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

+ **CRL.REV.P. 208/2013**

RAHUL YADAV

.....Petitioner

Through: **Mr. Rajat Aneja, Mr. Manav Narula
and Mr. Jatin Tyagi Advocates.**

versus

STATE

.....Respondent

Through: **Mr. Utkarsh, APP for State.**

CORAM:

HON'BLE MS. JUSTICE NEENA BANSAL KRISHNA

ORDER

02.04.2025

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1. Criminal Revision Petition under Section 397 read with Section 401 and 482 Cr.P.C has been filed to challenge the Order dated 11.01.2013 vide which the learned ASJ has framed the charges under Section 328/380/411/34 IPC against the Petitioner.

2. It is submitted that the allegations in a nutshell in the FIR was that Mr. Sameer Sawhney woke up in the morning of 08.01.2011 at about 10-11 AM and found his parents, his siblings and two children in an unconscious state. He further stated that his wife Rakhi Sawhney was in the house for a few moments after which she was not to be found. He became suspicious and searched his house and found Rs.5 lakhs cash and 2 kgs of gold were missing from the locker of his parents.

3. It was further stated that family members of the Complainant



had been unconscious for a particularly long period of time. They were admitted in Kalra Hospital where they received treatment from the doctors.

4. The Complainant further stated that he waited for his wife Rakhi Sawhney for the entire day but she did not return. The Complainant and the other family members were thus, convinced that Rakhi Sawhney has knowingly and intentionally administered some unknown substance in the coffee and milk served on the previous day i.e. 07.01.2011 which rendered the family members unconscious and also that the theft of 2 kgs of gold and Rs.5 lakhs cash was committed by her.

5. Smt. Rakhi Sawhney the main accused was traced to a hotel in Bahadurgarh, Haryana and apprehended on 09.01.2011. She made a confessional statement admitting her acts.

6. After completing the investigations, Chargesheet was filed in the Court on 11.07.2011 wherein the Petitioner Rakhi Sawhney, Jagan Nath Sawhney, father of the Petitioner were arrayed as three accused persons.

7. During the course of the proceedings bail was granted to all the three accused persons/Petitioners on 01.12.2011.

8. After the case was committed, Rakhi Sawhney filed an Application under Section 307 read with Section 306 Cr.P.C to become an approver and sought pardon from the Court. The Application was allowed by the learned ASJ on 03.09.2012 on which date her statement as approver was recorded in camera on oath, wherein she implicated the Petitioner as having induced and coerced



her to perform the impugned acts of drugging and theft.

9. It is submitted in the Petition that the entire statement of Rakhi Sawhney, the main accused is exculpatory and has shifted the entire commission of the main act of acquiring the drugs and administering them through the Petitioner. There is a significant change from her earlier statement to the IO on the date of her arrest on 09.01.2011 and has further stated that all the acts were done by her because of coercion by the Petitioner, none of the offences had been committed by her out of own free will. In the entire statement, there is no mention of modus operandi of theft or revelation of prior discussion between the Petitioner and herself. The statement before the learned ACMM thus, differed greatly in regard to the sequence of events.

10. It is further submitted that the entire Chargesheet does not make out a prima facie case under Section 328 IPC. The learned ASJ in the impugned Order dated 11.01.2013 directed framing of charges under Section 328/380/411/34 IPC against Rakhi Sawhney and under Section 411/414/34 IPC against Rakhi Sawhney and Sh. Jagan Nath Yadav with the non speaking Order.

11. It is, therefore, submitted that there is no iota of evidence in regard to the alleged offence under Section 328 IPC and the Order on Charge may be set aside/modified.

12. Learned counsel for the Petitioner has placed reliance on Mahinder Kumar & Anr vs. The State, 2017 SCC Online Del.8327 wherein the reference has been made to the judgment of the Apex Court in Joseph Kurian Phillip Jose vs. State of Kerala, AIR 1995 SC 4 wherein it has been held that in order to prove offence under Section



328, it has to be proved not only that the accused administered the substance to the Complainant but he did so with an intent to cause hurt or knowing it to be likely that it would cause hurt or with an intention to commit or facilitate the commission of an offence. In other words, the accused may accomplish the act by himself or by means of another.

13. In either situation, direct, reliable or cogent evidence is necessary. Despite there being an MLC of the victim, the Court granted benefit and acquitted the accused of the offence under Section 328 IPC.

14. Similar facts are involved in the case in hand. Even though the MLC of the victim was prepared, it is not sufficient for framing of Charge against the Petitioner, under Section 328 IPC.

15. **Learned Prosecutor** has contended that there is evidence by way of the statement of the approver, Ms. Rakhi Sawhney as well as the MLC to establish a *prima facie* case for framing of charge. There cannot be any minute sifting of the evidence at this stage and the learned ASJ has rightly framed the Charge against the Petitioner.

16. **Submissions heard and record perused.**

17. As has been rightly argued on behalf of the State, the evidence of Ms. Rakhi Sawhney, Approver and alleged improvements from her earlier statement, can only be adjudicated by way of trial and there cannot be any assessment of the credibility of her two statements, at the stage of framing of Charge.

18. Furthermore, her statement of having administered some substance on the previous night to the family members, also finds



corroboration from the MLC of Gulshan Sawhney, his wife Saroj Sawhney and Sameer Sawhney wherein it has been specifically recorded that these persons were drowsy and poorly responding to commands, it cannot be overlooked that the MLCs have been conducted on 08.01.2011 at 8.10 AM i.e. almost after almost 24 hours of alleged administration of drug.

19. At this stage, it cannot be said that there was no *prima facie* case made out against the Petitioner. The impugned Order of Charge does not suffer from any infirmity.

20. Petition along with pending Application(s) are hereby disposed of. However, it is clarified that the observations made herein is not an expression on the merits of the case.

NEENA BANSAL KRISHNA, J

APRIL 2, 2025

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