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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ **CRL.REV.P.1185/2024, CRL.M.A.29396-29397/2024 & 29400/2024**
ANUP KUMARPetitioner
Through: Ms. Kalpana Tripathy and Mr. Anil
Sharma, Advocates.

versus

STATE OF NCT OF DELHI AND ANR.Respondents
Through: Ms. Manjeet Arya, APP for State with
SI Vivek, PS: Mayur Vihar.

CORAM:
HON'BLE MR. JUSTICE ANOOP KUMAR MENDIRATTA

ORDER

% **27.09.2024**

CRL.M.A. 29398/2024

Exemption allowed, subject to just exceptions.

Application stands disposed of.

CRL.M.A. 29399/2024

For the reasons stated in the application, delay of 76 days in filing the revision petition is condoned.

Application stands disposed of.

CRL.REV.P. 1185/2024, CRL.M.As. 29396-29397/2024 and 29400/2024

1. Criminal Revision Petition under Sections 438 and 442 read with Section 528 of the Bharatiya Nagarik Suraksha Sanhita, 2023 ('BNSS') has been preferred on behalf of petitioner for setting aside order on charge dated 08.04.2024 passed by learned ASJ (SC-RC), East District, Karkardooma Courts, Delhi in FIR No. 0527/2023, under Sections 376/506 IPC, registered at PS: Mayur Vihar, Phase-1.



2. Issue notice. Learned APP for the State appears on advance notice and accepts notice.
3. In brief, as per the case of prosecution, prosecutrix alleged that petitioner had approached her through a matrimonial application. Further though, the prosecutrix blocked mobile number of petitioner, he again contacted her and assured that he would accept the prosecutrix along with her son. On 16.10.2023, petitioner established physical relations with the prosecutrix on false pretext of marriage and thereafter declined to marry her.
4. Learned counsel for petitioner submits that relations between the petitioner and prosecutrix were consensual in nature. She points out that prosecutrix is a major, aged about 35 years, with a child aged about 06 years and emphasizes that since prosecutrix knew the consequences of her actions, she cannot be said to have been misled by the petitioner.
5. On the other hand, learned APP for the State vehemently opposes the petition and supports the order passed by learned Trial Court on point of charge. She submits that the statement of prosecutrix has already been recorded before the learned Trial Court, wherein, she has supported the allegations levelled by her. She further contends that misrepresentation on the part of petitioner is apparent as he refused to marry after fraudulently giving assurance of marriage.
6. The principles to be considered at the stage of charge alongwith relevant decisions as noticed by the Hon'ble Apex Court in ***State of Rajasthan vs. Ashok Kumar Kashyap, (2021) 11 SCC 191*** may be beneficially reproduced:

“11.1. In P. Vijayan, this Court had an occasion to consider Section 227 Cr.P.C. What is required to be considered at the time of framing of the charge and/or considering the discharge application has been considered



elaborately in the said decision. It is observed and held that at the stage of Section 227, the Judge has merely to sift the evidence in order to find out whether or not there is sufficient ground for proceeding against the accused. It is observed that in other words, the sufficiency of grounds would take within its fold the nature of the evidence recorded by the police or the documents produced before the Court which ex facie disclose that there are suspicious circumstances against the accused so as to frame a charge against him. It is further observed that if the Judge comes to a conclusion that there is sufficient ground to proceed, he will frame a charge under Section 228 Cr.P.C., if not, he will discharge the accused. It is further observed that while exercising its judicial mind to the facts of the case in order to determine whether a case for trial has been made out by the prosecution, it is not necessary for the court to enter into the pros and cons of the matter or into a weighing and balancing of evidence and probabilities which is really the function of the court, after the trial starts.

*11.2. In the recent decision of this Court in **M.R. Hiremath**, one of us (D.Y. Chandrachud, J.) speaking for the Bench has observed and held in para 25 as under: (SCC p. 526)*

*“25. The High Court ought to have been cognizant of the fact that the trial court was dealing with an application for discharge under the provisions of Section 239 Cr.P.C. The parameters which govern the exercise of this jurisdiction have found expression in several decisions of this Court. **It is a settled principle of law that at the stage of considering an application for discharge the court must proceed on the assumption that the material which has been brought on the record by the prosecution is true and evaluate the material in order to determine whether the facts emerging from the material, taken on its face value, disclose the existence of the ingredients necessary to constitute the offence. In State of T.N. v. N. Suresh Rajan**, advertent to the earlier decisions on the subject, this Court held: (SCC pp. 721-22, para 29)*

‘29. ... 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.' ”

7. At the outset, it may be observed that petitioner had met the prosecutrix only on matrimonial application and as such, relations between petitioner and prosecutrix were based on assurance and understanding of marriage. The facts and circumstances apparently disclose that a false promise was made by petitioner with no intention of upholding the same.

8. The promise is of immediate relevance and bears a direct nexus to the decision to be taken by the complainant, to engage in sexual act. The contentions raised on behalf of learned counsel for petitioner that there was no such intention or misrepresentation on behalf of petitioner or the parties had voluntarily entered into physical relations, appear to be contrary to the facts emerging from record.

Considering the facts and circumstances of the case, *prima facie* there is sufficient material on record for presuming that petitioner had committed an offence, for purpose of framing of charge under Sections 376/506 IPC.

Petition is accordingly dismissed. Pending applications, if any, also stand disposed of.

ANOOP KUMAR MENDIRATTA, J.

SEPTEMBER 27, 2024/gs