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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**% *Date of Decision: 21st August, 2024*+ **CRL.REV.P. 80/2017 & CRL.M.A. 1243/2017****STATE**

.....Petitioner

Through: Mr. Ajay Vikram Singh,
APP for the State.
SI Bijender Singh (P.S.
Patel Nagar).

versus

DURGESH NANDINI & ANR

.....Respondents

Through: Mr. Sarfaraz Khan, Mr.
Mirza Amir Baig & Mr.
Abdul Wahid, Advocates
for Respondent No.1
(Through V.C.).

CORAM:**HON'BLE MR. JUSTICE AMIT MAHAJAN****AMIT MAHAJAN, J. (Oral)**

1. The present petition is filed challenging the order dated 01.09.2016 passed by the learned Additional Sessions Judge ('ASJ'), Tis Hazari Courts, Delhi in Criminal Revision No. 32/2/2015, whereby the learned ASJ had set aside the order dated 24.06.2015 passed by the learned Metropolitan Magistrate ('MM') framing charges against the Respondent No. 1 under Sections 506/34 of the Indian Penal Code ('IPC').

2. The FIR, in the present case, was registered under Sections 341/354/506/34 of the IPC pursuant to the order dated 17.04.2013, on an application filed by the complainant (Amita

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Sandal) under Section 156(3) of the Code of Criminal Procedure, 1973 ('CrPC').

3. In the complaint, the complainant had alleged that she was working with the Delhi Transport Corporation ('DTC') at Shadipur Depot at the relevant time. It was alleged that on 23.08.2011, when the complainant went to mark her attendance, the accused, Ved Prakash Sharma, was sitting alone and inappropriately touched her, grabbed her hand, and attempted to force her to sit with him, intending to outrage her modesty. It was further alleged that Ved Prakash Sharma had unlawfully marked her as absent in the attendance register.

4. The complainant further alleged that the accused, Ved Prakash Sharma, threatened her and used abusive and filthy language and when the complainant went to the Manager, that is, Respondent No. 1, she also harassed the complainant without any just cause.

5. After the completion of the investigation, the report was filed by the prosecution. It was stated that from the investigation, no offence was made out against the accused persons.

6. The learned Magistrate, by order dated 05.03.2014, took cognizance of the offences under Sections 354/509/341/506 of the IPC and by order dated 24.06.2015 framed charges against Respondent No. 1 under Sections 506/34 of the IPC.

7. The revision petition filed by Respondent No. 1, challenging the order dated 24.06.2015 was allowed by the impugned order dated 01.09.2016 which led to filing of the present petition.

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8. The learned Additional Public Prosecutor ('APP') for the State submits that the sole testimony of the complainant is adequate for conviction in cases relating to sexual offences. He submits that such offences are committed in dark corners and it is unlikely that there would be any eyewitnesses.

9. He further submits that at the time of considering the arguments on framing of charge, the defence of the accused is not to be looked into and the same is a matter of trial.

10. He further submits that the material collected during the investigation points towards the possibility that the accused might have committed the alleged offence and the charges should be framed.

11. The learned counsel for Respondent No.1 submits that the same complaint which led to registration of the FIR, was also made with the Department, that is, DTC. He submits that the inquiry was conducted by the Sexual Harassment Committee and the allegations were found to be false.

12. He further submits that it is a settled law that if the accused is exonerated in Departmental proceedings, no criminal trial involving the same facts can continue.

13. I have heard the learned counsel for the parties.

14. Since the petitioner has assailed the impugned order dated 01.09.2016 whereby, the learned ASJ discharged Respondent No.1, 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:

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“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.”

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 Court at the stage of framing of charge is to evaluate the material only for the purpose of finding out if the facts constitute the alleged offence, given the ingredients of the offence. Though, for the purpose of conviction, the same must be proved beyond reasonable doubt.

17. It is a settled case that during the investigation, the report was filed by the Police stating that no offence was made out against the accused persons.

18. The complaint was given for the first time by the complainant on 23.08.2011. The allegations were made against the accused, Ved Prakash Sharma, however, no allegation was made against Respondent No. 1.

19. An application was, thereafter, filed under Section 156(3) of the Code of Criminal Procedure, 1973 ('CrPC'), and the only allegation against Respondent No. 1 was that, despite the complaint being made by the complainant, she shielded the accused Ved Prakash Sharma. Respondent No. 1, at the relevant time, was working as a Depot Manager, and the accused, Ved Prakash Sharma, was working as an accountant.

20. It is relevant to note that charges are sought to be framed under Section 506 of the IPC. The same reads as under:

“506. Punishment for criminal intimidation.

Whoever, commits the offence of criminal intimidation shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both.

If threat be to cause death or grievous hurt, etc. :And if the threat be to cause death or grievous hurt, or to cause the destruction of any property by fire, or to cause an offence punishable with death or imprisonment for life, or with imprisonment for a term which may extend to seven years, or to impute unchastity to a woman, shall be punished with



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imprisonment of either description for a term which may extend to seven years, or with fine, or with both."

21. In terms of Section 503 of the IPC, a person is alleged to have committed an offence under Section 506 of the IPC if he threatens another with any injury to his person, reputation or property, or to the person or reputation of anyone in whom that person is interested, with intent to cause alarm to that person, or to cause that person to do any act which he is not legally bound to do or to omit to do any act which that person is legally entitled to do.

22. From the perusal of the complaint, it is apparent that, at no stage, the allegation had been made against Respondent No. 1 that she had intimidated the complainant, in any manner. The allegation, at the highest, against Respondent No. 1 is that she had refused to take the complaint of the complainant and had allegedly torn the written complaint. The allegation on the face of it, even if taken at the highest, does not fall within the definition of Sections 503 and 506 of the IPC.

23. Another aspect which has rightly been taken note of by the learned ASJ, is that the State, in the present case, had filed a cancellation report stating that no offence was made out. The learned Magistrate, however, took cognizance of the chargesheet despite the fact that no petition for protest was filed by the complainant.

24. The complaint, in such circumstances, as noted by the learned ASJ, could have been made under Section 200 of the CrPC, which requires a different procedure to be adopted, that is, examining the complainant and, thereafter, proceeding under CRL.REV.P. 80/2017

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Chapter XIV of the CrPC.

25. Considering the totality of the facts, in the opinion of this Court, the learned ASJ rightly held that there is no material to frame charges against Respondent No. 1 under Sections 506/34 of the IPC.

26. Another crucial aspect of this case is that an inquiry was conducted by the Sexual Harassment Committee in response to a complaint filed by the complainant. During this inquiry, it was determined that the complainant has a history of making frivolous complaints. The committee concluded that the particular complaint in question was unfounded and not substantiated by the evidence.

27. Considering the aforesaid, this Court finds no infirmity in the impugned order passed and the present petition is dismissed.

AMIT MAHAJAN, J

AUGUST 21, 2024
“SS”