



\$~52

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

+ CRL.M.C. 7721/2024 & CRL.M.A. 29483/2024

RAJA SINGH

.....Petitioner

Through: Mr. Rajeev Sharma,  
Senior Advocate with Mr.  
Anuj Handa, Ms. Sanya  
Handa, Mr. Shubham  
Pandey and Ms. Gautmi  
Shandilya, Advocates.

versus

STATE NCT OF DELHI & ANR.

.....Respondents

Through: Mr. Manoj Pant, APP for  
the State with SI Rachna,  
PS Civil Lines.  
Mr. Aditya Aggarwal, Mr.  
Ankit Mutreja, Ms. Shipali  
Garg, Ms. Ishita Kumar  
and Ms. Shivani Sharma,  
Advocates for R-2.

**CORAM:**

**HON'BLE MR. JUSTICE AMIT MAHAJAN**

**ORDER**

**20.12.2024**

%

1. The present petition is filed challenging the order dated 03.02.2024 (hereafter '**the impugned order**') passed by the learned Additional Sessions Judge ('**ASJ**') in case arising out of FIR No. 251/2022 dated 20.05.2022 registered at Police Station Civil Lines for offences under Sections 376/509/506 of the Indian Penal Code, 1860.

2. The learned ASJ, by the impugned order, dismissed the application filed by the petitioner seeking summoning of the police diary so as to enable the learned Trial Court to peruse the material collected during the investigation but not filed with the

CRL.M.C. 7721/2024

Page 1 of 7



chargesheet.

3. The learned senior counsel for the petitioner contends that the complainant, employed as Vice Principal at a school managed by the petitioner, was suspended *via* a Show-Cause Notice dated 16.03.2022. The petitioner alleges that this professional action triggered a series of escalating allegations by the complainant, culminating in the registration of the present FIR.

4. The learned senior counsel emphasizes that the complaint dated 21.03.2022 and subsequent notices did not include allegations of rape. He submits that the witness statements and documents collected during the investigation, including statements by school staff who refuted the allegations, were omitted from the chargesheet.

5. He further vehemently contends that a writ petition was also filed before this Court by the complainant where also no allegation in regard to rape was made by the prosecutrix and, for the first time, on 20.05.2022, an FIR was registered wherein the allegations were made in regard to the alleged incident of rape on 11.03.2022.

6. He submits that the relevant documents and material which categorically shows the frivolity of the allegations were though collected by the prosecution but were not relied upon when the chargesheet was filed. These crucial documents, which unequivocally exonerate the petitioner of any allegations of rape, were supplied to him under Section 207 of the Code of Criminal Procedure, 1973 ('CrPC').

7. He relies on the case of ***Shakuntala v. State (NCT of Delhi) : 2007 SCC OnLine Del 304*** to argue that withholding material evidence undermines the fairness of the judicial process.



8. Conversely, the learned Additional Public Prosecutor, supported by the learned counsel for Respondent No. 2, submits that the accused's defence cannot be considered at the stage of framing charges to avoid a mini-trial. They rely on ***State of Rajasthan v. Swarn Singh @ Baba : SLP(Criminal) No.3146 of 2021*** and ***CBI v. Mahesh Agarwalla : 2024 SCC OnLine Del 7201*** to contend that an application under Section 91 of the CrPC is not maintainable at this preliminary stage.

9. The limited issue for determination is whether the learned ASJ's refusal to summon exculpatory evidence collected during the investigation constitutes a material irregularity.

10. The petitioner is essentially aggrieved that the documents which, according to him, clearly exonerates him of any charge of rape, are required to be considered by the learned Trial Court at the time of arguments on charge. The documents relied upon by the petitioner are those documents which were with the Investigating Officer, but the Investigating Officer did not make them part of the final report.

11. It is well-established that a fair and impartial investigation is the cornerstone of criminal justice system. The Investigating Officer is not tasked with bolstering the prosecution's case by selectively withholding evidence. If evidence collected during the investigation is withheld, the accused has the right to rely on such evidence and request the Court to consider it at the stage of framing charges. In the present case, the petitioner asserts that witness statements and other materials exonerating him were deliberately excluded from the chargesheet, thus infringing his fundamental right to a fair trial.

12. The reliance placed by the learned counsel for the petitioner on the case of ***Shakuntala v. State (NCT of Delhi)***



(*supra*) is well-founded. The ~~in~~ <sup>in</sup>strument categorically mandates that courts must consider the entire evidence collected during the investigation, not just the materials relied upon by the prosecution. The selective omission of evidence by the Investigating Officer undermines the right to a fair trial guaranteed under Article 21 of the Constitution of India.

13. The Hon'ble Apex Court in ***Nitya Dharmananda v. Gopal Sheelum Reddy*** : (2018) 2 SCC 93, while observing the importance of presenting the complete material collected during the investigation before the Court, held as under:

*“5. It is settled law that at the stage of framing of charge, the accused cannot ordinarily invoke Section 91. However, the court being under the obligation to impart justice and to uphold the law, is not debarred from exercising its power, if the interest of justice in a given case so require, even if the accused may have no right to invoke Section 91. To exercise this power, the court is to be satisfied that the material available with the investigator, not made part of the charge-sheet, has crucial bearing on the issue of framing of charge.*

xxx

xxx

xxx

*8. Thus, it is clear that while ordinarily the Court has to proceed on the basis of material produced with the charge-sheet for dealing with the issue of charge but if the court is satisfied that there is material of sterling quality which has been withheld by the investigator/prosecutor, the court is not debarred from summoning or relying upon the same even if such document is not a part of the charge-sheet. It does not mean that the defence has a right to invoke Section 91 CrPC de hors the satisfaction of the court, at the stage of charge.”*

14. The petitioner relies upon certain key documents that, according to him, substantiate his innocence and were collected by the Investigation Officer during investigations but were not filed with the charge sheet. Specifically, these documents include:



14.1 Statements of ~~Victoria~~ witnesses recorded by the Investigating Officer.

14.2 Complaint dated 30.03.2022 filed by the prosecutrix to Deputy Chief Minister, National Commission of Women and Directorate of Education.

14.3 Copy of Writ Petition (civil) No. 6899/2022 filed by the prosecutrix before this Court.

15. The complainant has alleged in the FIR that the petitioner, who was serving as the Manager of Victoria Girls School at the time, sexually harassed her on multiple occasions and also made sexual remarks between 11.02.2022 and 11.03.2022. She further alleged that on 11.03.2022, during school hours in his office, the petitioner inserted his finger in her private parts against her will. The complainant also stated that she initially refrained from reporting these incidents due to fear and emotional distress but later decided to file the complaint.

16. The petitioner, however, contends that the statements of several witnesses recorded during the investigation exonerate him and categorically refute the complainant's version of events. Although this Court has not delved into the specifics of the documents sought to be placed on record, their nature and inclusion in the investigation materials suggest their relevance to the trial. The FIR, filed belatedly on 20.05.2022, almost two months after the alleged incident, raises further questions about its credibility. In the opinion of this Court, these documents are likely to have a material bearing on the case and must be examined by the learned Trial Court during the stage of framing charges to ensure a fair and impartial assessment of the evidence.



17. Clearly, the omission of documents had necessitated the petitioner to file an application under Section 172(2) of the CrPC for further production of documents. In the opinion of this Court, an application under Section 172(2) of the CrPC may not have been appropriate in the circumstances, as the documents in question were already part of the prosecution's records but excluded from the challan. The proper recourse would have been to summon these documents under Section 91 of the CrPC. However, given the circumstances and the interest of justice, this Court deems it unnecessary to direct the petitioner to file another application before the Trial Court. Instead, the inherent powers of this Court under Section 482 of the CrPC are invoked to ensure that justice is served without undue delay.

18. Section 482 of the CrPC empowers the High Court to make such orders as may be necessary to give effect to any order under the Code, to prevent abuse of the process of the Court, or otherwise to secure the ends of justice. In the present case, the exclusion of exculpatory evidence from the chargesheet constitutes a grave injustice that necessitates immediate correction.

19. In view of this Court, the respondents' reliance on ***State of Rajasthan v. Swarn Singh @ Baba*** (*supra*) and ***CBI v. Mahesh Agarwalla*** (*supra*) is misplaced. While these judgments caution against conducting a mini-trial at the stage of framing charges, they do not absolve the Court of its responsibility to ensure that all collected evidence is scrutinized.

20. In view of the above, this Court holds that the impugned order dated 03.02.2024 is unsustainable and is set aside. The learned Trial Court is directed to deal with the issue of framing



of charge in light of the observations made hereinabove and to proceed with the matter in accordance with law.

21. Pending application also stands disposed of.

**AMIT MAHAJAN, J**

**DECEMBER 20, 2024**