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

+ **CRL.REV.P. 91/2019 & CRL.M.A. 1539/2019**

STATE

.....Petitioner

Through: Mr. Amit Ahlawat, APP.
W/SI Preeti, P.S. Rani Bagh.

versus

MOHD. TALIB

.....Respondent

Through: None.

+ **CRL.REV.P. 113/2019 & CRL.M.A. 1827/2019**

STATE

.....Petitioner

Through: Mr. Amit Ahlawat, APP.
W/SI Preeti, P.S. Rani Bagh.

versus

MOHD. TALIB

.....Respondent

Through: None.

CORAM:

HON'BLE MR. JUSTICE SANJEEV NARULA

ORDER

20.02.2025

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1. The present revision petitions are directed against the orders of discharge dated 3rd October, 2018 passed by ASJ-01, POCSO Court, North West, Rohini in terms of FIR No. 890/2015 and FIR No. 892/2015 registered at P.S. Rani Bagh. Both of the aforesaid FIRs have been registered under Sections 376 of the Indian Penal Code, 1860¹ as well as

¹ "IPC"



Section 6 of the Protection of Children from Sexual Offences Act, 2012² and arise out of complaints filed by two minor sisters against their father.

2. The case of the prosecution in brief, is as follows:

2.1. Under operation 'Nirbheek', Delhi police had installed a complaint box in the Government Girls Secondary School, A-Block, Saraswati Vihar, Delhi. On 09th November, 2015, when the said box was opened by SI Pinky, one paper handwritten by a student 'F' was taken out on which it was written that her father used to beat her and indulge in bad physical contact with her. The said paper was read over in the presence of a school teacher and the Vice Principal. Thereafter, the student 'F' was called from her class to the Principal's Room, where on inquiry, the student disclosed that her father – i.e., the Respondent, used to touch her as well as her elder sister with bad intentions. Subsequently, her elder sister 'A' who was also studying in the same school was called into the Principal's Room. In the meanwhile, the SHO and other staff from the police station were also called to the school.

2.2. During inquiry, both the minor sisters gave written complaints to the SI mentioning acts of penetrative sexual assault committed upon them by the Respondent. Both the complainants mentioned that these acts would occur when their mother, who was a maid in different houses, used to be away for work. These statements of the two prosecutrices were recorded and their mother was called at the school. Thereafter, the two prosecutrices were taken to Bhagwan Mahavir Hospital for medical examination, along with their mother, however their mother refused to grant her consent for the internal medical examination of the prosecutrices. On the basis of the

² "POCSO"



statement of the prosecutrices, rukkas were prepared and two FIRs being FIR No. 890/2015 (in relation to the statement given by prosecutrix 'A') and FIR No. 892/2015 (in relation to the statement given by prosecutrix 'F') were registered at P.S. Rani Bagh on 09th November, 2015, under Section 376 of IPC and Section 6 of the POCSO Act. Thereafter, a site plan of the place of incident was prepared and the Respondent was arrested.

2.3. Subsequently, on 17th November, 2015, the statement of both the prosecutrices were recorded under Section 164 of the CrPC and the two were produced before the Child Welfare Committee. It is important to note that in the 164 statements, both the prosecutrices changed their stance and did not disclose anything about the alleged sexual assaults perpetuated on them. Rather the two stated that the statements given by them, during the inquiry conducted at the school were false statements and they had falsely implicated their father in the present cases.

2.4. In light of the foregoing facts, the ASJ found that the statements of the prosecutrices recorded under Section 161 and 164 of CrPC are not reconcilable and that the distinction between the two statements of the prosecutrices were so severe that even without a roving and fishing inquiry, it can be safely held at the stage of framing of charge itself, that there is no strong suspicion to proceed against the accused. Thus, in view of the distinct and changing stances taken by the prosecutrices, by way of the impugned orders dated 3rd October, 2024, the ASJ discharged the Respondent in both FIR No. 890/2015 and FIR No. 892/2015. Aggrieved by the said discharge, the State has preferred the present revision petitions.

3. Mr. Amit Ahlawat, APP for State, states that the impugned order deserves to be set aside as the ASJ has discharged the Respondent by



erroneously concluding that there is no strong suspicion against him for having committed offence of penetrative sexual assault upon the two prosecutrixes. He submits that the Trial Court has also failed to appreciate that a *prima facie* case is made out against the Respondent as is evident from the statement of the prosecutrixes given to the police under Section 161 as well as before the examining doctor wherein they had made specific allegations of sexual assault by the Respondent. He also argues that the written complaint of the prosecutrixes were duly corroborated by the statement of the witnesses recorded under Section 161 of CrPC.

4. In terms of the statement recorded under Section 164 is concerned, Mr. Ahlawat points out that the Trial Court has failed to consider that the 164 statements was taken on 17th November, 2015, i.e., 8 days after the statements of the prosecutrixes under Section 161 to the police was recorded on 9th November, 2015. As such, he argues that the Trial Court ought to have considered the aspect of familial and social pressure faced by the minor victims which could have possibly influenced them to change their statements before the Magistrate under Section 164 of CrPC. Rather, the Trial Court has given more weightage to the 164 statements of the prosecutrixes which could not have been done at the stage of framing of charge.

5. Mr. Ahlawat further argues that the Trial Court has not considered the fact that the complaint of the younger victim 'F' was found in the complaint box installed at her school, pursuant to a workshop on sexual harassment conducted by the police under operation 'Nirbeek'. Thus, the prosecutrix was mature enough to understand the consequences of levying such allegations against her own father, which would not have been done unless



there was an element of truth to such allegations. He urges that both the prosecutrices supported each other's statement before the police in 161 CrPC, that they faced physical and sexual assaults by their father when their mother was not at home. Moreover, he submits that the Trial Court should have also considered that the mother of the victim is the one who refused the internal medical examination of the prosecutrices at the time of preparation of their MLC. Thus, it is possible that the minor victims were under the control and influence of their mother, who is also the wife of the Respondent and because of this, there are chances that the minor victims could have been influenced by her. Moreover, these facts could only be established if the Respondent was put to trial.

6. Lastly, it is pointed out that, at the stage of framing of charge, no meticulous examination of evidence could be done by the Trial Court and the Trial Court ought to have only assessed whether there are sufficient grounds to constitute an offence with which the accused could be charged. Reliance in this regard is placed on the judgement of the Supreme Court in **Sajjan Kumar v. CBI**³, **Niranjan Singh Karam Singh Punjabi v, Jitendra Bhimraj Bijjaya & Ors.**⁴ and **State of M.P. v. S.B. Johari & Ors.**⁵

7. The Court has carefully considered the aforementioned contentions. Before addressing the grounds raised by the State, it is important to take note of the impugned orders. Since the two orders are materially similar, for the sake of brevity, the order dated 3rd October, 2018, arising out of FIR No. 890/2015, challenged in CRL.REV.P. 91/2019 is being reproduced hereinunder as follows:

³ (2010) 9 SCC 368

⁴ (1990) 4 SCC 76



“1. Accused Mohd. Talib has been charge-sheeted in the matter for committing aggravated penetrative sexual assault upon his own daughter i.e. prosecutrix A, a minor girl aged about 14 years.

2. The facts of the case as borne out from the record are that under Operation 'Nirbhik', a complaint box was installed in the Govt. Girls Secondly School, A Block, Saraswati Vihar, Delhi and on 09.11.2015, when the said box was opened by SI Pinky, one paper written by one student F... is taken out, on which it was written that her father used to beat her and used to do bad touch with her. Said paper was read over in the presence of school teacher and vice Principal and then child F... was called from her class in the Principal Room, where on inquiry, F... disclosed that her father i.e. accused also used to do bad touch with her as well as her elder sister A, who was also studying in the same school, was called in the Principal Room and SHO and other staff was also called there and after inquiry, child A (hereinafter referred to as 'prosecutrix') gave a complaint to SI Pinky while mentioning that accused had committed written penetrative sexual assault upon her as well as her sister F..., when her sister F... was only aged about 14 years. She further mentioned that her mother used to work as maid in different kothies and in the absence of her mother, accused used to commit penetrative sexual assault upon her and her sister F... and she requested for strict action against the accused. Statement of the prosecutrix to this effect was recorded and her mother was called at the school. Thereafter, prosecutrix was taken to Bhagwan Mahavir Hospital, where prosecutrix was initially medically examined, but her mother refused for her gynecological examination. On the basis of statement of the prosecutrix, a rukka was prepared and present case FIR was registered.

3. During investigation, site plan of the place of incident was prepared. Accused was arrested and his medical examination and potency test was conducted and exhibits were seized. Statement of the prosecutrix u/s 164 Cr.P.C was recorded and she was produced before CWC. Statements of the witnesses were recorded and on completion of the investigation, charge sheet against the accused was filed before this court.

4. **In her statement recorded u/s 164 Cr.P.C, the prosecutrix did not utter anything about the sexual assault upon her and stated that the made by her to the police in the school was a wrong statement and she wished to tell truth in this statement and stated that accused (her father) used to scold her for getting less marks in examination and used to say to her to work in the kothies with her mother. She further stated that**

⁵ [2000 SCC (Cri) 311]



accused used to beat her black and blue with pipe, wire or danda, on very petty matter such as, to talk with her friends or to visit any boy at home for taking copy or book and due to the beatings, she sustained severe injuries on her back and finger and because of the aforesaid reason, she has to make a false statement. She further stated that accused used to beat her mother as well as her and her sisters very much and she had heard that such type of cases would take a long time. In the entire statement, she did not make any allegations of any sexual assault upon her or her sister by the accused.

5. Today, the matter is fixed for consideration on charge. Ld. Defence Counsel for the accused submits that prosecutrix got a false FIR registered against the accused as he used to beat her. He further submits that in view of the statement u/s 164 Cr.P.C of the prosecutrix, no charge is made out against the accused and he is entitled for discharge in the matter.

6. On the other hand, Ld. Addl.PP for state has opposed the plea of discharge of accused on the ground that prosecutrix in her written complaint made to the police specifically disclosed about the acts of the accused with her and same is duly corroborated by the statements of the witnesses recorded u/s 161 Cr.P.C and as such prima facie charges u/s 5 (1) and (p) of POCSO Act punishable u/s 6 of PCOSO Act, additionally u/s 376 (2) (n) IPC is made out against the accused.

7. I have carefully perused the complaint as well as the statement recorded U/s 164 Cr.P.C on record. I have also perused the other documents including statement of the prosecutrix and her mother recorded u/s 181 Cr.P.C. A combine reading of the statement of prosecutrix recorded u/s 164 Cr.P.C along with other material on record, reveals that accused did not commit any kind of sexual assault upon the prosecutrix. The prosecutrix in her statement u/s 164 Cr.P.C has specifically stated that as the accused used to beat her, her mother and her sister badly, she lodged the present false case against him.

8. The Hon'ble Supreme Court in the decision reported as (2010) 9 SCC 368 Sajjan Kumar v. Central Bureau of Investigation of Investigation after considering various decisions of the Supreme Court, summarized the principles with respect to scope of **sections 227 and 228 of cr. p.c** 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 doubled power to sit 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 focused was possible.

(vi) At the stage of Sections 227 and 226, the 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.

9. This judgment of Hon'ble Supreme Court was duly relied upon by the Hon'ble Delhi High Court in Crl. Revision Petition No. 9/2017 and



Crl. Revision Petition No. 10/2017 both titled as State vs. Gajraj Singh, dated 16.01.2017 and Hon'ble High Court upheld the orders of Trial court, discharging the accused. In these cases, victims in their complaint to the police alleged that the doctor/accused sexually assaulted them at his clinic, while medically examining them. They completely exonerated the accused in their statements recorded u/s 164 Cr.P.C by saying that on 22.06.2015, they had gone with their mother to the dispensary and went to the doctor without following the line, due to which doctor scolded her and they started crying and mother called the police.

The Hon'ble High Court further said that statement is 184 Cr.P.C were recorded by the Magistrate after verifying the voluntariness of both the prosecutrixs to make the statements. Even during trial, the two statements, that is, one recorded u/s 181 Cr.P.C and u/s 164 Cr.P.C are not reconcilable. The distinction between the two being so severe that even without a roving and fishing inquiry, it can safely be held that at this stage itself, there is no strong suspicion to proceed against the respondent.

10. The facts of this case are exactly similar to the one in these cases before Hon'ble High Court. In the present case, nothing has been said by the prosecutrix against the accused in her statement u/s 164 Cr.P.C. The Court has not to act as mouthpiece of the prosecution, but should examine the broad probabilities of the case.

11. Similarly, in another case titled as Shyam Kumar Vs. State (NCT of Delhi), Cri. Revision Petition no. 424/16, decided on 01.03.2017, Hon'ble High Court discharged the accused therein after considering the statement of the victim recorded u/s 164 Cr.P.C, wherein no averments were made against the accused showing commission of any offence.

12. From the material on record, no strong suspicion against the accused Mohd. Talib having committed any penetrative sexual assault upon the prosecutrix or upon her sister is made out. Accordingly, the accused Mohd. Talib is discharged. He is on bail. His bail bond stands canceled. Surety stands discharged. Endorsement, if any on the documents of either accused or his surety be canceled. The original documents of accused or his surety, if on record, be returned to them forthwith."

8. As is evident from the above, the Trial Court has discharged the Respondent on account of glaring contradictions in the statement of the prosecutrix recorded under Section 161 and 164 CrPC. The reasoning of the



Trial Court is identical in the order dated 3rd October, 2018, arising from the proceedings in FIR No. 892/2015, impugned in CRL.REV.P. 113/2019. In order to properly assess these findings, it is important to take note of the statements of the prosecutrices under Section 164 of CrPC.

i). In FIR No. 890/2015, the statement of the prosecutrix 'A' under Section 164 is as follows:

"The statement which I had given to police and the statement which I had given in school is wrong. Now I want to speak the truth. My father used to scold me for my low marks in school and used to say that I should work in houses with my mother. If I used to talk to any of my friends or if any boy used to come to our house to ask for any notebook or book then also our father used to beat us and took it in a different way. Even on small and trivial issues he used to beat us to that extent that I had sustained grievous injuries on my back and had also broken my finger. My father used to beat with either the pipe or wire or thick danda. He used to beat all of us. He used to be very angry sometimes and sometimes soft in nature. I even had a thought to run away from the house. Because of all such situations I had given the previous statements as I had heard from someone on whom such allegations are levied then cases go on for many days."

ii). In FIR No. 892/2015, the statement of the prosecutrix 'F' under Section 164 is as follows:

"One lady used to come in our colony to sell clothes, she told that if the allegations of rape or offence of like nature is levied on some person and if he is sent to jail then the government offers a flat to the victim, so I put the allegations on my father for the wrong thing and wrongly accused him of offence. My parents live in a rented accommodation and I didn't like this, so I wanted to get them a flat anyhow. Thus I went greedy and told such things. Now, I want to state that whatever I have stated before the police was all because of my greed. I apologize for that and please forgive our father. Punish us with any punishment but not our father."

9. Therefore, it is clear from the above that while earlier the prosecutrices had stated to the IO under Section 161 of CrPC that their father had sexually assaulted them, in their statement under 164 of CrPC



they have stated under oath before the Magistrate that they have made wrong statements to the police. On the basis of these glaring discrepancies, the Trial Court rightly observed that the distinction between the two statements given by the prosecutrixes were so severe that even without any roving inquiry or fishing inquiry, it could safely be held that there is no strong suspicion to proceed against the Respondent.

10. Furthermore, on the previous date, considering the fact that the case involved prosecutrixes who were minor at the time of the alleged incident, the Court had called upon the IO to inform the prosecutrixes about the listing of the present matters so that they could also be given an opportunity to make a representation. In compliance with the said directions, the IO duly served the notice to the mother of the victims and intimated her about the listing of the matters. However, according to the IO, the mother of the prosecutrixes has stated that she does not know the whereabouts of her own daughters. Furthermore, the mother of the prosecutrixes has told the IO that she has nothing to state in terms of the present matters. This fact, indicates to the Court that the prosecutrixes are not coming forward to stand by their statements under Section 161, on which the State is relying on to challenge the order of discharge of the accused.

11. The law on the framing of charge is well established. The Supreme Court has held in **Sajjan Kumar v. Central Bureau of Investigation**⁶ that even though a Court ought not to meticulously examine the evidence during the framing of charge, what has to be considered is whether or not the material placed before the Court discloses grave suspicion against the accused. If such grave suspicion is made out on a *prima facie* analysis of the



material on record, the Court will be fully justified in framing the charge and proceeding for trial. However, the Supreme Court has also cautioned the Courts that while conducting such analysis, the Trial Court must not act as a mere post office or a mouthpiece of the prosecution, but rather consider all the broad probabilities of the case, the total effect of the evidence and the documents produced, and any basic infirmities, etc.

12. The present cases solely hinge on the statements of the minor prosecutrixes made before the police during the initial inquiry, without there being any corroborative or scientific evidence to support the allegations. Thus, in the opinion of the Court, the Trial Court has rightly held that strong suspicion against the accused is not made out on the basis of the material on record.

13. For the foregoing reasons, the Court does not find any merit in the present petition.

14. Dismissed along with pending applications.

SANJEEV NARULA, J

FEBRUARY 20, 2025/as

⁶ (2010) 9 SCC 368