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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**% *Judgment delivered on: 29.01.2025*+ **CRL.REV.P. 4/2025****HIMANSHU SINGLA**

.....Petitioner

Through: Mr. Akshay and Mr. Anurag S.
Tomar, Advocates

versus

STATE OF NCT OF DELHI & ANR.

.....Respondents

Through: Mr. Naresh Kumar Chahar,
APP for the State with SI
Nisha, P.S. Mohan Garden**CORAM:****HON'BLE MS. JUSTICE SWARANA KANTA SHARMA****JUDGMENT****SWARANA KANTA SHARMA, J.**

1. This petition has been filed under Section 438 of the Bharatiya Nagarik Suraksha Sanhita, 2023 [hereafter 'BNSS'] on behalf of the petitioner, seeking setting aside of the order on charge dated 12.12.2024 [hereafter 'impugned order'] passed by learned Additional Sessions Judge (FISC)(RC), Dwarka Courts, Delhi [hereafter 'Sessions Court'], whereby charge under Section 64(2)(m) of Bharatiya Nyaya Sanhita, 2023 [hereafter 'BNS'] was framed against the petitioner, in Sessions Case No. 771/2024, arising out of FIR No. 295/2024, registered at Police Station Mohan Garden, Delhi, under Sections 376/506 of Indian Penal Code, 1860 [hereafter 'IPC'].



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2. Briefly stated, the present FIR was registered on the basis of a complaint filed by the prosecutrix on 02.09.2024, wherein she alleged that she had got married to one Karan in the year 2016. She claimed that her husband used to beat her, and she had later obtained a divorce from him on 04.06.2024. She further stated that in February 2024, she had come in contact with the accused (petitioner herein) online, and they had started chatting. Subsequently, they had met in Krishna Nagar. On the afternoon of 28.05.2024, the accused had called her to his flat at Mohan Garden, Delhi, where he had established sexual relations with her on the pretext of marriage. Thereafter, they had met at the same flat on multiple occasions, and the accused had continued to establish physical relations with her under the assurance of marriage. She alleged that she had been unaware of the accused's marital status and had only discovered the same later when she had checked his mobile phone. Upon confrontation, the accused had apologized and had promised to leave his wife and marry the prosecutrix. In July 2024, the accused had allegedly assured the prosecutrix that he would live with both her and his legally wedded wife. Following this, the prosecutrix had stopped communicating with him. However, they had again engaged in physical relations on 19.08.2024/20.08.2024 at the same flat, during which the accused had once again promised to divorce his wife. Subsequently, the accused's wife had allegedly called and threatened the prosecutrix against taking any legal action against her husband. The prosecutrix thus alleged that the accused had engaged in sexual



intercourse with her on multiple occasions on the false promise of marriage.

3. The medical examination of the prosecutrix was conducted on 02.09.2024, and her statement under Section 183 of BNSS was recorded on 03.09.2024. In her medical examination, the prosecutrix had reiterated her allegations and, in addition, had informed the concerned doctor that the accused had engaged in oral and anal sexual intercourse with her on three to four occasions forcibly, without her consent. Similar allegations had also been made in the statement recorded under Section 183 of BNSS. The petitioner herein was arrested in this case on 07.09.2024.

4. By way of the impugned order, the learned Sessions Court was pleased to frame charge under Section 64(2)m of BNS against the petitioner, which has been assailed before this Court.

5. The learned counsel appearing for the petitioner argues that the impugned order passed by the learned Sessions Court is erroneous, illegal, and incorrect, inasmuch as the Court has overlooked the material collected during the investigation by the I.O. and that there was no application of mind while passing the order. It is argued that the petitioner herein is innocent and that the prosecutrix's real intention is to humiliate and extort money from him by falsely implicating him in this case. It is contended that the prosecutrix, being a married woman and a mother of two children, was aware of the accused's marital status from the beginning and, therefore, cannot claim the protection and remedies available under Section 376 of IPC



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/ Section 64(2)(m) of the BNS. In this regard, reliance is placed on the decision of S. Rajadurai vs. State of NCT of Delhi & Anr. 2023 SCC Online Del 5919.

6. It is argued on behalf of the petitioner that he was not in Delhi on 28.05.2024 and was, in fact, in Hansi, Haryana, before 08:00 AM. It is submitted that he had no interaction with the prosecutrix in the afternoon on 28.05.2024, which is evident from the Fastag receipts at toll plazas outside Delhi, as well as his mobile's CDR and cell tower location. Regarding the second alleged incident on 19.08.2024, it is pointed out that the CDR and cell tower locations of both the petitioner and the prosecutrix do not match. Furthermore, it is contended that during the entire alleged period, the prosecutrix was actively using her mobile phone, making calls and sending messages, which rules out any possibility of force being used against her. As for the third alleged incident on 20.08.2024, it is submitted that the prosecutrix did not even meet the petitioner on that date, a fact corroborated by the CDR and cell tower locations of their mobile phones.

7. It is further argued that the prosecutrix has not specified any exact dates or times of the alleged incidents of sexual assault on the false pretext of marriage. Additionally, it is submitted that the CDR details of the prosecutrix would reveal that she herself had made multiple calls to the accused's wife, wherein she had threatened the petitioner with dire consequences if he did not succumb to her alleged illegal demands or if his wife remained a hurdle between



them. It is also contended that the prosecutrix was a consenting party in the relationship and had willingly visited the accused's flat at Mohan Garden. It is further argued that there is a distinction between a mere breach of promise and a false promise made with mala fide intent, and the accused can be convicted for rape only if the court concludes that his intention was mala fide and that he had a clandestine motive. It is submitted that the trial in this case would amount to an abuse of the process of law, and even otherwise, no case of rape is made out against the accused. Therefore, it is prayed that the present petition be allowed.

8. On the other hand, the learned APP appearing for the State argues that the record in this case reveals that the petitioner had taken the prosecutrix to his rented flat on several occasions and, on the pretext of marrying her, had maintained physical relations with her. It is further contended that at the stage of charge, only a *prima facie* case is to be considered, and the defence of the accused cannot be taken into account at this stage. It is also submitted that the plea of *alibi* raised by the accused cannot be of any avail to him at this stage, as it is a matter to be considered during trial. It is thus argued that taking into account the contents of the FIR, MLC of the prosecutrix, and her statement recorded under Section 183 of BNSS, the present petition be dismissed.

9. This Court has **heard** arguments addressed on behalf of the parties and has gone through the material placed on record by the either side.



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10. In the case at hand, the allegations against the petitioner, in a nutshell, are that he had established physical relations with the prosecutrix on multiple occasions on the false pretext of marriage, despite being already married. She claimed that she had been unaware of his marital status initially and had only discovered it later. It is further alleged that even after the confrontation, the accused had assured her that he would divorce his wife, which led her to continue the relationship.

11. Having considered the rival contentions of the parties and the statements placed on record, this Court is of the opinion that both the prosecutrix and the accused were already married and in legally subsisting marriages with their respective partners. Concededly, the accused was aware of the marital status of the prosecutrix, though the prosecutrix states that she was unaware of the accused's marital status and came to know about it only later.

12. The accused contends that their relationship was consensual and argues that since the prosecutrix was already married, she should have known that she could not have legally married him. On this aspect, this Court notes that there are categorical allegations that the accused had not disclosed his marital status to the prosecutrix and that she had discovered it only later, when she had checked his mobile phone. The prosecutrix asserts that she had obtained a divorce from her husband solely based on the assurance given by the accused that he would marry her. Consequently, she had divorced her husband. Her case is that the accused was fully aware that she was



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not living with her husband and that she had taken the step of obtaining a divorce only on his assurance that he would marry her. Therefore, as far as the argument that the prosecutrix, being already married, should have known that she could not have legally married the accused, is concerned, this Court is of the opinion that the prosecutrix herein is not a highly educated woman and has placed on record notarized documents executed between her and her husband, purporting to record their mutual consent for separation or divorce. However, it is important to note that the documents she relies upon to claim that she is divorced are only notarized affidavits.

13. But this Court remains cognizant of the fact that, while adjudicating cases, courts must take into account the principles of social context jurisprudence, as they deal with human lives and the complex situations that arise within them. While the moral views of the judge or a particular segment of society should have no role in such adjudication, courts must consider the social background and circumstances in which incidents or offenses take place. In the present case, considering the prosecutrix's background, she may have believed that the execution of notarized documents of divorce, which recorded mutual consent for separation, was sufficient to establish her status as divorced. Although such a document does not constitute a legal divorce, her reliance on it lends *prima facie* credence to her argument that she was promised marriage by the accused and, based on this promise, she chose to separate from her husband and enter into the relationship. As it appears from the record, the accused,



while continuously promising marriage, misrepresented himself as unmarried, which led the prosecutrix to take the significant step of divorcing her husband.

14. Insofar as the law concerning framing of charge is concerned, in case of *Manendra Prasad Tiwari v. Amit Kumar Tiwari*: 2022 SCC OnLine SC 1057, the Hon'ble Supreme Court, while explaining the well-settled law on exercise of powers under Section 397 and 482 Cr.P.C., had observed as under:

"21. ...The truthfulness, the sufficiency and acceptability of the material produced at the time of framing of a charge can be done only at the stage of trial. To put it more succinctly, at the stage of charge the Court is to examine the materials only with a view to be satisfied that prima facie case of commission of offence alleged has been made out against the accused person..."

22. ...At the stage of framing of a charge, the court is concerned not with the proof of the allegation rather it has to focus on the material and form an opinion whether there is strong suspicion that the accused has committed an offence, which if put to trial, could prove his guilt. The framing of charge is not a stage, at which stage the final test of guilt is to be applied. Thus, to hold that at the stage of framing the charge, the court should form an opinion that the accused is certainly guilty of committing an offence, is to hold something which is neither permissible nor is in consonance with the scheme of Code of Criminal Procedure..."

(Emphasis added)

15. On the aspect of standard of proof at the stage of charge, the Hon'ble Supreme Court in *Bhawna Bai v. Ghanshyam*: (2020) 2 SCC 217 has observed as under:

"13. ...At the time of framing the charges, only prima facie case is to be seen; whether case is beyond reasonable doubt, is not to be seen at this stage. At the stage of framing the charge,



the court has to see if there is sufficient ground for proceeding against the accused. **While evaluating the materials, strict standard of proof is not required; only prima facie case against the accused is to be seen.**

(Emphasis added)

16. Therefore, at the stage of charge, based on the facts, circumstances, and documents placed before this Court, it cannot be concluded – without a trial – that the prosecutrix is falsely implicating the petitioner herein. Whether her claims are actually credible and the allegations are true, will only become clear after the parties lead their evidence. Accordingly, at this stage, a case for discharge is not made out.

17. Therefore, this Court is of the opinion that the charge under Section 64(2)(m) of BNS is made out against the petitioner herein. The order of the learned Sessions Court, however, is modified to the extent of the observations made in this case, and the impugned order framing charge against the petitioner is sustained, though, on different grounds.

18. In view of the above, the present petition along with pending application stands dismissed.

19. Nothing expressed hereinabove shall tantamount to an expression of opinion on the merits of the case.

20. The judgment be uploaded on the website forthwith.

SWARANA KANTA SHARMA, J

JANUARY 29, 2025/at