



2024:DHC:7380



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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**% *Date of Decision: 16th August, 2024*+ CRL.REV.P. 1032/2024, CRL.M.A. 24330/2024 &
CRL.M.A. 24331/2024

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.....Petitioner

Through: Mr. Sanjay Dewan with
Mr. Anish Dewan, Ms.
Garima Verma, Mr.
Ayush Dawar & Mr.
Rushant Malhotra,
Advocates.

versus

STATE OF NCT OF DELHI
& ANR.

.....Respondents

Through: Mr. Naresh Kumar
Chahar, APP for the State
with Mr. Sagar Dhingra,
Mr. Pushpendra Veer
Pratap Singh, Mr.
Hammad Khan, Mr.
Shubham Lakra & Mr.
Shikhar Bhardwaj,
Advocates.
SI Akash Kumar (P.S.
Bhajanpura).**CORAM:****HON'BLE MR. JUSTICE AMIT MAHAJAN****AMIT MAHAJAN, J. (Oral)**

1. The present revision petition is filed challenging the order dated 13.03.2024 (hereafter '**the impugned order**'), passed by the learned Additional Sessions Judge, East District, Karkardooma Courts, Delhi in SC No. 703/2023 arising out of FIR No.716/2020, registered at Police Station Bhajanpura.

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2. The learned Trial Court, by the impugned order, discharged Respondent No.2.

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

3.1. The present FIR was lodged on 28.12.2020 at the instance of the prosecutrix/ petitioner. It is alleged that Respondent No.2/ accused established sexual relations with the prosecutrix on the pretext of false promise to marry.

3.2. It is alleged that the prosecutrix got acquainted with the accused a decade prior to the registration of the FIR at a cafe owned by him in Greater Kailash. It is alleged that Respondent No.2 told the petitioner that he liked her. He also disclosed to her that he was having marital problems and he wanted to divorce his wife. It is alleged that the petitioner had gotten divorced from her husband in the year 2009 as well and the accused had made her believe that he would divorce his wife.

3.3. It is alleged that on one day, at a late hour, the petitioner was in the restaurant of the accused where he gave her a cold drink. On the repeated insistence of the accused, the petitioner drank the same and fell unconscious. When she woke up, she found that she was in a flat and her clothes were in a disarray. It is alleged that the petitioner also felt pain in her private parts as the accused had allegedly raped her. It is alleged that the accused apologised to the petitioner and promised to marry her after divorcing his wife. It is alleged that on being asked, the accused informed the petitioner that they were in his flat at Yamuna Vihar Colony. It is alleged that after the incident, the accused raped her a number of times.



3.4. It is alleged that a few days after the incident, the accused closed the restaurant. It is alleged that the accused kept asking the petitioner to trust him and kept establishing physical relations with her without her will. It is alleged that when the petitioner asked the accused as to why he had closed the restaurant in Delhi, he told her that he will settle in Delhi after divorcing his wife. It is alleged that the accused asked the petitioner to wait and to trust him. Thereafter, the petitioner and the accused started talking less and the accused always asked her to wait. It is alleged that when the petitioner went to meet the accused, he established relations with her again by assuring her of their relationship.

3.5. It is alleged that the accused enticed the petitioner to work as an event organiser and assured her that he would help her financially. It is also alleged that the petitioner started losing faith in the accused, however, he used to send her quotation for parties and pressurised her to stay close to him. It is alleged that the accused told the petitioner that this way his wife will also not be suspicious.

3.6. It is alleged that after the wife of the accused came to know of the relationship, a party organised by the petitioner for 100 people in the restaurant of the accused was also cancelled by the accused. It is alleged that when the petitioner had reached Goa to meet the accused, he threatened the petitioner with a pistol. It is alleged that the accused along with his wife also threatened the petitioner to leave him alone and threatened her of dire consequences.



3.7. The petitioner supported her case in her statement recorded under Section 164 of the Code of Criminal Procedure, 1973. She also stated that she had gone to Goa in December, 2020 in relation to the party scheduled on 24.12.2020. She stated that the accused had threatened her with a gun and asked her to return to Delhi. She also stated that the accused had forcefully established physical relations with her at that time.

3.8. Chargesheet was filed against Respondent No.2 for the offences under Sections 376/328/506 of the Indian Penal Code, 1860 ('**IPC**').

4. The learned ASJ, by the impugned order, discharged Respondent No.2/ accused of the alleged offences and noted that no reliable evidence was placed on record to frame charges against him *qua* any of the alleged offences. The learned ASJ took note of the WhatsApp chats between the petitioner and the accused starting from December, 2020 till 01.03.2021 that were made a part of the supplementary chargesheet, and observed that the same seemed to be purely business conversations. It was noted that there was no proof that there had been any contact between the accused and the petitioner prior to the same. The learned ASJ also noted that there was no discussion of the date and time of the first alleged incident of rape in Yamuna Vihar. It was noted that the petitioner had chosen to register the FIR at the Police Station which had jurisdiction over the area of her residence without identifying the alleged spot where she was raped. It was also noted that there was no medical evidence of rape or the intoxicating substance that was allegedly



administered by the accused to the prosecutrix. It was noted that no date and time was fixed for marriage either.

5. The learned counsel for the petitioner submits that the impugned order suffers from grave infirmities as the learned ASJ has conducted a mini trial.

6. He submits that the learned Trial Court has erroneously observed that the statement of the prosecutrix was not sufficient to proceed against Respondent No.2. He submits that charges could have been framed solely on the basis of the statement of the prosecutrix under Section 164 of the Code of Criminal Procedure, 1973 given the nature of the offence.

7. He submits that it is trite law that the sole testimony of the prosecutrix can be the basis of conviction for the offence under Section 376 of the IPC if the same inspires confidence, which is subject matter of trial after the evidence is led. He relies upon the judgments in the cases of ***Gopal Jha v. State : 2023 SCC Online Del 5675*** and ***Hazrat Deen v. State of U.P. : 2022 SCC OnLine SC 1781***.

8. He submits that the CDR clearly revealed that the location of the prosecutrix and Respondent No.2 was the same on the date of the alleged incident in December, 2020.

9. He submits that the learned Trial Court has not properly perused the chargesheet and failed to consider that Respondent No.2 had pressurised the petitioner to fabricate the chats professional chats with him to avoid the scrutiny of his wife. He submits that the number of the calls and messages sent by the accused shows that the parties had a personal relationship.



10. He further submits that it was wrongly observed that no explanation was given as to how Respondent No.2 brought the petitioner from Geater Kailash to Yamuna Vihar, even though, it was clearly alleged in the FIR that the petitioner had lost her consciousness on drinking the intoxicating drink given by Respondent No.2.

11. He submits that the petitioner was unable to point out the house where she was allegedly raped as the incident had occurred almost a decade back and she had been intoxicated by Respondent No.2 at that time.

12. He further submits that the petitioner could not provide the exact time of the meetings as the parties met on a number of days over a period of 10 years.

13. He submits that no date and time were fixed for the marriage as it has been the petitioner's case from the start that the accused had promised to divorce his wife and marry her, in which case, no time for the same could obviously be fixed.

14. He submits that no proper perusal of the chargesheet was done by the learned Trial Court.

15. I have heard the learned counsel and perused the record.

16. Before delving into the facts of the present case, it is important to note that it is a settled law that the scope of interference by High Courts while exercising revisional jurisdiction is limited and ought to be exercised sparingly, in the interest of justice [Ref. *Amit Kapoor v. Ramesh Chander* : (2012) 9 SCC 460].

17. In the case of *Amit Kapoor v. Ramesh Chander* (*supra*),



the Hon'ble Supreme Court, advertent to a catena of precedents, has noted that the test is whether the allegations, as made from the record of the case, taken at their highest, constitute the offence or not.

18. It is trite law that the trial court, at the stage of framing of charges, is not required to conduct a mini trial and has to merely weigh the material on record to ascertain whether the ingredients constituting the alleged offence are *prima facie* made out against the accused persons. The Hon'ble Apex Court, in the case of ***Sajjan Kumar v. CBI : (2010) 9 SCC 368***, has culled out the following principles in regards to the scope of Sections 227 and 228 of the CrPC:

"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)

19. It is also clear that this Court, while exercising revisional jurisdiction, is not required to reevaluate the evidence or hold a mini trial as the same would tantamount to this Court assuming appellate jurisdiction. Thus, all that has to be seen is whether the learned Trial Court has adequately appreciated the material on record and whether on the material placed before it, the Court could form an opinion that there is *grave suspicion* against the accused.

20. The learned counsel for the petitioner has primarily argued that the statement of the victim alone was sufficient to frame charges against Respondent No.2. Reliance has been placed on the judgments of **Gopal Jha v. State** (*supra*) and **Hazrat Deen v.**



State of U.P. (supra).

21. It is relevant to note that in the case of **Hazrat Deen v. State of U.P. (supra)**, it was noted by the Hon'ble Apex Court that while discrepancies in FIR and the statement under Section 164 of the CrPC might be a defence, however, discrepancies could not be a ground for discharge.

22. Placing reliance on the same, a Coordinate Bench of this Court in the case of **Gopal Jha v. State (supra)** had dismissed the challenge of the accused to the charges framed under Section 376 of the IPC. The Court had also placed reliance on **Renu Vij v. State : Crl. Rev. P. 272/2007** where it was observed that whether the statement of the prosecutrix inspires confidence or not is a question of fact and is to be decided on the basis of evidence adduced by the prosecution. The said cases are distinguishable on facts.

23. As discussed above, at the time of framing charges, it is open to the Court to sift through the material on record while discerning whether grave suspicion exists against the accused. It is also trite law that the learned Trial Court ought not to conduct a roving enquire, however, it would be wrong to suggest that merely because the prosecutrix supports her case in her statement under Section 164 of the CrPC, then charges ought to be framed against the accused no matter how improbable the version of the prosecutrix is. To hold otherwise would curb the judicial discretion of the Trial Court and would be against the settled principles of judicial propriety. When the primary material on record is only the statement of the prosecutrix, the



Court cannot be precluded from considering whether the same inspires such confidence so as to give rise to grave suspicion against the accused person of having committed the crime.

24. As per Respondent No.2, the FIR was maliciously registered due to a dispute over him cancelling the party organised by Respondent No.2 on account of Government restrictions imposed due to the pandemic. The same is supported by his WhatsApp chats as well.

25. The learned Trial Court has aptly taken into account the WhatsApp chats between the petitioner and Respondent No.2 that ranged between December, 2020 till 01.03.2021. The same were made a part of the supplementary chargesheet. On the basis of the same, the learned Trial Court observed that it was apparent that the parties did not know each other prior to 01.12.2020 and that the chats were in relation to the confirmation for the party.

26. It is argued that the chats were deliberately kept professional to avoid the suspicion of the wife of Respondent No.2, however, it is still peculiar that even though the parties were allegedly in a relationship since the year 2009, there is no record of their meetings or how they scheduled the same. While the petitioner cannot be expected to keep track of all meetings between the parties over the course of a decade, in the present case, there is absolutely no mention of them meeting except after the party was scheduled. It has also been alleged that Respondent No.2 used to sometimes give a little money to the petitioner, however, there is no proof or trail of the same either.

27. The learned Trial Court also noted that the petitioner had



been unable to point out the house where the accused had first raped her. Even if it is accepted that the petitioner was unable to identify the house where she was allegedly raped for the first time due to the incident being a decade old, the story of the prosecution is still plagued with such infirmities that it does not raise grave suspicion against the accused.

28. The learned Trial Court has also rightly appreciated that there is no medical evidence of rape and neither of any intoxicating substance being administered to the prosecutrix.

29. Insofar as the non-consideration of the CDR is concerned, in the opinion of this Court, the same also does not help the case of the prosecution. The mere presence of the parties in one spot in December, 2020, that is, when they were embroiled in a business dispute, does not give rise to grave suspicion, especially, when the allegations range over a decade.

30. From a bare perusal of the record, in the opinion of this Court, the statement of the petitioner does not inspire confidence and the material on record does not point towards commission of the alleged offence.

31. It has been alleged that the relationship between the parties spanned over the course of a decade where Respondent No.2 continued to exploit the petitioner and sexually establish relations with her by repeatedly making false assurances that he would divorce his wife and marry her. As per the FIR, the petitioner lost faith in Respondent No.2 and doubted him, despite which, she allegedly continued the relationship with him on his assurances. Notably, the petitioner is a mature woman and she



was aware that Respondent No.2 was a married man. Even assuming that the petitioner believed the promises and assurances of Respondent No.2, if any such promises were ever made, there is no evidence that Respondent No.2 had no intention of keeping the promise that he made almost a decade back. As observed in the case of ***Pramod Suryabhan Pawar v. State of Maharashtra: AIR 2019 SCC 4010***, to vitiate the consent of a woman, it is necessary that the promise to marry was false and given in bad faith with no intention of following through. The Court underscored the difference between breach of promise to marry and non-fulfillment of a false promise that was given with the understanding that it will be broken. Further, the subject FIR was quashed by the Hon'ble Apex Court after observing that the failure of the appellant therein to fulfill a promise in the year 2016 that he had made in the year 2008 could not be construed to mean that the promise itself was false.

32. As discussed above, the learned Trial Court has evidently applied its judicial mind and considered the totality of the facts before discharging Respondent No.2 of the alleged offences in light of the absence of grave suspicion against Respondent No.2.

33. Considering the aforementioned facts, no ground is made out to warrant any interference in the impugned order.

34. The present petition, along with the pending applications, are dismissed in the aforesaid terms.

AMIT MAHAJAN, J

AUGUST 16, 2024

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