



2025:DHC:1291



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

% **Date of order: 28th February, 2025**

+ **CRL.REV.P. 338/2023 & CrI.M.As.8375-76/2023**

DHANRAJ AND ORS

...Revisionists

Through: **Mr. R.S. Kaushik and
Mr. Basab Sengupta, Advocates**

versus

STATE (GOVT. OF NCT OF DELHI)Respondent

Through: **Mr. Satish Kumar, APP for the State
with SI Vineet Kumar
Mr. Joginder Tuli, Ms. Joshini Tuli
and Ms. Aastha Sharma, Advocates
for complainant with complainant in
person through vc**

CORAM:

HON'BLE MR. JUSTICE CHANDRA DHARI SINGH

ORDER

CHANDRA DHARI SINGH, J (Oral)

1. The instant petition under Section 438 read with Section 442 of the Bharatiya Nagarik Suraksha Sanhita, 2023 [earlier Section 397 read with Section 401 of the Code of Criminal Procedure, 1973 (hereinafter as the “Code”)] has been filed on behalf of the petitioners seeking setting aside of the order dated 21st November, 2022 (hereinafter “impugned order”) passed by the learned Additional Sessions Judge, Special Fast Track Court, South District, Saket Courts, Delhi (hereinafter “ASJ”), wherein, charges were framed against the petitioners under Sections 376(D) of the Indian Penal

Signature Not Verified

Digitally Signed
By: GAURAV SHARMA
Signing Date: 05.03.2025
18:51:29

CRL.REV.P. 338/2023

Page 1 of 14



2025:DHC:1291



Code, 1860 (hereinafter “IPC”) amongst others, arising out of FIR bearing no. 1515/15 registered at Police Station – Neb Sarai, Delhi..

2. The brief facts of the case are that the petitioner nos. 2 and 3, namely, Mr. Lalit and Mr. Vishal, are the sons of petitioner no. 1 i.e., Mr. Dhanraj. The complainant is the wife of petitioner no. 1’s brother and she has a son namely Mr. D.

3. It is alleged that a property dispute between the complainant and the petitioners has been persisting since the year 2002. On 21st October, 2015, a quarrel took place between the parties and a PCR call vide DD No., 12A was received by the Police Station – Neb Sarai, Delhi. Thereafter, the complainant was admitted to the AIIMS hospital for the injuries sustained during the said quarrel.

4. Based on the statement provided by the complainant, an FIR bearing no. 1515/15 dated 21st October, 2015 got registered at the Police Station – Neb Sarai, Delhi under Sections 354/354B/323/506/34 of the IPC.

5. Thereafter, chargesheet under Section 173 of the Code was filed by the police and accordingly, the petitioners herein filed an application under Section 227 of the Code before the learned ASJ for discharge. However, the learned ASJ passed the impugned order, thereby, framing charges against the petitioners under Sections 323/506/376D/34 of the IPC and the petitioner no. 1 is additionally charged with Sections 354/354B of the IPC.

6. Aggrieved by the charges framed under Section 376D of the IPC, the petitioners filed the instant petition seeking setting aside of the same.

7. Learned counsel for the petitioners submitted that the learned ASJ



2025:DHC:1291



erroneously passed the impugned order without considering the facts and circumstance of the case as no case is made out against the petitioners under Section 376D of the IPC.

8. It is submitted that the learned ASJ failed to appreciate that there are procedural irregularities in the instant case, where the complainant was allowed to give her statement under Section 164 of the Code after a delay of 17 months.

9. It is submitted that while framing charges against the petitioner, the learned ASJ failed to observe that the medical examination of the complainant does not reveal anything to attract the provisions of Section 376D of the IPC and therefore, the petitioners were erroneously charged with the said provision.

10. It is further submitted that the complainant did not mention that she was subjected to rape under Section 376D of the IPC at the time of registering the FIR, however, the same was mentioned, especially against the petitioner no. 1, while recording her statement under Section 164 of the Code, thereby, amounting to discrepancies in her statements.

11. It is submitted that it is a settled position of law that if there are two views possible, the one favorable to the accused should be taken into account by the Court, however, the learned ASJ failed to appreciate the said law.

12. In view of the foregoing submissions, it is prayed that the instant petition may be allowed.

13. *Per Contra*, learned APP for the State vehemently opposed the instant



petition and submitted that the learned ASJ has rightly framed charges against the petitioner after considering the material placed on the record.

14. It is submitted that the statements provided by the complainant under Sections 161 and 164 of the Code reveal that she was subjected to serious offence of sexual assault and rape and the same is further corroborated by the Medico-Legal Case (hereinafter “MLC”) report as well. Therefore, it is prayed that the instant petition may be dismissed being devoid of any merit.

15. Thereafter, the learned counsel for the complainant submitted that the learned ASJ has rightly framed charges under Section 376D of the IPC against the petitioners as there is sufficient material on record indicating the commission of offence by the petitioners.

16. It is submitted that while passing the impugned order, the learned ASJ has rightly considered the material on record such as the statements made under Section 161 and 164 of the Code as well as the MLC for determination of a *prima facie* case against the petitioners.

17. It is further submitted that it is a settled position of law that the Court concerned is not required to evaluate the material in entirety and consider the defense of the accused at the stage of framing of charges.

18. It is submitted that this Court has limited powers to interfere with the impugned order while exercising revisional jurisdiction and the said interference can be done only if there is a glaring irregularity in the order passed by the subordinate Court. However, the learned ASJ has relied on the sufficient material on record required for framing charges against the petitioner.



19. Therefore, in light of the foregoing submissions, it is prayed that the instant petition, being devoid of any merit, may be dismissed.

20. Heard learned counsel for the parties and perused the record.

21. It is a settled position of law that the revisional jurisdiction conferred upon this Court is limited in nature and therefore, the same cannot be exercised in a mechanical manner. However, the said revisional jurisdiction can be exercised when there is a gross illegality or irregularity in the findings given by the court below. The said principle was encapsulated by the Hon'ble Supreme Court in the case of **Amit Kapoor v. Ramesh Chander**, (2012) 9 SCC 460, wherein, it was categorically observed that the revisional jurisdiction can be invoked only when the Subordinate Court has passed an order which is grossly erroneous and ignored the pertinent evidence on record, however, the same is not exhaustive in nature and differs with every case based on the merits of the same.

22. Therefore, keeping the foregoing in mind, the limited question for adjudication before this Court is whether the learned ASJ rightly framed charges under Section 376D of the IPC against the petitioners.

23. Keeping in mind that the revisional Court can only interfere when the impugned order suffers from severe illegality or irregularity, this Court finds it apposite to examine the findings of the impugned order. The relevant extracts of the same are as follows –

“ In the present case, at the time of medical examination on 21.10.2015, specific allegation of sexual assault has been made by the prosecutrix and thereafter, in the statement u/s 164 Cr.P.C dated 05.04.2017, the specific allegation of digital rape



has been made against accused Dhanraj, Vishal and Lalit. In the statement u/s 313 Cr.P.C recorded in FIRNo. 1516/2015 PS Neb Sarai, the son of prosecutrix has made allegation of sexual assault upon the prosecutrix by Dhanraj, Lalit and Vishal. As discussed above, the discrepancy in the FIR and statement u/s 164 Cr.P.C cannot be a ground for discharge without initiation of trial. From the foregoing extracts of the impugned order, it is observed that the learned ASJ relied upon the material available on its record i.e., Statement made by the complainant under Sections 161 and 164 of the Code and MLC in order to arrive at a conclusion that there exists a prima facie case against the petitioners for the offence punishable under Section 376D of the IPC.

*There is specific allegation of gang rape in the statement u/s 164 Cr.P.C against accused Dhanraj, Lalit and Vishal that they dragged the prosecutrix inside the room, removed her salwar and Lalit and Vishal held hands and legs of the prosecutrix and Dhanraj inserted finger in her private part. **The allegations are prima facie sufficient at this stage to frame charge for the offence punishable u/s 376D IPC against accused Dhanraj, Lalit and Vishal.***

*In the FIR, specific allegation of assault upon the prosecutrix and her son by accused Dhanraj, Lalit, Anita, K.irti, Vishal and Dharamveer has been made. Further, in the statement u/s 164 Cr.P.C, the allegation of extension of threat has been made against all accused persons. The allegations prima facie show that all accused, in furtherance of common intention, voluntarily caused hurt to the prosecutrix and her son and they also extended threats to ldl the prosecutrix and her son. **The allegations are sufficient to frame charge for the offence punishable u/s 323/506/34 IPC against accused Dhanraj, Lalit, Anita, Kirti, Vishal and Dharamveer.***

In the FIR and statement u/s 164 CR.P.C, specific allegation is made against accused Dhanraj that he inappropriately touched the prosecutrix, held her from behind,



manhandled her and tore her clothes. The allegations are sufficient at this state to frame charge for offence punishable u/s 354 and 354B IPC against accused Dhanraj.

The application us 227 Cr2C moved on behalf of accused Dhanraj, Lalit and Vishal stands dismissed and disposed of, accordingly.

24. Before advertng to the instant case, it is apposite for this Court to mention the case of *State v. A. Arun Kumar, (2015) 2 SCC 417*, wherein, it was categorically observed by the Hon'ble Supreme Court that at the stage of framing of charges, the Courts are only required to evaluate the material on record to solely determine whether a *prima facie* case is made out against the accused or not. The relevant paragraph of the same is as follows –

“9. This Court then went on to cull out principles as regards scope of Sections 227 and 228 of the Code, which in our view broadly apply to Sections 238 and 239 of the Code as well. It was observed thus in para 21 : (Sajjan Kumar case [(2010) 9 SCC 368 : (2010) 3 SCC (Cri) 1371] , SCC pp. 376-77)

“Exercise of jurisdiction under Sections 227 and 228 CrPC

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 discloses 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.”

25. The said principle of law is also encapsulated in the case of ***State of T.N. v. R. Soundirarasu*, (2023) 6 SCC 768** as well. Furthermore, in the case of ***Tarun Jit Tejpal v. State of Goa*, (2020) 17 SCC 556**, the Hon’ble Supreme Court also observed that the submissions made on the merits of the case should be taken at an appropriate stage, including the defence of the accused, as the same is not relevant at the stage of framing of charges.

26. Keeping the foregoing law in mind and advertent to the instant case, it is the case of the petitioner that the learned ASJ failed to consider the discrepancy in complainant’s statement as she raised the accusations of gang rape only while recording her statement under Section 164 of the Code and the same cannot establish a *prima facie* case against the petitioner.

27. Before dealing with the material relied upon by the learned ASJ, this Court finds it apposite to clarify that the discrepancies between the initial statement given by the complainant and the subsequent statement given under Section 164 of the Code are viewed as a defence of an accused and therefore, the same cannot be considered at the stage of framing of charges. The same was observed by the Hon’ble Supreme Court in the case of ***Hazrat Deen vs. The State of Uttar Pradesh*, 2022 SCC OnLine SC 1781**.

28. Now, directing to the material on record, it is observed that the complainant’s statement was recorded under Section 161 of the Code on the



date of the incident itself i.e., 21st October, 2015, wherein, it was stated that on the said date, the complainant's son went to the temple and when she was alone in the house, the petitioner no. 1 entered her house and touched her inappropriately, despite the complainant retaliating against him. In the process, her clothes were torn. The complainant's son came back to the house and tried to push petitioner no. 1 away from her, however, the petitioner no. 1's family members, including petitioner no. 2 and 3 entered the house and started beating the complainant and her son.

29. As per the Status Report, the complainant's statement was recorded under Section 164 of the Code on 5th April, 2017, wherein, it was mentioned by the complainant that the petitioners herein dragged her inside a room, undressed her and that petitioner no. 1 inserted his fingers in her private parts. The relevant portion of the same is reproduced hereinunder –

“5. On 21/11/2022 in case FIR 1515/15 the charge U/S 323/506/34 IPC was framed against accused Anita, Kirti and Dharamveer, charge U/S 323/506/34/354/354B/376D IPC was framed against accused Dhanraj and charge U/S 323/506/34/376D IPC against Lalit and Vishal by the Hon'ble Court of MS. Neha, LD. ASJ, Spl. Fast track Court, South District, Saket, New Delhi.”

30. At this stage, this Court has perused the MLC dated 21st October, 2015, which is annexed as Annexure C to the instant petition. It is observed that the said MLC recorded that it was a case of sexual assault and that the clothes of the complainant were torn.

31. After perusing the foregoing material, it is observed that the



2025:DHC:1291



complainant mentioned that she was subjected to alleged rape only in her statement under Section 164 of the Code. However, in her statement under Section 161 of the Code, although there was no mention of commission of rape, she stated that the petitioner no. 1 touched her inappropriately and misbehaved with her. As discussed above, the discrepancy in the said statements cannot be evaluated at the stage of framing of charges as the same amounts to the defence of the accused and the same may be taken up at the appropriate stage of the trial.

32. Furthermore, it is a settled position of law that Section 164 of the Code is more reliable than Section 161 of the Code, as the former is given under an oath. Although the statement made under Section 164 of the Code cannot be used as a substantive piece of evidence and only as corroborative evidence, in cases of rape, more weightage is required to be given for statements made under Section 164 of the Code, especially at the stage of framing of charges. As discussed earlier, the Courts cannot go into the veracity of the evidence placed on record at the stage of framing of charges and should only concern itself with whether there exists sufficient material to determine a *prima facie* case against the accused for framing of charges. Therefore, it is to be borne in mind that the Courts are required to show sensitivity, liberty and consideration while dealing with the cases of rape, especially at the stage of framing of charges as the veracity and truthfulness of the evidence as well as the case can be determined at the further stages of trial.

33. However, it is also pertinent for this Court to note that the MLC,



which is recorded after the complainant's admission to the hospital, reveals that the case is of sexual assault, thereby, sufficiently corroborating her statement under Section 161 and 164 of the Code regarding the alleged commission of offence. Moreover, *prima facie*, it indicates upon conjoint reading that the complainant has been subjected to the offence of gang rape as adduced under Section 376D of the IPC and the involvement of the petitioners herein as per the statements of the complainant under Sections 161 and 164 of the Code.

34. At this juncture, it is apposite for this Court to state that while adjudicating an application under Section 227 of the Code, the Court must restrict itself with the material submitted by the prosecution and is allowed to only look into the sufficiency of material on record to determine whether there is adequate material for framing of charges against the accused. It is relevant to note the case of ***Ajay Kumar Parmar v. State of Rajasthan, (2012) 12 SCC 406***, wherein, the following was observed –

“17. The court should not pass an order of acquittal by resorting to a course of not taking cognizance, where prima facie case is made out by the investigating agency. More so, it is the duty of the court to safeguard the rights and interests of the victim, who does not participate in the discharge proceedings. At the stage of application of Section 227, the court has to sift the evidence in order to find out whether or not there is sufficient ground for proceeding against the accused. Thus, appreciation of evidence at this stage, is not permissible. (Vide P. Vijayan v. State of Kerala [(2010) 2 SCC 398 : (2010) 1 SCC (Cri) 1488 : AIR 2010 SC 663] and R.S. Mishra v. State of Orissa [(2011) 2 SCC 689 : (2011) 1 SCC (Cri) 785 : AIR 2011 SC 1103] .)”



35. From the foregoing discussions, it is observed that upon conjoint reading of the aforesaid material, the statement made under Section 161 is supported by the MLC, thereby, denoting that the complainant was subjected to sexual assault, and the statement under Section 164 of the Code reveal the role played by the petitioners, thereby, making a *prima facie* case against the petitioners for framing of charges in the instant case. Moreover, given the facts and circumstances of the case alongwith the material on record, the charges are rightly framed against the petitioners and the truthfulness and veracity of the instant case can be ascertained at the further stages of trial, in the interest of justice.

36. Considering the foregoing discussions on law and facts, this Court is of the considered view that the learned ASJ was right in framing charges under Section 376D of the IPC against the petitioners as *prima facie* case is made out based on the face value of the material placed on the record.

37. Given the limited jurisdiction of this Court while exercising revisional powers, this Court finds no reason to interfere with the impugned order at this stage of framing of charge.

38. Therefore, this Court is of the considered view that there is no illegality in the impugned order dated 21st November, 2022 passed by the learned Additional Sessions Judge, Special Fast Track Court, South District, Saket Courts, Delhi in Case No. 38/2019 arising out of FIR bearing no. 1515/15 registered at Police Station – Neb Sarai, Delhi, and the same is, hereby, upheld.



2025:DHC:1291



39. Accordingly, the instant revision petition stands dismissed being devoid of any merit, along with pending applications, if any.

40. It is made clear that any observations made herein are only for the purpose of deciding the present petition and shall not be construed as an expression on the merits of the case. The Court concerned shall proceed with the matter uninfluenced by any observations made by this Court and shall decide the case strictly in accordance with law.

41. The order be uploaded on the website forthwith.

CHANDRA DHARI SINGH, J

FEBRUARY 28, 2025

Rt/mk/ryp

Click here to check corrigendum, if any