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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**% *Date of Decision: 14.07.2025*+ **CRL.REV.P. 1263/2024 & CrI. M.A. 32991/2024**

RAJESH SINGH ALIAS RAJPetitioner

Through: Ms. Bhagwan Jha, Ms.
Shobhana Aggarwal,
Advocates

versus

THE STATE OF NCT OF DELHI & ANR.Respondents

Through: Mr. Satish Kumar, APP for the
State along with Insp.
Manjusha.**CORAM:****HON'BLE DR. JUSTICE SWARANA KANTA SHARMA****JUDGMENT****DR. SWARANA KANTA SHARMA, J (ORAL)**

1. The present revision petition has been preferred by the petitioner seeking setting aside of the order dated 01.05.2023 [hereafter '*impugned order*'] passed by learned Additional Sessions Judge (SC–RC), South-East District, Saket Courts, New Delhi [hereafter '*Sessions Court*'] in SC No. 157/2023 arising out of FIR No. 008/2023, registered on 05.01.2023 at Police Station Sarita Vihar, Delhi for the commission of offence punishable under Section 376 of the Indian Penal Code, 1860 [hereafter '*IPC*'], *vide* which charge was framed against the petitioner.



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2. Brief facts of the case are that on 05.01.2023, on a complaint of Ms. 'R', the present FIR was registered at P.S. Sarita Vihar, Delhi. The prosecutrix alleges that she had met Rajesh @ Babu, who is her cousin (son of her real *mausi*), at her parental home at her father's demise. They exchanged their numbers and started talking to each other. In the meantime, the prosecutrix, who married to one 'H' on 26.06.2011, had filed her divorce case at the concerned Court in Kanpur, Uttar Pradesh, which was still pending. It is alleged that, after some time, Rajesh expressed his desire to marry the prosecutrix. When she refused, stating that he was like her brother, he purportedly told her that in Orissa such marriages were permissible and assured that he would marry her. It is further alleged that, on 24.12.2019, Rajesh called the prosecutrix to Delhi to celebrate his birthday. Upon her arrival at New Delhi Railway Station, he allegedly took her to his rented accommodation at B-66, Khali Extension, Sarita Vihar, where he had physical relations with her against her will, and then assured that he would marry her after her divorce. She has further alleged that Rajesh called her to Delhi on three to four more occasions, each time taking her to the same premises and seeking physical relations, to which she objected, insisting that marriage should precede any such relationship. According to the FIR, the last meeting between them took place on 10.11.2022 at New Delhi Railway Station, when she refused to accompany him. Thereafter, Rajesh stopped answering her calls and declined to marry her. When she contacted his family, his sister Babi and one Sonu allegedly told her in an angry tone that



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Rajesh was like her brother, could not marry her, and that she should never call their home again. The prosecutrix alleges that Rajesh had physical relations with her against her will and was now refusing to marry her. The statement of the prosecutrix was recorded under Section 164 of Cr.P.C. on 05.01.2023, and she was medically examined on 06.01.2023. After completion of investigation, chargesheet was filed before the concerned Court.

3. By way of order dated 01.05.2023, the learned Sessions Court was pleased to frame charge against the petitioner for commission of offence under Section 376 of IPC. Aggrieved by the said order, the present revision petition has been preferred by the petitioner.

4. The learned counsel appearing for the petitioner contends that the charge could not have been framed against the petitioner for offence of rape, inasmuch as the petitioner and prosecutrix are maternal brother and sister, and marriage between them falls under prohibited degree of marriage, which could not have been solemnized. It is further argued that prosecutrix is already married and though her divorce proceedings are pending, she has not yet been divorced. In these circumstances, the learned counsel for the petitioner submits that no offence of rape on false pretext of marriage is made out against the present petitioner. It is thus prayed that the petition be allowed and the impugned order on charge be set aside.

5. The learned APP appearing for the State, on the other hand, opposes the present petition and argues that prima facie charge is



made out against the petitioner as the allegations are of forcible sexual intercourse and not merely on false pretext of marriage. He further points out that in the FIR, the prosecutrix has also mentioned that the petitioner had told her that they would get married in Orissa where such marriages, which are otherwise prohibited, can be solemnized. Thus, he prays that the trial is warranted in this case and the impugned order be upheld.

6. This Court has **heard** arguments addressed on behalf of both the parties and has perused the material placed on record.

7. This Court has, on multiple occasions, reiterated the well-settled law on charge and the scope of enquiry into the merits of the case at the stage of charge. In ***Manendra Prasad Tiwari v. Amit Kumar Tiwari and Anr.***: 2022 SCC OnLine SC 1057, the Hon^{ble} Supreme Court discussed the law on exercise of power under Section 397 or Section 482 of Cr.P.C. by the Courts while deciding a petition seeking discharge or quashing of charge framed by the Trial Court. The relevant observations in this regard read as under:

“21. The law is well settled that although it is open to a High Court entertaining a petition under Section 482 of the Cr.P.c or a revision application under Section 397 of the Cr.P.c to quash the charges framed by the trial court, yet the same cannot be done by weighing the correctness or sufficiency of the evidence. In a case praying for quashing of the charge, the principle to be adopted by the High Court should be that if the entire evidence produced by the prosecution is to be believed, would it constitute an offence or not. The truthfulness, the sufficiency and acceptability of the material produced at the time of framing of a charge can be done only at the stage of trial. To put it more succinctly, at the stage of charge the Court is to examine the materials only with a view to be satisfied that



prima facie case of commission of offence alleged has been made out against the accused person. It is also well settled that when the petition is filed by the accused under Section 482 Cr.PC or a revision Petition under Section 397 read with Section 401 of the Cr.Pc seeking for the quashing of charge framed against him, the Court should not interfere with the order unless there are strong reasons to hold that in the interest of justice and to avoid abuse of the process of the Court a charge framed against the accused needs to be quashed. Such an order can be passed only in exceptional cases and on rare occasions. **It is to be kept in mind that once the trial court has framed a charge against an accused the trial must proceed without unnecessary interference by a superior court and the entire evidence from the prosecution side should be placed on record. Any attempt by an accused for quashing of a charge before the entire prosecution evidence has come on record should not be entertained sans exceptional cases.**

22. The scope of interference and exercise of jurisdiction under Section 397 of Cr.P.c has been time and again explained by this Court. Further, the scope of interference under Section 397 Cr.P.c at a stage, when charge had been framed, is also well settled. **At the stage of framing of a charge, the court is concerned not with the proof of the allegation rather it has to focus on the material and form an opinion whether there is strong suspicion that the accused has committed an offence, which if put to trial, could prove his guilt. The framing of charge is not a stage, at which stage the final test of guilt is to be applied.** Thus, to hold that at the stage of framing the charge, the court should form an opinion that the accused is certainly guilty of committing an offence, is to hold something which is neither permissible nor is in consonance with the scheme of Code of Criminal Procedure.

23. Section 397 Cr.P.c vests the court with the power to call for and examine the records of an inferior court for the purposes of satisfying itself as to the legality and regularity of any proceedings or order made in a case. The object of this provision is to set right a patent defect or an error of jurisdiction or law or the perversity which has crept in the proceeding.”

8. The Hon’ble Supreme Court in *Ghulam Hassan Beigh v.*



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Mohd. Maqbool Magrey: (2022) 12 SCC 657, after discussing several judicial precedents, has summed up the law of framing of charge in following words:

“...Thus, from the aforesaid, it is evident that the trial court is enjoined with the duty to apply its mind at the time of framing of charge and should not act as a mere post office. The endorsement on the charge sheet presented by the police as it is without applying its mind and without recording brief reasons in support of its opinion is not countenanced by law. However, the material which is required to be evaluated by the Court at the time of framing charge should be the material that is produced and relied upon by the prosecution. The sifting of such material is not to be so meticulous as would render the exercise a mini-trial to find out the guilt or otherwise of the accused. All that is required at this stage is that the Court must be satisfied that the evidence collected by the prosecution is sufficient to presume that the accused has committed an offence. Even a strong suspicion would suffice...”

9. In the present case, this Court notes that the prosecutrix has levelled allegations of rape, including rape on false pretext of marriage, against the petitioner. Though the learned counsel for petitioner has argued that rape on false pretext of marriage cannot be made out in the present case, since the petitioner and prosecutrix are real cousins and their marriage is prohibited and further that the prosecutrix has yet not obtained divorce from her husband, this Court is of the view that the same can be of no help to the petitioner at this stage.

10. A perusal of the statement of the prosecutrix recorded under Section 164 of Cr.P.C. reveals that the prosecutrix has alleged that –



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on 24.12.2019, the accused Rajesh had called the prosecutrix for his birthday and raped her. In the FIR also, she alleges that the accused had made physical relations with her against her consent, and after that, he had assured her of marriage. It emerges from these allegations that the accused is alleged to have raped the prosecutrix and thereafter assured her of marriage on pretext that such marriages are permissible in Orissa. Thus, it is apparent that the first incident of 24.12.2019 is alleged to be a simpliciter incident of rape, i.e. establishing physical relations without consent, which would fall within the ambit of offence under Section 376 of IPC.

11. Thus, considering the overall facts and circumstances of the case, and in view of the foregoing discussion, this Court finds no reasons to interfere with the impugned order dated 01.05.2023 passed by learned Sessions Court.

12. Accordingly, the present petition stands dismissed along with pending application, if any.

13. It is however clarified that the observations made in this order are solely for the purpose of deciding this petition and the same shall not affect the merits of the case during trial.

14. The judgment be uploaded on the website forthwith.

DR. SWARANA KANTA SHARMA, J

JULY 14, 2025/vc