of the petitioner under Section 164 of the CrPC, shows a marked difference in the version put forth by the petitioner.

15. It is also pertinent to note that the FIR, admittedly, was filed at a belated stage. The incident allegedly happened in the month of July 2016 whereas the complaint was initially given in the month of April 2018. Counselling sessions were also held before the CAW Cell, however, no agreement was arrived at between the petitioner and her in-laws. A fresh complaint was thereafter given on 20.12.2018, which led to registration of the present FIR. The delay in giving the complaint in regard to the alleged act of the father-in-law casts serious doubt on the allegations made by the petitioner. Even though some explanation is sought to be given by the learned counsel for the petitioner to justify the delay in lodging the subject FIR, it cannot be denied that there are certain inconsistencies in the statement of the petitioner.

16. Insofar as the offence under Section 498A of the IPC is concerned, a perusal of the record makes it apparent that no specific allegation in regard to cruelty inflicted by Respondent No. 2 is made.

17. The petitioner is embroiled in matrimonial disputes with the son of Respondent No. 2. It is not uncommon for parties embroiled in matrimonial disputes to make general omnibus allegations to rope the distant relatives and in-laws to face trial.



For this reason, the Hon'ble Apex Court in a catena of decisions has cautioned Courts from proceeding against the distant relatives and in-laws unless specific allegations disclosing their *prima facie* involvement is made out.

18. In the present case, the learned ASJ observed that in the entire body of the complaint, no allegation with respect to any demand for dowry or cruelty in relation to demand for dowry was made against Respondent No. 2. It was noted that even in the statement recorded under Section 164 of the CrPC, the petitioner did not make any allegation against Respondent No. 2 for demanding dowry or inflicting cruelty for non-fulfilment of any such demand. It was further noted that in addition to there being no specific and distinct allegation against Respondent No. 2, there was also no date, time or occasion specified where it was alleged that the petitioner was treated with cruelty for want of dowry. Considering that no specific role was attributed to Respondent No. 2, the learned ASJ rightly discharged Respondent No. 2 of the offence under Section 498A of the IPC.

19. The allegation in regard to demand of dowry and cruelty, even otherwise, relates to the year 2007 when the petitioner got married to the son of Respondent No. 2 and certain omnibus allegations for the years 2010, 2013 and 2014.

20. As noted above, there has been a long delay which casts a doubt on the allegations. Further, as rightly observed by the learned Court of Sessions, no date, time or specific occasion has been mentioned as to when the petitioner was treated with cruelty by Respondent No. 2.



21. When the broad probabilities of the case on the facts as brought on record are examined, this Court finds no infirmity in the order discharging Respondent No. 2 of the offences under Section 498A/34 and Section 354 of the IPC. The allegations and the material on record does not give rise to grave suspicion so as to frame charges against Respondent No. 2.

22. In view of the aforesaid, this Court does not find any infirmity in the impugned order and the same cannot be faulted with.

23. The present petition is accordingly dismissed.

AMIT MAHAJAN, J

NOVEMBER 14, 2024