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

+ **CRL.REV.P. 236/2024 & CRL.M.A. 5403/2024**

XXXX

..... Petitioner

Through: Mr. Suresh Chaudhary and
Mr. Gagan Kumar
Singhal, Advs.

versus

STATE & ANR.

..... Respondents

Through: Mr. Naresh Kumar
Chahar, APP for the State
with SI Meenu, PS Kirti
Nagar.

CORAM:

HON'BLE MR. JUSTICE AMIT MAHAJAN

ORDER

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20.02.2024

1. The present petition is filed under Sections 397/ 401 read with Section 482 of the Code of Criminal Procedure, 1973 challenging the order dated 31.08.2023 (hereafter '**impugned order**'), passed by the learned Additional Sessions Judge ('**ASJ**'), SFTC (West)-01, Tis Hazari Courts, Delhi, in SC No.382/2022, whereby Respondent No.2 has been discharged of the offences punishable under Sections 376/376(2)(n) of the Indian Penal Code, 1860 ('**IPC**').

2. The brief facts of the present case are as follows:

2.1. On 28.10.2021, FIR No. 480/2021 was registered for offences under Sections 376/376(2)(n) of the IPC, at Police Station Kirti Nagar, on a complaint made by the petitioner alleging that Respondent No.2 had blackmailed her and forcibly established physical relations with her.

2.2. It was stated that the petitioner got married in the year 1992 and had been living separately from her husband since the year 2006. Respondent No.2 used to live in the house opposite to



that of the petitioner.

2.3. It was alleged that the first incident of rape took place about nineteen years prior to the registration of the FIR, when the petitioner wanted to rent a house, and Respondent No.2 took her to show a house that was owned by him. It was alleged that Respondent No.2 forcibly had sexual relations with the petitioner there. It was alleged that Respondent No.2 blackmailed the petitioner with her obscene videos and photographs captured during the first incident. It was also alleged that Respondent no.2 threatened to tell her husband if she did not agree to stay in Respondent No.2's flat. It was alleged that the petitioner started living in the flat of Respondent No.2. It was alleged that Respondent No.2 used to exploit the petitioner after her husband left for work.

2.4. It was alleged that after the petitioner gave birth to her son, Respondent No.2 started harassing her more. Respondent No.2 insisted that the petitioner leave her husband and also forcibly took out her luggage, in her absence, and sent it to her mother's house. It was stated that the petitioner then started residing with her husband again. Thereafter, Respondent No.2 started blackmailing the petitioner again, and on 23.05.2005, also took her to his house and along with his wife beat the petitioner badly. It was stated that a case was also registered in Indirapuram Police Station in this regard.

2.5. It was alleged that Respondent No.2 informed her one day that he had left his wife and asked her to leave her husband. Respondent No.2 also told her husband that Respondent No.2 was the father of her son. This infuriated the petitioner's husband and caused an altercation, whereafter the petitioner started living separately from her husband.



2.6. It was alleged that Respondent No.2 threatened to defame her due to which she started living with him. It was alleged that Respondent No.2 continued to forcibly have sexual intercourse with the petitioner during a span of nine years.

2.7. It was alleged that the petitioner started living in Mumbai with her daughter for an year, whereafter she came back to Delhi and told Respondent No.2 that she would not have physical relations with him. Respondent No.2 thereafter came to her house on many instances and even stayed for the night. It was alleged that on 25.10.2021, Respondent No.2 asked the petitioner to prepare a meal for him and bring it to his banquet. Thereafter, they went to his house as it was late. It was alleged that at his house, Respondent No.2 forced the petitioner to have physical relations with him by blackmailing her.

3. The learned ASJ, by the impugned order, discharged Respondent No.2 of the offences punishable under Sections 376/376(2)(n) of the IPC. The learned ASJ considered the text messages sent by the petitioner to Respondent No.2; that the petitioner and her daughters had a number of financial transactions with Respondent No.2; that the parties and the daughter of the petitioner had also gone to Dubai on a family trip; and the petitioner had herself uploaded eight tiktok videos of herself with Respondent No.2, filmed in public, which showed that there was a good and loving relationship between them. The learned ASJ observed that the material on record did not make a case for absence of consent of the petitioner in the sexual relationship between the parties. The operative portion of the impugned order is reproduced hereunder:

“14. So the documents produced before this Court are implying good relations rather than forceful relation between the prosecutrix and accused. Complainant and

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the statement u/S 164 Cr.P.C. also shows that the prosecutrix with her children had been visiting to the house of the accused, she herself agreed to go to accused on 25.10.2021, she herself sat on the motorcycle of accused to go to his house and she even stayed with the accused though at his request, so element of force or compulsion on the part of the accused as being suggested by the prosecutrix through her complaint cannot be read. Consent of a woman cannot be inferred only from the words chosen by the prosecutrix in her complaint but it is the inference of all the circumstances taken together....Thus, when the conduct of the prosecutrix for more than 19 years is not reflecting lack of her consent, the denial of consent by her on one fine day cannot be accepted to allow the accused to go for the agony of trial for rape as all the circumstances and admitted documents in the form of tictoc videos, bank statements, photos and documents produced by the prosecutrix herself in the form of SMS, when accepted as it is, cumulative presenting a view that relationship between the prosecutrix and the accused were consensual in nature and at this stage, when his view is dominantly emanating from the record, benefit ought to be granted to the accused. Hence it is held that the record is lacking sufficient ground to frame the charge against the accused and he is hereby discharged.”

4. The learned counsel for the petitioner submits that the learned ASJ failed to appreciate that the statement of the petitioner is sufficient to frame charges against Respondent No.2.

5. He submits that the learned ASJ had erroneously passed the impugned order without going through the several complaints, divorce deed and threatening messages sent by Respondent No.2 to the petitioner.

6. He submits that the learned ASJ had erroneously relied on TikTok videos, which can not be interpreted to be conclusive proof of the innocence of Respondent No.2.

7. 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**]

8. 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.

9. 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)

10. It is clear that this Court, at this stage, is not required to reevaluate the evidence or hold a mini trial as the same would be 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.

11. In the present case, the learned counsel for the petitioner has contended that the learned ASJ has not sifted the evidence on
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record and has not taken into account the several complaints, divorce deed and text messages between the petitioner and Respondent No.2. The said averment is unmerited.

12. The learned ASJ observed that the Divorce Deed was irrelevant in the present case as the allegation herein is of rape on the basis of blackmail, rather than rape on the false pretext to marry. While, the subject of the FIR mentions “Forced physical relations on the pretext of marriage”, no allegation regarding any false promise of marriage has been levelled against Respondent No.2.

13. The learned ASJ, in paragraph 13 of the impugned order, has also discussed the text messages between the parties and found the same to be merely regular messages exchanged between partners.

14. The learned ASJ has discussed the complaints made by the petitioner in detail and rightly observed that while the petitioner had made a complaint in the year 2007 stating that Respondent No.2 had raped her, she had also stated that she had asked Respondent No.2 to not come to her house if he could not give her expenses. The learned ASJ also rightly observed that the petitioner had failed to explain as to why she had not pressed the complaint dated 07.04.2007 and also that the complaint made in the year 2005 (regarding Respondent No.2 and his wife giving beatings to the petitioner) was irrelevant *qua* the allegation of rape.

15. As rightly observed, the petitioner herself displayed her relationship with Respondent No.2, as that of a couple, on TikTok and also undertook trips with him. Moreover, the petitioner admittedly continued to reside with Respondent No.2 post the complaint made in the year 2007.



16. In view of the same, it cannot be said that the learned ASJ has not carefully sifted through the evidence/ material on record.

17. The Hon'ble Apex Court, in the case of ***Tameezuddin v. State (NCT of Delhi) : (2009) 15 SCC 566***, had observed as under:

“9. It is true that in a case of rape the evidence of the prosecutrix must be given predominant consideration, but to hold that this evidence has to be accepted even if the story is improbable and belies logic, would be doing violence to the very principles which govern the appreciation of evidence in a criminal matter.”

18. At the stage of framing charges as well, when the primary material on record is only the statement of the prosecutrix, the Court has to consider whether the same inspires such confidence so as to give rise to grave suspicion against the accused person of having committed the crime.

19. From a bare perusal of the record, it appears that the petitioner and Respondent No.2 had continuous sexual relations for almost 19 years, which started when both the parties were married to different partners. Respondent No.2 frequented the house of the petitioner for almost a decade and the parties admittedly went on trips together. The petitioner, by herself, posted as many as eight TikTok videos with Respondent No.2, that were filmed in public. There is no allegation that the petitioner was coerced into travelling with Respondent No.2 or that Respondent No.2 had threatened her to film or post said videos on social media. It is also relevant to note that in the present case, it is stated in the FIR that on the date of incident in the year 2021, the petitioner had gone to Respondent No.2's banquet to give him a meal that she had prepared at his instance. It is also pertinent to note that the petitioner, after having lodged



the complaint in the year 2007, was free to approach the police again for help if she was being blackmailed by Respondent No.2. The complaint was given only in the year 2021 after an alleged incident at the home of Respondent No.2. No explanation has been provided as to why the petitioner refrained from approaching the authorities or informing others about the alleged continuous incidents of rape for such a long period of time.

20. It seems highly improbable that a lady, who was raped and blackmailed by a person over the course of almost two decades, would engage in cordial discourse, go on trips or willingly make an effort to showcase a happy relationship with her assailant on social media.

21. In such circumstances, this Court is of the opinion that the statement of the petitioner does not inspire confidence and the material on record does not point towards coerced consent on part of the petitioner by way of blackmail.

22. As discussed above, the learned ASJ has evidently applied its judicial mind and considered the totality of the facts before discharging Respondent No.2 of the offences punishable under Sections 376/376(2)(n) of the IPC in light of absence of grave suspicion against Respondent No.2.

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

24. The present petition, along with the pending application, are dismissed in the aforesaid terms.

AMIT MAHAJAN, J

FEBRUARY 20, 2024/ ssh