



2024:DHC:4071



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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**% *Date of Decision: 15th April, 2024*+ **CRL.REV.P. 397/2017****STATE NCT OF DELHI**

..... Petitioner

Through: Mr. Mukesh Kumar, APP
for the State along with
Adv. Sanjeevni Mittal with
W/SI Anita, PS Uttam
Nagar.

versus

SANTOSH KUMAR

..... Respondent

Through: Ms. Rakhi Dubey, Adv.
through V.C.**CORAM:****HON'BLE MR. JUSTICE AMIT MAHAJAN****AMIT MAHAJAN, J. (Oral)**

1. The present petition is filed under Sections 397/401 read with Section 482 of the Code of Criminal Procedure, 1973 (**CrPC**), assailing the order of charge dated 25.10.2016 (hereafter '**the impugned order**'), passed by the learned Additional Sessions Judge (SFTC), Dwarka Courts, Delhi (hereafter '**Trial Court**') and seeking framing of charge for offence punishable under Section 376 of the Indian Penal Code, 1860 (**IPC**) in the case arising out of FIR No. 1041/2016, registered at Police Station Uttam Nagar, under Section 376 of the IPC.

2. Prosecutrix/ complainant is a widowed lady, having a six-year-old daughter. On 18.8.2015, the prosecutrix lodged a



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complaint with the police stating that she was residing in a rented accommodation at Uttam Nagar, New Delhi. It is alleged that she was in a live-in relationship with the respondent since the year 2012.

3. It is alleged that the respondent had established physical relations with her several times on the pretext of marriage. It is alleged that the respondent refused to solemnize marriage. FIR under section 376 of the IPC was registered on 18.08.2015.

4. During the investigation, the prosecutrix was medically examined at DDU Hospital, Hari Nagar, New Delhi on 18.8.2015, where it is alleged that the prosecutrix refused to undergo her internal examination. Her statement under Section 164 of the CrPC was recorded by learned MM, Dwarka Courts, New Delhi on 19.8.2015. After the completion of the investigation, charge sheet was filed against the accused for the offence under Section 376 of the IPC.

5. The learned Sessions Court discharged the respondent *vide* order dated 25.10.2016 on the grounds that the prosecution's evidence lacked credibility and consistency. The learned Sessions Court reasoned that there was a significant delay in lodging the FIR. The prosecutrix waited approximately three years after the alleged incidents and provided inconsistent statements regarding whether the sexual relations were consensual or forced. Furthermore, it was reasoned that her medical examination showed no fresh injuries, and she refused an internal examination, offering no medical support for her claims of rape. The learned Sessions Court determined that these factors did not

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establish a *prima facie* case against the accused for the charge of rape under Section 376 IPC. The operative portion of the impugned order is reproduced hereunder:

“9. In her complaints dated 29.4.2014 & 30.5.2014, prosecutrix has alleged that she was living in live-in relationship with the accused who established physical relations with her on the pretext of marriage. In the FIR, it is alleged that accused forcibly established physical relations with her on the pretext of marriage while in her statement u/s 164 Cr.PC she has alleged that accused committed rape upon her. Thus, the prosecutrix has not divulged with certainty and clarity if physical relations with the accused were consensual on his promise to marry or it were against her wishes forcibly. This relationship continued for sufficient duration and at no stage, she raised alarm/hue and cry or lodged report with the police against alleged forcible sex. Even after the initial incident in 2012 she continued to have sexual relations with him without demur and at no stage prosecutrix lodged report about his conduct and behaviour. No specific date and time as to when the said relations were maintained have been mentioned either in the complaints or in her statement u/s 164 Cr.PC. It was only when the accused started avoiding the prosecutrix, she approached the police. Thus, the said complaint was made after a considerable delay.

10. Prosecutrix was medically examined on 18.8.2015. The prosecutrix had refused to undergo her internal examination. Doctor has written on the MLC that she did not find any fresh external injury on the person of the prosecutrix at the time of the examination. There is no medical evidence to support the version of the prosecutrix that she was raped. Accused was also medically examined by doctor on 18.5.2016 at DDU Hospital, New Delhi which was a sheer formality.

13. Considering the facts and circumstances of this case, after sifting and weighing the evidence for the limited purpose of finding out whether or not a *prima facie* case is made out against the accused, I am of the opinion that the materials placed before the Court do not disclose the grave suspicion against the accused for framing a charge against him for committing offences



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punishable under Sections 376 IPC. Accordingly, accused in the present case is discharged for the offence punishable u/s 376 IPG. His personal bond is cancelled and surety is discharged. In terms of Section 437(A) Cr.P.C., accused is directed to furnish personal bond in the sum of Rs.25,000/- with one surety in the like amount for a period of six months for his appearance before the High Court of Delhi in the event the prosecution wishes to challenge the present order by filing the appropriate petition in the High Court. Ahlmad is directed to page and bookmark the file so as to enable the digitisation of the entire record. File be consigned to Record Room.”

6. Aggrieved by the aforesaid order, the petitioner has preferred the present petition.

7. The learned Additional Public Prosecutor for the State submits that the learned Trial Court has committed an error by discharging the accused / respondent of the alleged offence. The offence under Section 376 of the IPC is made out as the allegation of the prosecutrix was that of physical relationship which was entered into between the prosecutrix and the accused on a false pretext of marriage.

8. He submits that the learned Trial Court has erroneously passed the impugned order and failed to appreciate that the statement of the prosecutrix is sufficient to frame charges against the respondent.

9. He submits that the learned Trial Court erred in discharging the respondent when the issue, whether consent had been obtained under the false promise of marriage is a matter of trial and *prima facie* a case had been made out against the accused.

10. He further submits that considering the allegations levelled

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by the prosecutrix in her complaint and statement recorded under Section 164 of the CrPC, charges under Section 376 of the IPC should have been framed against the accused and the genuineness of the allegations can be tested at the stage of trial.

11. *Per contra*, the learned counsel for the respondent argues that there is no infirmity in the order passed by the learned Trial Court and a well-reasoned order is passed by the learned Trial Court after considering the material on record and the inconsistencies in the statements of the prosecutrix, which warrants no interference. Thus, it is prayed that the present petition be dismissed.

12. I have heard arguments advanced by the learned counsel for the parties and have perused the material placed on record.

13. Since the prosecution has assailed the impugned order framing charges against the respondent, it will be apposite to succinctly discuss the statutory law with respect to framing of charge and discharge as provided under Sections 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 sub-section (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.”

14. The scope of interference by High Courts while exercising revisional jurisdiction in a challenge to order framing charge is well settled. The power ought to be exercised sparingly, in the interest of justice, so as to not impede the trial unnecessarily. [Ref: **Amit Kapoor v. Ramesh Chander : (2012) 9 SCC 460**]

15. 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)

16. The edifice of an order on charge is appreciation of *prima facie* view of the matter. The Court at the stage of framing of charge is to evaluate the material only for the purpose of finding out if the facts emerging when taken at their face value, disclose the existence of ingredients constituting the alleged offence. Though, for the purpose of conviction, the same must be proved beyond reasonable doubt.

17. In the present case, the arguments of the learned APP for the State rest primarily on the grounds that the prosecutrix and the respondent were in a live-in relationship since the year 2012 and the respondent had promised to marry her. It is alleged by the prosecutrix that the respondent used to establish forcible physical relations with her on several occasions on the pretext of marriage. It is further alleged that the prosecutrix permitted physical relationship on the assurance of marriage, which was eventually refused.

18. The relationship between the prosecutrix and the respondent continued for almost three long years, and it



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cannot be said that she consented because she was under misconception of the promise of marriage. Now that the relationship turned sour, it cannot be inferred that the physical relationship established on every occasion was against her will or without consent. When two mature persons come together and invest in a relationship, one cannot be blamed only because the other complained of the act at some point when the relationship did not go well and could not ultimately culminate into a marriage.

19. The learned Trial Court by the impugned order rightly noted the delay of three years in lodging the FIR since the delay sometimes affords an opportunity for the complainant to deliberate upon the complaint and to make embellishments or even make fabrications. Further, there is no substantial justification provided for this delay which aligns with the prosecutrix's allegations.

20. The learned Trial Court while discharging the respondent further noted the discrepancies between the initial complaints of the prosecutrix and the FIR subsequently lodged. In her initial complaints, the prosecutrix alleged that she was living in a live-in relationship with the accused who established physical relations with her on the pretext of marriage. However, in the FIR, the prosecutrix drastically altered her statement and alleged that the accused established forcible physical relations, while in her statement under Section 164 of the CrPC, she alleged that the accused committed rape upon



her. Such discrepancies are critical as they directly impact the credibility of the allegations and necessitate a careful examination.

21. The Hon'ble Apex Court in ***Pramod Suryabhan Pawar v. State of Maharashtra & Anr. : (2019) 9 SCC 608***, quashed the FIR, noting that the complainant was aware that there existed obstacles in marrying the accused and still continued to engage in sexual relationship.

22. A coordinate Bench of this Court in the case of ***Anand Kaushal v. State (NCT of Delhi) : 2020 SCC OnLine Del 2475***, while setting aside the order framing charge under Section 376(2)(n) of the IPC observed as under :

25. A woman's consent cannot be readily accepted as invalid or vitiated on an allegation that it was secured in consideration of promises, which were found to be false. This is principally for a reason that intimate physical act must be assumed to be in consideration of love, attraction and affection and not for any other promises of material well being or social standing. Plainly, failure of a man to live up to those promises would not render a consensual intimate act as rape. Equally, a promise of marriage cannot be construed as a currency to secure a woman's consent for sex. It is obvious that such consent would also be on account of mutual attraction and not merely because a man promises marriage.

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27. Clearly, where a man and woman develop a relationship and a engage consensual sexual acts over a period of time; the allegation that man has committed rape as he has declined to get married, is unsustainable. Plainly, it would be absurd to suggest that a man forfeits his right to have second thoughts regarding marriage, if he has engaged in premarital sex. It is equally unacceptable that every man who has engaged in



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premarital sex with a woman would be vulnerable to a charge of committing rape, if for any reason he does not wish to continue his relationship with the woman.

23. When the discharge has been ordered after properly considering the material before the court, it should not be interfered with. Admittedly, the relationship between the prosecutrix and the respondent was consensual. Nonetheless, the prosecutrix filed the complaint claiming that her consent was vitiated as it was allegedly obtained by a false promise of marriage.

24. In light of the above considerations, particularly the discrepancies in the prosecutrix's statements regarding the nature of the relationship and consent, and taking into consideration the considerable delay in lodging the FIR, this Court finds no compelling reason to overturn the learned Trial Court's decision to discharge the respondent of the offence punishable under Section 376 of the IPC. The conflicting narratives provided by the prosecutrix about the consensual versus forcible nature of the relationship raise significant doubts about the veracity of the allegations. These contradictions are critical and undermine the reliability of the allegations, suggesting that the initial consent might not have been vitiated as later alleged.

25. As discussed above, the learned Trial Court has evidently applied its judicial mind and considered the totality of the facts before discharging the respondent of

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the offence punishable under Section 376 of the IPC in light of the absence of grave suspicion against the respondent.

26. In view of the above, this Court finds that the impugned order suffers from no irregularity, illegality, impropriety, or perversity and no ground is made out to warrant any interference in the impugned order.

27. Accordingly, the present petition stands dismissed. Pending application, if any, also stand disposed of.

AMIT MAHAJAN, J

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