



\$~42

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

+ **CRL.REV.P. 1240/2023**

S

.....Petitioner

Through: Mr. Rajbir Singh Sagar,
Adv. (through VC)

versus

STATE OF NCT OF DELHI
AND ORS

.....Respondents

Through: Mr. Raj Kumar, APP for
the State
SI Pankaj Kumar, PS-
Jyoti Nagar
Mr. Vipin Rana, Ms. Ritu,
Mr. S.K. Gill, Mr. Vinay
Panwar, Mr. Vishu Verma,
Mr. Satyam Gill & Mr.
Lakshay Sharma, Advs.

CORAM:

HON'BLE MR. JUSTICE AMIT MAHAJAN

ORDER

29.10.2025

%

1. The present petition is filed against the order dated 21.07.2023 (hereafter '**impugned order**') passed by the learned Additional Sessions Judge ('ASJ'), East, Karkardooma Courts, Delhi in SC No. 842/2019 arising out of FIR No. 299/2018 registered at Police Station Jyoti Nagar for offences under Sections 376/328 of the Indian Penal Code, 1860 ('**IPC**').
2. By the impugned order, the learned ASJ discharged Respondent No. 2 of the offences under Sections 376/328/506 of the IPC.
3. Succinctly stated, the FIR was registered on a complaint given by the prosecutrix/petitioner. It is alleged that the



prosecutrix's husband and Respondent No. 2 worked in the Delhi Police, and during the course of time, family relations developed between the parties whereafter frequent calls were exchanged between them. It is alleged that in the month of July, 2017, Respondent No. 2 came to the house of the prosecutrix whereafter he was offered tea. It is alleged that Respondent No. 2 mixed some stupefying substance in the prosecutrix's tea whereafter the prosecutrix fell unconscious.

4. The prosecutrix alleged that she realised that she has been sexually assaulted as, upon regaining consciousness, she felt something wrong had been done to her. It is alleged that thereafter, Respondent No. 2 called the prosecutrix and started threatening her by stating that either the prosecutrix accedes to all the demands made by Respondent No. 2 or he would spread her obscene video allegedly prepared by him.

5. Thereafter, it is alleged that the prosecutrix was constantly stalked by Respondent No. 2 who used to take her in a car to various places and establish physical relations with her. It is alleged that Respondent No. 2 used to sit in the car with the prosecutrix at IHBAS hospital for several hours and used to commit rape on her. It is further alleged that Respondent No. 2 sexually assaulted the prosecutrix at the house of one Anjali who is stated to be the friend of Respondent No. 2. It is alleged that the prosecutrix was also taken to Cross River Mall by Respondent No. 2 on a few occasions whereafter on 18.07.2018, the prosecutrix disclosed about the alleged acts of Respondent No. 2 to her husband.

6. It is alleged that thereafter the prosecutrix's husband



warned Respondent No. 2 not to call the prosecutrix again. It is further alleged that Respondent No. 2 continued to extend threats to the prosecutrix and also demanded money from her post which a complaint was given which led to the registration of the present FIR.

7. After the completion of the investigation, chargesheet was filed before the learned Trial Court for the offences under Sections 376/506/328 of the IPC.

8. By the impugned order, the learned ASJ discharged Respondent No. 2 of the offences under Sections 376/506/328 of the IPC. It was noted that there was an inordinate delay in the registration of the FIR. It was noted that the prosecutrix alleged that she was subjected to constant threats by Respondent No. 2 that he would make her obscene video allegedly recorded by him 'viral'. In that regard, it was noted that the mobile phones of the prosecutrix as well as that of Respondent No. 2 were seized and sent to FSL, however, the FSL report mentioned that the relevant data could not be traced from the mobile phones. It was noted that no obscene video as alleged was found.

9. The learned ASJ also noted that as per the case of the prosecutrix, Respondent No. 2 committed the alleged offences at various places out of which one place was IHBAS Hospital wherein Respondent No. 2 allegedly committed the alleged offence in his car. It was noted that as per the chargesheet, during the course of investigation, the security Incharge of the parking of IHBAS hospital was interrogated and examined and the relevant CCTV footages were also checked, however, the presence of the prosecutrix and Respondent No. 2 could not be



found at any point of time. It was noted that the CDR analysis revealed that calls were exchanged from both the sides which appeared to be clearer in the backdrop that admittedly both the families were at visiting terms with each other.

10. The learned ASJ noted that the prosecutrix never complained or raised any alarm when she was allegedly being taken to different places by Respondent No. 2 for a period of one year. It was further noted that while the prosecutrix alleged that Respondent No. 2 threatened her that he would make her video viral, no obscene video could be found during the course of the investigation. Consequently, the learned ASJ discharged Respondent No. 2 of the offences under Sections 376/328/506 of the IPC.

11. The learned counsel for the petitioner submits that the learned ASJ erred in discharging Respondent No. 2 of the offences under Sections 376/328/506 of the IPC. He submits that the learned ASJ failed to consider that the prosecutrix herself revealed that she could not mention about the occurrence of the incident on an earlier occasion as she was afraid of her dignity. He submits that the learned ASJ gave undue weightage to the delay in reporting the incident and lodging the FIR.

12. The learned counsel for Respondent No. 2 submits that the impugned order is well reasoned and warrants no interference by this Court.

13. Before adverting to examine the facts of the present case, since the petitioner has assailed the impugned order whereby Respondent No. 2 was discharged of the offences under Sections 376/328/506 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.”

14. 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)

15. 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.

16. It is pertinent to note that the present case finds its genesis from the allegation that in the month of July, 2017, Respondent No. 2 came to the house of the prosecutrix, mixed some stupefying substance in her tea post which the prosecutrix was rendered unconscious whereafter, Respondent No. 2, taking advantage of the said fact, had established physical relations with the prosecutrix. The prosecutrix has alleged that Respondent No. 2 had raped her because, upon her regaining consciousness, she felt that something wrong had been done to her.

17. The allegations that form the substratum of the present case is that thereafter, Respondent No. 2 constantly threatened the prosecutrix that he would spread the obscene video allegedly recorded by him and that on the basis of such threat, he called the prosecutrix to various locations and established physical relations with her. It has also been alleged that on 18.07.2018, the prosecutrix disclosed about the alleged actions of Respondent No. 2 to her husband who warned Respondent No. 2 to stay away from the prosecutrix. It is alleged that despite the same, Respondent No. 2 continued to extend threats and also demand money. The same led to the registration of the subject FIR.

18. It is firstly pertinent to note that as per the allegation of the prosecutrix, Respondent No. 2 used to threaten her that he would



spread the obscene video of the prosecutrix. In that regard, it is relevant to mention that during the course of the investigation, the mobile phones of the prosecutrix as well as Respondent No. 2 were sent for FSL examination. As per the FSL report, no obscene data could be traced which, as noted above, forms the bedrock of the threats extended to the prosecutrix and the allegations levelled against Respondent No. 2.

19. The prosecutrix alleged that Respondent No. 2 forcefully established physical relations with her in the following places – house of Respondent No. 2's friend namely Anjali located near Khajuri Chowk, a hotel called Pooja Palace in Paharganj and IHBAS Hospital. From a perusal of the chargesheet, it is borne out that as per the description given by the prosecutrix, an inquiry was conducted at house no. A-8/21, DLF Ankur Vihar, however, no girl named Anjali could be found. The chargesheet further provides that an inquiry was conducted at Pooja Palace in Paharganj and the entry register of the hotel was checked, however, no record could be obtained. Further, in relation to the allegation that Respondent No. 2 would take the prosecutrix to IBHAS Hospital wherein he allegedly committed the alleged offence in his car, the chargesheet indicates that the security Incharge was interrogated and the CCTV footage was checked, however, nothing substantiating the allegations of the prosecutrix could be found.

20. Further, in relation to the allegation that various calls were made by Respondent No. 2 to the prosecutrix, it is borne out from the chargesheet that upon the CDR analysis of the mobile numbers of the prosecutrix and Respondent No. 2, it was found



that calls were exchanged from the mobile phones of both the prosecutrix and Respondent No. 2.

21. It is also pertinent to mention that the first alleged incident of rape was committed in July, 2017, however, the FIR was registered much later on 27.08.2018. In the course of one year, the prosecutrix was taken to different locations where she was allegedly raped by Respondent No. 2, however, no alarm was ever raised by her. On such a conspectus of facts, and as rightly noted by the learned ASJ, no grave suspicion arises for framing of charge under Section 376 of the IPC.

22. Insofar as the offence under Section 328 of the IPC is concerned, the same reads as follows:

“328. Causing hurt by means of poison, etc., with intent to commit and offence.—Whoever administers to or causes to be taken by any person any poison or any stupefying, intoxicating or unwholesome drug, or other thing with intent to cause hurt to such person, or with intent to commit or to facilitate the commission of an offence or knowing it to be likely that he will thereby cause hurt, shall be punished with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine”

23. In the present case, the prosecutrix has alleged that Respondent No. 2 mixed some stupefying substance in her tea post which the prosecutrix became unconscious. It is alleged that thereafter, Respondent No. 2 raped the prosecutrix. As note above, the alleged incident dates back to July 2017 and the present complaint was given much later on 27.08.2018. As rightly noted by the learned ASJ, there was no question of recovery of the alleged cup of tea as the present complaint was given more than one year after the alleged incident took place. In such circumstances, no grave suspicion arises for framing of



charge for the offence under Section 328 of the IPC.

24. Insofar as the offence under Section 506 of the IPC is concerned, 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.

25. In the present case, it has been alleged that Respondent No. 2 threatened the prosecutrix that he will spread the obscene video of the prosecutrix allegedly recorded by him. As noted above, no obscene video was recovered from the phone of Respondent No. 2 during the course of investigation when his phone was sent for FSL examination. Further, as noted by the learned ASJ, no such obscene photograph/video could be recovered during the entire investigation. Moreover, from a perusal of the FIR, it is apparent that the allegations levelled against Respondent No. 2 are generic in nature and do not disclose when and the manner in which the prosecutrix was threatened. The same also fails to disclose an intention to cause alarm so as to attract Section 506 of the IPC. The FIR was also lodged belatedly. Consequently, no grave suspicion arises against Respondent No. 2 which is not properly explained in order to frame charge under Section 506 of the IPC.

26. Undisputedly, the accused can be convicted solely on the basis of the evidence of the prosecutrix as long as the same inspires confidence and corroboration is not necessary for the same. However, in the present case, the material collected during



the course of the investigation, contradicts the allegations levelled by the prosecutrix.

27. In such circumstances, in the absence of any corroboration, the accused cannot be put to trial on the basis of mere suspicion. The learned ASJ is not supposed to act as a rubberstamp and accept the allegations levelled by the prosecutrix on a demurrer. It is the duty of the Court to sift the evidence *albeit prima facie* to ascertain whether grave suspicion arises against the accused for the purpose of framing of charge.

28. In that regard, as noted above, the investigation carried out in the present case does not corroborate but contradicts the allegations levelled by the prosecutrix. Consequently, as rightly noted by the learned ASJ, no grave suspicion arises against Respondent No. 2 which is not properly explained for the purpose of framing of charge for the offences under Sections 376/328/506 of the IPC.

29. In view of the above, I find no infirmity with the impugned order and the same cannot be faulted with.

30. The present petition is accordingly dismissed.

AMIT MAHAJAN, J

OCTOBER 29, 2025

“SS”