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

+ **CRL.REV.P. 777/2023 & CRL.M.A. 19613/2023**

THE STATE (GNCT OF DELHI)Petitioner
Through: Mr. Shoaib Haider, APP
for the State with SI
Ashish Kumar, PS Kalindi
Kunj.

versus

SHAHBEZ @ SAJIBRespondent
Through: Mr. Mohd. Naved Mian,
Adv. (through VC)

CORAM:

HON'BLE MR. JUSTICE AMIT MAHAJAN

ORDER

% **15.09.2025**

1. The present revision petition is filed under Section 397 of the Code of Criminal Procedure, 1973 ('CrPC') challenging the order dated 18.07.2022 (hereafter '**impugned order**') passed by the learned Additional Sessions Judge ('ASJ'), South-East District, Saket Courts, New Delhi in Sessions Case No. 491/2021 whereby the accused/respondent was discharged for the offences under Section 375/506/328 of the Indian Penal Code, 1860 ('IPC').

2. The brief facts are that on 02.04.2021, a PCR call was received by the police stating "*ek ladka mujhse pyar karta tha jo ab kisi aur se shaadi kar rha hai, need help*". The prosecutrix thereafter gave a written letter addressed to the SHO of Police Station Kalindi Kunj, wherein, she alleged that she was having friendship with the accused/respondent for the last four years. She alleged that last week due to some reason the



friendship between the prosecutrix and accused/respondent got sour and the accused/respondent had not called the prosecutrix since then. She alleged that due to stress she had called on 112 number and that no physical exploitation or wrong act had been done against her. It was stated that she does not want any legal action against the accused/respondent. The said letter was written by the complainant in the presence of her mother who had affixed her thumb impression on the same.

3. On 26.06.2021, the prosecutrix visited Police Kalindi Kunj and stated that an incident of sexual assault had taken place against her. The police, thereafter, recorded her statement, wherein, she alleged that that she had met the accused/respondent five years ago and both of them developed a friendship with each other.

4. It was alleged that the accused/respondent told the prosecutrix that he loves her and wants to marry her. It is alleged that four and half years ago the accused/respondent took the prosecutrix to a hotel in Sarai Kale Khan on the pretext of having a meal. It is alleged that there the accused/respondent established sexual relations with the prosecutrix on the pretext of marriage.

5. The accused/respondent, thereafter, allegedly on several occasions established sexual relations with the prosecutrix on the pretext of getting married. It was alleged that, whenever, she used to ask the accused/respondent regarding marriage, he used to evade the question on one pretext or the other.

6. She alleged that suddenly three months ago the accused/respondent stopped talking to her and blocked her



mobile number. It is alleged that when she was able to talk to him he refused to marry her and allegedly threatened to kill her.

7. Pursuant to the statement made by the prosecutrix, the police registered FIR No. 348/2021 for the offence under Section 376 of the IPC.

8. That on 28.06.2021, the prosecutrix was taken to Saket Court Complex, wherein, her statement under Section 164 of the CrPC was recorded. In her statement, she alleged that the accused/respondent had taken her mobile number and started to call her. It is alleged that he had expressed his liking for her and told the prosecutrix that he loved her.

9. She stated that one day the accused/respondent had taken her to a hotel in Sarai Kale Khan on the pretext of having a meal. It is alleged that there the accused/respondent had allegedly given her a cold drink laced with intoxicants and after consuming the same the prosecutrix became unconscious. It is alleged that after she woke up she found that she was not wearing her clothes and when asked the accused/respondent as to what had he done he replied by saying that he had established sexual relations with her and had also clicked her photographs.

10. She allegedly told the accused/respondent that she will complain about the same to the police, whereafter, the accused/respondent stopped her and assured that he will marry her.

11. She stated that the accused/respondent, thereafter, allegedly started blackmailing her by saying that he will post her photographs on the internet and took a lot of money from her. He



also used to establish sexual relations with the prosecutrix by threatening her to post her photographs on the internet.

12. She further stated that four months ago the accused/respondent stooped talking to her and when she tried to contact him he allegedly used to threaten her by saying that if she bothers him again he will release all her photographs on the internet.

13. After completion of investigation the police filed chargesheet against the accused/respondent for the offences under Section 376/506/328 of the IPC.

14. The learned ASJ after hearing the arguments on charge by the impugned order discharged the accused/respondent for the aforesaid offences. The learned ASJ noted that the prosecutrix had repeatedly changed her stance during the entire course of investigation and the same did not inspire confidence in the case of the prosecution.

15. The learned Additional Public Prosecutor for the State submits that the impugned order passed by the learned ASJ is perverse, manifestly erroneous and unsustainable in the eyes of law.

16. He submits that the learned ASJ erred by making the observation that the accused/respondent on several occasions made sexual relations with the prosecutrix on the pretext of marriage, shows that the prosecutrix consented to the aforesaid acts of sexual relation.

17. *Per contra*, the learned counsel for the accused/respondent vehemently opposes the arguments as raised by the learned



Additional Public Prosecutor for the State. He consequently prays that the present petition be dismissed.

18. I have heard the learned counsel for the parties and perused the record.

Analysis

19. The scope of interference by High Courts while exercising revisional jurisdiction in a challenge to order framing charge/discharge is well settled. The power ought to be exercised sparingly, in the interest of justice. It is not open to the Court to misconstrue the revisional proceedings as an appeal and reappreciate the evidence unless any glaring perversity is brought to its notice.

20. Since the State has assailed the impugned order whereby the accused/respondent was discharged for the offences under Sections 376/506/328 of the IPC, it will be apposite to succinctly discuss the statutory law with respect to framing of charge and discharge as provided under Section 227 and 228 of the CrPC.

The same is set out below:

“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 subsection (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.”

21. The Hon’ble Apex Court in **Union of India v. Prafulla Kumar Samal : (1979) 3 SCC 4**, dealt with the scope of enquiry a judge is required to make with regard to the question of framing of charges. Inter alia, the following principles were laid down by the Court:

“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.

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(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.**

(emphasis supplied)

22. 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)

23. In *State of Gujarat v. Dilipsinh Kishorsinh Rao* : (2023)



17 SCC 688, the Hon'ble Apex Court has discussed the parameters that would be appropriate to keep in mind at the stage of framing of charge/discharge, as under:

"7. It is trite law that application of judicial mind being necessary to determine whether a case has been made out by the prosecution for proceeding with trial and it would not be necessary to dwell into the pros and cons of the matter by examining the defence of the accused when an application for discharge is filed. At that stage, the trial judge has to merely examine the evidence placed by the prosecution in order to determine whether or not the grounds are sufficient to proceed against the accused on basis of charge sheet material. The nature of the evidence recorded or collected by the investigating agency or the documents produced in which prima facie it reveals that there are suspicious circumstances against the accused, so as to frame a charge would suffice and such material would be taken into account for the purposes of framing the charge. If there is no sufficient ground for proceeding against the accused necessarily, the accused would be discharged, but if the court is of the opinion, after such consideration of the material there are grounds for presuming that accused has committed the offence which is triable, then necessarily charge has to be framed.

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12. The primary consideration at the stage of framing of charge is the test of existence of a prima-facie case, and at this stage, the probative value of materials on record need not be gone into. This Court by referring to its earlier decisions in the State of Maharashtra v. Som Nath Thapa, (1996) 4 SCC 659 and the State of MP v. Mohan Lal Soni, (2000) 6 SCC 338 has held the nature of evaluation to be made by the court at the stage of framing of the charge is to test the existence of prima-facie case. It is also held at the stage of framing of charge, the court has to form a presumptive opinion to the existence of factual ingredients constituting the offence alleged and it is not expected to go deep into probative value of the material on record and to check whether the material on record would certainly lead to conviction at the conclusion of trial."

24. 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. Thus, while framing of charges, the Court ought to look at the limited aspect of whether, given the material placed before it, there is grave suspicion against the accused which is not properly explained. Though, for the purpose of conviction, the same must be proved beyond reasonable doubt.

25. The limited question for the determination of this Court is thus whether the learned ASJ rightly discharged the respondent of the alleged offences.

26. In the present case, the allegations against the accused/respondent are that he had established sexual relations with the prosecutrix on the false pretext of marrying her.

27. The learned ASJ noted that the prosecutrix had changed her version during the entire course of investigation.

28. From a perusal of the material on record it can be seen that the prosecutrix has never been consistent with her version of the alleged incident. On 02.04.2021 the prosecutrix in her written letter to the SHO stated that no wrong act had taken place with her and she did not want any legal action against the accused/respondent.

29. However, in her statement which led to registration of FIR she alleged that the accused/respondent on multiple occasions has established sexual relations with her on the pretext of marriage. To the contrary, in her statement under Section 164 of the CrPC she alleged that the accused/respondent had given her a cold drink laced with intoxicants and after consuming the same the prosecutrix became unconscious and thereafter the accused/respondent established sexual relations with her.



30. In her statement under Section 161 of the CrPC the prosecutrix alleged that the accused/respondent had repeatedly established sexual relations with her on the false pretext of getting married.

31. It is pertinent to note that during the course of investigation the prosecutrix failed to identify the hotel where the accused/respondent had committed the alleged offence. Further the CDR details of the mobile phone of the prosecutrix was not detected at the relevant time at the alleged spot of the incident.

32. In a recent decision in the case of ***Mahesh Damu Khare v. State of Maharashtra*** : 2024 SCC OnLine SC 3471, the Hon'ble Apex Court reiterated the legal principles concerning consensual relationships and the initiation of criminal proceedings on allegations of sexual relationship on the false promise of marriage. The Hon'ble Apex Court quashed the FIR against the appellant therein and held as under :

“22..... Thus, in a situation where physical relationship is maintained for a prolonged period knowingly by the woman, it cannot be said with certainty that the said physical relationship was purely because of the alleged promise made by the appellant to marry her. Thus, unless it can be shown that the physical relationship was purely because of the promise of marriage, thereby having a direct nexus with the physical relationship without being influenced by any other consideration, it cannot be said that there was vitiation of consent under misconception of fact.

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27..... In our opinion, the longer the duration of the physical relationship between the partners without protest and insistence by the female partner for marriage would be indicative of a consensual relationship rather than a relationship based on false promise of marriage by the male partner and thus, based on misconception of fact.”

28. Moreover, even if it is assumed that a false promise of marriage was made to the complainant initially by the



appellant, even though no such cogent evidence has been brought on record before us to that effect, the fact that the relationship continued for nine long years, would render the plea of the complainant that her consent for all these years was under misconception of fact that the Appellant would marry her implausible. Consequently, the criminal liability attached to such false promise would be diluted after such a long passage of time and in light of the fact that no protest was registered by the complainant during all those years. Such a prolonged continuation of physical relationship without demurral or remonstrance by the female partner, in effect takes out the sting of criminal culpability and neutralises it.

29. It will be very difficult to assume that the complainant who is otherwise a mature person with two grown up children, was unable to discover the deceitful behaviour of the appellant who continued to have sexual relationship with her for such a long period on the promise of marriage. Any such mendacious act of the appellant would have been exposed sooner without having to wait for nine years. The inference one can draw under the circumstances is that there was no such false promise made to the complainant by the appellant of marriage by continuing to have physical relationship so as to bring this act within the province of Section 376 IPC and therefore, there was no vitiation of consent under misconception of fact.

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31. In our view if criminality is to be attached to such prolonged physical relationship at a very belated stage, it can lead to serious consequences. It will open the scope for imputing criminality to such long term relationships after turning sour, as such an allegation can be made even at a belated stage to drag a person in the juggernaut of stringent criminal process. There is always a danger of attributing criminal intent to an otherwise disturbed civil relationship of which the Court must also be mindful.”

33. In view of the inconsistent stand of the prosecutrix as rightly observed by the learned Trial Court, this Court is of the opinion that there is no grave suspicion for framing charges against the accused/respondent for the offences under Section 376 of the IPC. Mere bald allegation that too belatedly after the



initial complaint when no allegation was made against the respondent and that too without any corroborative evidence, is not sufficient to raise grave suspicion against the respondent.

34. Insofar as the charge under Section 506 of the IPC is concerned, the only allegation levelled is that the accused/respondent used to threaten the prosecutrix that he would post all her photographs on the internet if the prosecutrix refused to any of his demands.

35. A bare perusal of Section 506 of the IPC makes it clear that before an offence of criminal intimidation is made out, it must be established that an accused had an intention to cause alarm to the complainant. Mere threats given by the accused not with an intention to cause alarm to the complainant would not constitute an offence of criminal intimidation. Even otherwise, the allegation in view of entirety of facts as discussed above, does not inspire confidence so as to raise grave suspicion against the respondent.

36. Therefore, there is no infirmity with the impugned order passed by the learned ASJ to warrant any interference.

37. The present petition is dismissed in the aforesaid terms.

38. Pending application(s) also stand disposed of.

AMIT MAHAJAN, J

SEPTEMBER 15, 2025

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