



2025:DHC:676



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

% **Date of order: 27th January, 2025**

+ **CRL.REV.P. 186/2023, CrI.M.As.4599-4600/2023 & 31196-97/2023**

PRABHU DAYAL

.....Petitioner

Through: Mr. Jitender Sethi, Senior Counsel
with Mr. Hemant Gulati and Mr.
Shobit Dimri, Advs.

versus

STATE, NCT OF DELHI

.....Respondent

Through: Mr. Raghuinder Verma, APP for the
State along with Insp. Satbir Singh,
P.S. Jaitpur.
Mr. H. S. Gautam and Ms. Neha
Singh, Advocate for R-2

CORAM:

HON'BLE MR. JUSTICE CHANDRA DHARI SINGH

ORDER

CHANDRA DHARI SINGH, J (Oral)

1. The instant revision petition is filed under Section 397 read with Section 401 of the Code of Criminal Procedure, 1973 (hereinafter "Cr.P.C.") seeking setting aside of the Order dated 13th March, 2020 and Order dated 25th August, 2022 *qua* the petitioner passed by the learned Additional Sessions Judge, South East District, New Delhi (hereinafter "ASJ").

2. The brief facts of the case are that the petitioner along with other co-accused entered the house of the prosecutrix and allegedly physically assaulted the prosecutrix and her family members. It is also alleged that the



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petitioner misbehaved with the prosecutrix and took away valuable articles from her house.

3. Accordingly, the instant FIR dated 7th May, 2016 was registered against the petitioner and other co-accused, and *vide* Order dated 13th March, 2020, the learned ASJ held that a *prima facie* case is made out against the petitioner under Sections 376D/323/354/427/452/395/509/149 of the Indian Penal Code, 1860 (hereinafter “IPC”).

4. Thereafter, *vide* Order dated 25th August, 2022, charges were framed against the petitioner along with other co-accused under Sections 323/354/376D/452/509/149/427/395 of the IPC. Aggrieved by the same, the instant revision petition has been filed by the petitioner.

5. Mr. Jitender Sethi, learned Senior Counsel appearing on behalf of the petitioner vehemently submitted that while framing of charges against the petitioner, the learned ASJ has not taken into consideration the material placed on record along with the chargesheet submitted by the Investigating Agency.

6. It is submitted that the charge under Section 376D of the IPC was framed against the petitioner merely on the ground that there are allegations made by the prosecutrix in the statement recorded under Section 161 and 164 of the Cr.P.C. It is further submitted that from a plain reading of the statements of the prosecutrix recorded under Section 161 and Section 164 of the Cr.P.C., it is clear that there is no allegation of commission of the offence of rape against the petitioner.

7. It is submitted that there is no role assigned to the petitioner with



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respect to the commission of the offence of rape to the prosecutrix by the petitioner. It is further submitted that as per the Section 164 statement, the prosecutrix has made specific allegations against the two other accused persons, namely, Ishwar Dayal and Deen Dayal, disclosing that they inserted their fingers in her private part, and that there are no allegations against the petitioner herein for the commission of offence punishable under Section 376D of the IPC.

8. It is submitted that there is no other material on the record which supports the allegations made against the petitioner for the commission of the offence under Section 376D of the IPC.

9. In view of the foregoing submissions, it is prayed that the said impugned order may be set aside or modified to the extent that the petitioner may not be charged for the commission of the offence under Section 376D of the IPC.

10. *Per contra*, learned counsel appearing on behalf of the prosecutrix submitted that the learned ASJ has framed charges against the present petitioner on the basis of the statements made by the prosecutrix under Section 161 and 164 of the Cr.P.C. It is duly conceded that in the aforesaid statements of the prosecutrix, there is no allegation against the present petitioner disclosing the commission of the offence of rape and that the only allegation against him is that he misbehaved with the prosecutrix.

11. Mr. Raghuinder Verma, learned APP appearing on behalf of the State, has also duly conceded that there are no allegations made against the present petitioner in the Statements of the prosecutrix recorded under Section 161



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and 164 of the Cr.P.C., which point towards the commission of offence punishable under Section 376D of the IPC.

12. Heard learned counsel for the parties and perused the material placed on record.

13. Before advertng to the merits of the present case, it is important to discuss the settled law on the issue of framing of charges against the accused. In the case of ***Dipakbhai Jagdishchandra Patel v. State of Gujarat***, (2019) 16 SCC 547, the Hon'ble Supreme Court clarified the principle related to the framing of charges against the accused. The relevant portion of the judgment is quoted as under:

“15. We may profitably, in this regard, refer to the judgment of this Court in State of Bihar v. Ramesh Singh [State of Bihar v. Ramesh Singh, (1977) 4 SCC 39 : 1977 SCC (Cri) 533 : AIR 1977 SC 2018] wherein this Court has laid down the principles relating to framing of charge and discharge as follows: (SCC pp. 41-42, para 4)

“4. ... Reading Sections 227 and 228 together in juxtaposition, as they have got to be, it would be clear that at the beginning and the initial stage of the trial the truth, veracity and effect of the evidence which the prosecutor proposes to adduce are not to be meticulously judged. Nor is any weight to be attached to the probable defence of the accused. It is not obligatory for the Judge at that stage of the trial to consider in any detail and weigh in a sensitive balance whether the facts, if proved, would be incompatible with the innocence of the accused or not. The standard of test and judgment which is to be finally applied before recording a finding regarding the guilt or otherwise of the accused is not exactly to be applied at



the stage of deciding the matter under Section 227 or Section 228 of the Code. At that stage the court is not to see whether there is sufficient ground for conviction of the accused or whether the trial is sure to end in his conviction. Strong suspicion against the accused, if the matter remains in the region of suspicion, cannot take the place of proof of his guilt at the conclusion of the trial. But at the initial stage if there is a strong suspicion which leads the Court to think that there is ground for presuming that the accused has committed an offence then it is not open to the Court to say that there is no sufficient ground for proceeding against the accused. The presumption of the guilt of the accused which is to be drawn at the initial stage is not in the sense of the law governing the trial of criminal cases in France where the accused is presumed to be guilty unless the contrary is proved. But it is only for the purpose of deciding prima facie whether the court should proceed with the trial or not. If the evidence which the prosecutor proposes to adduce to prove the guilt of the accused even if fully accepted before it is challenged in cross-examination or rebutted by the defence evidence, if any, cannot show that the accused committed the offence, then there will be no sufficient ground for proceeding with the trial. ... If the scales of pan as to the guilt or innocence of the accused are something like even, at the conclusion of the trial, then, on the theory of benefit of doubt the case is to end in his acquittal. But if, on the other hand, it is so at the initial stage of making an order under Section 227 or Section 228, then in such a situation ordinarily and generally the order which will have to be made will be one under Section 228 and not under Section 227.”



16. In *Union of India v. Prafulla Kumar Samal* [*Union of India v. Prafulla Kumar Samal*, (1979) 3 SCC 4 : 1979 SCC (Cri) 609 : AIR 1979 SC 366] , after survey of case law, this is what the Court has laid down: (SCC p. 9, para 10)

“10. Thus, on a consideration of the authorities mentioned above, the following principles emerge:

(1) That the Judge while considering the question of framing the charges under Section 227 of the Code 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.

(2) 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.

(3) The test to determine a prima facie case would naturally depend upon the facts of each case and it is difficult to lay down a rule of universal application. By and large however if two views are equally possible and the Judge is satisfied that the evidence produced before him while giving rise to some suspicion but not grave suspicion against the accused, he will be fully within his right to discharge the accused.

(4) That in exercising his jurisdiction under Section 227 of the Code the Judge which under the present Code is a senior and experienced 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 appearing in the case and so on. This however does not mean that the Judge should make a roving enquiry into the pros and cons



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of the matter and weigh the evidence as if he was conducting a trial.”

14. From a perusal of the above quoted judgment of the Hon’ble Supreme Court, it is clear that a strong suspicion against the accused would suffice at the stage of framing of charge against the accused. However, it is clarified that the strong suspicion must be based on some material which enables the Court to take a *prima facie* view that the offence in question is committed by the accused.

15. Adverting to the merits of the case, it is imperative at this stage to examine the contents of the statement of the prosecutrix recorded under Sections 161 and 164 of the Cr.P.C, as well as the order dated 13th March, 2020 and order dated 25th August, 2022 passed by the learned ASJ.

16. The petitioner has been charged for the commission of offence under Section 376D of the IPC, which reads as under:

“376D. Gang rape - Where a woman is raped by one or more persons constituting a group or acting in furtherance of a common intention, each of those persons shall be deemed to have committed the offence of rape and shall be punished with rigorous imprisonment for a term which shall not be less than twenty years, but which may extend to life which shall mean imprisonment for the remainder of that person's natural life, and with fine:

Provided that such fine shall be just and reasonable to meet the medical expenses and rehabilitation of the victim:

Provided further that any fine imposed under this section shall be paid to the victim.”

17. From a bare perusal of the provision, it is clear that the offence under



Section 376D of the IPC will only be made out against the accused if the offence of rape is committed by one or more persons constituting a group or acting in furtherance of a common intention to the commit the said offence. In light of this, it is important for this Court to examine the order on charge dated 13th March, 2020 against the petitioner.

18. The relevant portion of the order on charge dated 13th March, 2020 is reproduced below:

“Since, the prosecutrix Ms. ‘MM’ has alleged manipulation of her body by way of inserting fingers in her vagina, the MLC would not have yielded much result. In her initial complaint/FIR, the prosecutrix had alleged that the accused persons did ‘battamiziyan’ with her which may be interpreted to include insertion of finger in her vagina. In any case, the veracity or otherwise of the allegations leveled by the prosecutrix and other victims can be determined only by conducting trial. From the perusal of complaint, documents annexed along with the chargesheet and statements recorded U/s 161 & 164 Cr.P.C, a prima facie case for commission of offences U/s-323/354/376-D/452/427/395/509/149 IPC is made out against all the accused persons.”

19. The statement of the prosecutrix as recorded under Section 161 of the Cr.P.C. is reproduced below:

“I state that I am residing in the above-mentioned address alongwith my family and am a House wife. On 21/4/16, I was present in my house alongwith my Husband, my son Mohit, my daughter-in-law Pooja and with younger son; then at about 8 PM Prabhu Dayal, Deen Dayal, Ishwar Dayal, Bhagwat Dayal alongwith their sons came to our house and started giving us beatings; and myself, my daughter-in-law Pooja and my husband Jatvir received serious injuries and Police took us to



the Hospital.

Prabhu Dayal, Ishwar Dayal, Bhagwat Dayal, Deen Dayal took away all our articles which includes TV, Washing Machine, Bed, Almirah, Iron Box, Gas Cylinder and Rs.30,000 cash alongwith our other utensils and gold articles & Aadhar Card and Ration Card etc. A list in this regard has been given to you by my Husband, which is correct and I endorse the same. I have heard my statement which is true and correct."

20. The statement of the prosecutrix as recorded under Section 164 of the Cr.P.C. is reproduced below:

"21st day i.e. 21/4/2016, now four months will be completed and I do not remember the exact date, as I am not much literate. At about 8 PM when we were present in the room in our house and were talking to each other, then Prabhu Dayal, Deen Dayal, Ishwar Dayal and Bhagwat Dayal who are living in our neighbourhood came to our house. Some of them had forcibly taken my daughter, my children and my daughter-in-law outside the house while Deen Dayal had given me beatings and I fell down, and then Ishwar Dayal had also given me beatings. At that time Ishwar Dayal had broken the sting of my salwar and thereafter put his finger inside it and stated that I should run away from this place leaving everything aside and started abusing me in filthy language & started misbehaving with me; and also Deen Dayal had put his fingers 2-3 times and told me that I should run away from there. I am very much afraid of them. After that their sons had picked up articles belonging to me and my daughter-in-law and went outside. They left nothing with us. There were about 20-25 people with them who took away all the articles lying in the house and after taking articles they started breaking my house. The children of these 4 persons were also giving beatings to my children. I was given fist blow by Deen Dayal on my abdomen and when my child of 12 years age came to save me, then he was also given



beatings on his cheeks. They had destroyed my Nursery and took away all the papers lying in the house.

Then my husband also came there and he gave a call to the PCR and after that the Police reached at the spot and took all of us to the Trauma Centre. After getting discharged from the Hospital, I came to the house of my sister-in-law (Jethani). Police had not helped us and after 17 days, FIR was registered in the present case.

I have not received any article belonging to me.”

21. A bare perusal of the statements of the prosecutrix recorded under Sections 161 and 164 of the Cr.P.C. shows that the prosecutrix has not made any allegations for the commission of the offence punishable under 376D of the IPC against the petitioner. There are no allegations suggesting that the petitioner along with other co-accused formed a part of a group or acted in furtherance of a common intention for the commission of the offence of rape.

22. This Court further observes that in the above quoted statements recorded under Sections 161 and 164 of the Cr.P.C., the prosecutrix has made specific allegations for the offence punishable under Section 376D of the IPC *qua* two other co-accused, but certainly not against the present petitioner. There is also no other material on record to show that the petitioner herein is involved in the commission of the offence under Section 376D of the IPC.

23. This Court has taken into consideration that the above quoted statements of the prosecutrix merely disclose that the limited allegations against the present petitioner are that he caused hurt to the prosecutrix,



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leading to serious injuries and that he, along with other co-accused took away multiple articles from the prosecutrix's house. There is no allegation against the petitioner disclosing his involvement in the commission of the offence of gang rape under Section 376D of the IPC.

24. In view of the above facts and circumstances, the impugned orders dated 13th March, 2020 and 25th August, 2022 stands modified *qua* the petitioner. Accordingly, charges framed against the petitioner under Section 376D of the IPC is set aside. The Court concerned is directed to modify the impugned order on charge accordingly.

25. It is made clear that this Court has not made any observations on the merits of the charges framed against the petitioner under other provisions of the IPC.

26. In view of the aforesaid terms, the instant revision petition is partly allowed and stands disposed of along with pending applications, if any.

27. The order to be uploaded on the website forthwith.

CHANDRA DHARI SINGH, J

JANUARY 27, 2025

pk/st/rt/mk

Click here to check corrigendum, if any