



2025:DHC:637



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

% **Date of order: 24th January, 2025**

+ **CRL.REV.P. 347/2016**

STATE (GNCT OF DELHI)Petitioner

Through: **Ms. Priyanka Dalal, APP for State
with SI Kriti Singh, PS Welcome.**

versus

SAIYAMA @ SAIBARespondent

Through: **None**

CORAM:

HON'BLE MR. JUSTICE CHANDRA DHARI SINGH

ORDER

CHANDRA DHARI SINGH, J (Oral)

CRL.M.A. 7699/2016 (Seeking condonation of delay in filing the petition)

The instant application under Section 5 of the Limitation Act, 1963 has been filed on behalf of the applicant seeking condonation of delay in filing the revision petition.

For the sufficient cause being shown in the application, the same is allowed and the delay of 28 days, in filing the revision petition, is condoned.

Accordingly, the application stands disposed of.

CRL.REV.P. 347/2016

1. The instant revision petition under Section 397(1) of the Code of Criminal Procedure, 1973 (hereinafter "CrPC") has been filed on behalf of the petitioner/State seeking setting aside the order dated 11th December,



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2015 (hereinafter “impugned order”) passed by the learned Additional Sessions Judge, Special Fast Track Court, Karkardooma Courts, Delhi (hereinafter “ASJ/Trial Court”) and framing of charges against the respondent under Sections 323, 354, 365, 366, 368, 370 and 120B of the Indian Penal Code, 1860 (hereinafter “IPC”).

2. The brief facts that led to the filing of the instant petition are as follows:

- a. As stated in the complaint, the prosecutrix, a resident of North Pargana, West Bengal, travelled to Delhi on 20th May, 2015 with accused Sahajan Moliya @ Bapi, on the pretext that he will marry her. Thereafter, the prosecutrix stayed with the said accused at some hotel in Delhi where he allegedly established physical relationship with her.
- b. On the next day, the prosecutrix was taken to the residence of co-accused Jahir Jamadar @ Raju, where his wife, namely Saiyama, i.e., the respondent herein also resided. In their house, co-accused Jahir Jamadar @ Raju and the respondent allegedly attempted to coerce the prosecutrix into prostitution.
- c. Thereafter, while the co-accused Sahajan Moliya @ Bapi and the respondent were out of the house, co-accused Jahir Jamadar @ Raju allegedly held the prosecutrix’s hand and asked her to make physical relations with him to which the prosecutrix resisted.
- d. Subsequently, on 23rd May, 2015, the prosecutrix was taken to the house of co-accused Laxmi Sharma @ Chanda and Nafees @



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Sameer at Kabir Nagar, Delhi where another co-accused Irshad was also present. It is alleged that at the aforesaid place, the prosecutrix was again coerced into prostitution by all the four accused and upon her refusal, discussions ensued about selling her, and co-accused Irshad allegedly attempted to rape her. The prosecutrix then raised an alarm and attempted to escape but was unsuccessful.

- e. Upon hearing the commotion, Chote Khan, the landlord of accused Nafees @ Sameer allegedly called the police. Pursuant to the same, the prosecutrix's statement was recorded with the assistance of an interpreter as she spoke Bengali language.
- f. Based on her complaint, the instant FIR was registered and the prosecutrix was subjected to a medical examination, which revealed some injury marks on her body.
- g. Thereafter, on 27th May, 2015, the prosecutrix's statement was recorded under Section 164 of the CrPC, wherein, she reiterated the allegations made against the accused persons in the FIR.
- h. Additionally, she stated in her statement recorded under Section 164 of the CrPC that co-accused Jahir Jamadar @ Raju and the respondent warned her that co-accused Sahajan Moliya @ Bapi intended to sell her and advised her against going to the house of co-accused Laxmi Sharma @ Chanda. Later, co-accused Sahajan Moliya @ Bapi took the prosecutrix to his sister's house, where her husband and brother-in-law were also present. His sister allegedly



pressured the prosecutrix to marry her brother-in-law and upon her refusal, she informed the prosecutrix that co-accused Sahajan Moliya @ Bapi had demanded Rs. 50,000/- in exchange for selling her.

- i. Upon completion of the investigation, chargesheet dated 14th July, 2015 was filed against all the accused persons under Sections 323, 354, 365, 366, 368, 370, 376, 120B of the IPC.
- j. Pursuant to the above, the learned ASJ, vide the impugned order, framed charges against all the accused persons except the respondent herein. In the said impugned order, the learned ASJ discharged the respondent stating to the effect that no *prima facie* evidence has been found against her.
- k. Aggrieved by the order of discharge *qua* the respondent herein, the petitioner has approached this Court seeking setting aside of the impugned order *qua* the respondent.

3. Ms. Priyanka Dalal, learned APP appearing on behalf of the petitioner submitted that a court, at the stage of framing of charges, is not required to enter into meticulous consideration of evidence and only a *prima facie* opinion needs to be formed.

4. It is submitted that the entire chain of events reflects a coordinated conspiracy in which all accused, including the respondent had a role. It is further submitted that the FIR alleges that the respondent herself was engaged in prostitution, hence, she was part of a larger scheme to trap and exploit vulnerable girls.



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5. It is submitted that the respondent was aware of the prosecutrix's impending exploitation, which is shown through the warning given by the respondent that the co-accused Sahajan Moliya @ Bapi intended to sell the prosecutrix, which contradicts the finding of the learned ASJ that no *prima facie* case was made out against her.

6. It is submitted that the co-accused Laxmi Sharma @ Chanda revealed the offer of co-accused Sahajan Moliya @ Bapi about the sale of the prosecutrix. It is also submitted that this reference to her sale and forced prostitution could not have occurred unless the respondent was aware of the larger conspiracy. It is further submitted that these facts *prima facie* warrant the framing of charges against her.

7. It is submitted that all the accused persons including the respondent conspired to persuade the prosecutrix to indulge herself in the illegal trade of prostitution which is sufficient to frame charges against the respondent.

8. It is submitted that the learned ASJ failed to appreciate the gravity and nature of the offences in question as the allegations involve serious charges of human trafficking, forced prostitution and conspiracy. It is further submitted that the failure to consider the seriousness of these offences and the *prima facie* evidence suggesting the respondent's involvement undermines the settled position of law.

9. It is submitted that the learned ASJ failed to consider the judgment of the Hon'ble Supreme Court passed in ***Yash Pal Mittal v. State of Punjab (1977) 4 SCC 540***, wherein the Hon'ble Court held that conspiracy lies in the agreement or concerted action among accused, even if each conspirator



is unaware of every detail, as long as they share the common objective. It is further submitted that the respondent's knowledge that the prosecutrix was to be sold and her involvement in the chain of events indicate her complicity in the conspiracy thereby, making her discharge erroneous.

10. It is submitted that the learned ASJ failed to consider the principle laid down in *State of Maharashtra v. Som Nath Thapa (1996) 4 SCC 659*, wherein the Hon'ble Supreme Court held that to establish a charge of conspiracy, mere knowledge of involvement in an illegal act or a legal act by illegal means is sufficient. It is further submitted that the respondent's awareness of the prosecutrix being sold and her role in the chain of events show her participation in the conspiracy.

11. It is submitted that the learned ASJ failed to consider the principle laid down in *State through Superintendent of Police, CBI/SIT v. Nalini & Ors. (1999) 5 SCC 253*, wherein the Hon'ble Supreme Court held that criminal conspiracy is distinct from other offences, as intent does not constitute the crime, and there must be an agreement to commit an unlawful act. It is further submitted that the respondent's knowledge and conduct, when viewed in light of these principles, suggest her involvement in the unlawful agreement.

12. Therefore, in view of the foregoing submissions, it is prayed that the instant petition may be allowed and the relief be granted as prayed for.

13. It is noted that despite issuance of notice and warrants, no appearance has been entered on behalf of the respondent. The instant revision petition is pending since 2016, and therefore, this court is left with no option but to



decide the present petition on the basis of the material available before this Court.

14. Heard the learned counsel for the petitioner and perused the material available on record.

15. The core issue before this Court for adjudication is ***Whether the impugned order discharging the respondent suffers from any illegality, perversity, or non-application of judicial mind?***

16. Before advertng to the merits of the instant petition, this Court finds it imperative to peruse the impugned order. Relevant extracts of the same are as under:

“1. The case of the prosecution is essentially based on the statement dated 24.05.2015 of the prosecutrix to the police officials and her statement under section 164 Cr.P.C dated 27.05.2015 , made to the learned Metropolitan Magistrate.

2. In the statement dated 24.05.2015, the prosecutrix had stated that she was a resident of a village at 24 North Pargana, West Bengal. She was introduced to accused Sahajan Moliya @ Bapi by one Khadhija (not arrested as yet). The prosecutrix was told by this accused that her family would not approve of their marriage. Thus on 20.05.2015, the prosecutrix alongwith accused Bapi came to Delhi. She alongwith this accused resided at a hotel at Jama Masjid area for one night and during that period accused Bapi made physical relations with her on promise of marriage. Next day, the prosecutrix was taken to the house of accused Jahir Jamadar @ Raju where his wife accused Saima @ Saiba were also present. In their house accused Raju asked the prosecutrix to indulge in dirty profession and told her that his wife Saima is also doing the same work. Accused Saima also asked the prosecutrix to be a



part of dirty profession. At that time, accused Raju caught hold of the hand of the prosecutrix and asked her to make physical relations with him but she denied. On her refusal, accused Raju slapped her (the prosecutrix).

3. The prosecutrix also alleged that thereafter on 23.05.2015, she was taken to the house of accused Laxmi Sharma @ Chanda and Nafees @ Sameer at Kabir Nagar where one person namely accused Irshad was also present. Again the prosecutrix was asked to indulge in prostitution by all the four persons and on her refusal, she was beaten by all the four persons. At that time the prosecutrix spoke to Khadija (not arrested) who also advised her to indulge in prostitution and thereafter accused Irshad attempted to rape her. At that time accused Bapi and Chand were speaking about selling the prosecutrix. The prosecutrix raised alarm and tried to run away but she was not able to escape. However, on hearing noises, Prosecution witness Chote Khan landlord of accused Nafees @Sameer called the police officials and police officials reached there. As there was language problem, an interpreter was arranged and the statement of the prosecutrix was got recorded.

4. On the basis of the above complaint, present FIR under 323/354/366/368/370/376/1208 IPC was got registered against the accused persons on 24.05.2015. On 24.05.2015 the prosecutrix was subjected to medical examination in which some injury marks were noticed on the body of the prosecutrix but those were healed marks and no fresh injury marks were seen. Samples from her person were not collected.

5. On 27 .05.2015, statement of the prosecutrix was got recorded under section 164 Cr.P.C in which the prosecutrix made similar allegations against the accused persons. In addition she stated that Raju and Saima told the prosecutrix



that accused Bapi will sell her and she should not go to the house of other sister (Didi of accused Bapi). She also stated that accused Bapi took her to the house of his sister where the husband and brother-in-law (dever) of that sister were also present. Sister of accused Bapi asked the prosecutrix to marry her brother-in-law. The sister of accused Bapi also told the prosecutrix that accused Bapi had demanded Rs.50,000/- for selling her. The prosecutrix also alleged that accused Bapi told her that she has to do the same work with one or two men as she did with him (accused Bapi). The sister of accused Bapi also told that she should start learning the work with her brother-in-law on which the prosecutrix started crying then they beat her.

6. After completion of investigation, the police has filed the present chargesheet against all the accused persons under sections 323/354/365/366/368/370/376/120B IPC.

8. Learned Addl. Public Prosecutor for the state submitted that there are sufficient material on record to frame the charge against the accused persons for the alleged offences. He further submitted that the evidence on record shows that the prosecutrix was brought to Delhi and an attempt was made to indulge her in prostitution.

9. It is contended on behalf of accused persons that they are innocent and have not committed the alleged offences. It is also contended that no offence of criminal conspiracy is made out against the accused persons. They contended that there is not an iota of independent evidence to show that any of the accused persons was indulging in a prostitution racket. Learned counsel for accused Sahajan Moliya @ Bapi contended that even as per the case of prosecutrix, she herself came to Delhi with this accused to marry him and she did not raise any alarm during



this large journey Learned counsel for accused Laxmi Sharma @ Chanda referred to photocopy of an election I-card filed by this accused in which this accused has been shown as wife of Mahesh Sharma.

17. As far as accused Saima @ Saiba is concerned, the prosecutrix has stated that accused Bapi used to refer her as Didi. The allegation against this accused is that she asked the prosecutrix to indulge in dirty work. There is no allegation that she did anything more to persuade the prosecutrix to be a part of dirty trade. Even if this allegation is taken on its face value, it only shows that this accused advised the prosecutrix to do dirty work. Moreover, the prosecutrix has not made any such allegation against this accused in her statement under section 164 Cr.P.C. In her statement under section 164 Cr.P.C. the prosecutrix has stated that she was advised by this accused not to go to the house of Laxmi Sharma @ Chanda. In my view, no case is made out to frame any charge under any provision against his accused. She is discharged in this case.”

17. Upon perusal of the aforesaid extracts of the impugned order, it is observed that the learned ASJ noted the prosecution's case was based on prosecutrix's allegations that she was brought to Delhi under false pretense and was tried to be forced into prostitution. While the chargesheet included allegations against the multiple accused persons, the learned ASJ found no substantive evidence linking the respondent to any coercive act or conspiracy.

18. The learned ASJ further observed that the only allegation against the respondent was that she asked the prosecutrix to engage in prostitution without any additional overt act of persuasion or coercion. The learned ASJ



also relied on the prosecutrix's statement recorded under Section 164 of the CrPC, in which she merely stated that the respondent advised her not to go to the house of accused Laxmi Sharma @ Chanda. It is observed that there is no reference to the active involvement of the respondent in the alleged conspiracy. Based on these findings, the learned ASJ concluded that there was no material to frame charges against the respondent and thus, the respondent was discharged.

19. In the present revision petition, the petitioner contends that the learned Trial Court wrongly evaluated the evidence at the stage of framing of charges, as only a *prima facie* glance is required at the said stage. The learned ASJ, vide the impugned order, discharged the respondent on the ground that the prosecutrix's statement under Section 164 of the CrPC did not allege any coercive or persuasive act on her part to force the prosecutrix into prostitution.

20. In view of the above, this Court must decide whether the learned ASJ's approach in assessing the evidence at the stage of framing of charge was legally tenable. To determine this, this Court will now examine the relevant judicial precedents that define the standard of scrutiny required at the stage of the framing of charges.

21. The Hon'ble Supreme Court in ***Hardeep Singh v. State of Punjab***, (2014) 3 SCC 92 has held as under:

“The court has to see as to whether the material brought on record reasonably connect the accused with the offence. Nothing more is required to be enquired into. While dealing with the aforesaid provisions, the test of prima facie case is



to be applied. The court has to find out whether the materials offered by the prosecution to be adduced as evidence are sufficient for the court to proceed against the accused further.”

22. Further, in State of **Madhya Pradesh v. Mohanlal Soni**, (2000) 6 SCC 338, the Hon’ble Supreme Court has made the following observations:

“The crystallised judicial view is that at the stage of framing charge, the court has to prima facie consider whether there is sufficient ground for proceeding against the accused. The court is not required to appreciate evidence to conclude whether the materials produced are sufficient or not for convicting the accused.”

23. The above-mentioned judicial precedents reaffirm the well-established principle that at the stage of framing charges, a court is required to assess only whether there is sufficient ground to proceed against the accused, and not to conduct a meticulous evaluation of evidence or determine the probability of conviction. The test of a *prima facie* case is to be applied, meaning that if the material on record reasonably connects the accused to the alleged offence, charges must be framed, and the matter should proceed to trial.

24. At the stage of framing of charge, a court does not adjudicate upon the truthfulness or sufficiency of evidence but merely examines whether the allegations, if taken at face value, disclose an offence. It is not necessary for the prosecution to prove guilt beyond a reasonable doubt at this juncture. Instead, the law mandates that the court must only determine whether the



allegations require further judicial scrutiny through a full-fledged trial. If the material on record creates a reasonable suspicion of involvement in the offence, the framing of charges is justified. Conversely, where the allegations are so weak or baseless that no case is made out even on a *prima facie* basis, the accused may be discharged.

25. A careful examination of the material on record, particularly the prosecutrix's statement recorded under Section 164 of the CrPC, is necessary to determine whether the *prima facie* case is made out against the respondent.

26. At this stage, this Court has referred to the statement of the prosecutrix recorded under Section 164 of the CrPC. Relevant portion of the same is as follows:

"...On the next day he took me to the house of Raju and Saima. He introduced Saima as his sister.

On the next day Baapi was about to take me to his other sister house. Raju and Saima said to me don't go with Baapi, he will sell you. After that Baapi said to me that I have to work on his sister's house. Raju also beat me there"

27. Upon perusal of the above, it is made out that the prosecutrix's statement recorded under Section 164 of the CrPC makes only a passing reference to the respondent in two instances. It is observed by this Court that as per the statement of the prosecutrix, upon taking the prosecutrix to co-accused Jahir Jamadar @ Raju's house, co-accused Sahajan Moliya @ Bapi introduced the respondent as his sister, and the prosecutrix later stated that



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co-accused Jahir Jamadar @ Raju and the respondent warned her not to go with Sahajan Moliya @ Bapi, as he allegedly intended to sell her.

28. This Court is of the view that the statement recorded under Section 164 of the CrPC does not indicate that the respondent persuaded, coerced or facilitated the commission of any offence against the prosecutrix. The only role attributed to her is that she along with co-accused Jahir Jamadar @ Raju cautioned the prosecutrix against Sahajan Moliya @ Bapi. Rather than implying complicity, this statement suggests intent to warn rather than participation in any conspiracy or any commission of any other offence against the prosecutrix.

29. There is no assertion that the respondent engaged in, facilitated, or conspired in trafficking or sexual exploitation of the prosecutrix. Unlike other accused persons, who allegedly attempted to force the prosecutrix into prostitution, there is no positive act by the respondent that would indicate criminal liability.

30. Taken at face value, the aforesaid statement of the prosecutrix does not indicate meeting of minds, prior agreement or active involvement by the respondent in the alleged offence. There is no material to suggest that the respondent played an active role in luring, confining or attempting to traffic the prosecutrix, nor is there any indication that she was involved in executing or furthering a common plan with the other accused persons.

31. In light of the above, it is evident that the petitioner has failed to present any substantive material that would warrant interference with the discharge order.



32. Furthermore, mere presence or passive knowledge of an alleged offence does not automatically translate into culpability, particularly in offence that require an overt act, inducement or active participation.

33. Here, it is pertinent to note that the scope of revisional jurisdiction under Section 397 of the CrPC is extremely limited and must be exercised sparingly, only where the trial court's decision is grossly erroneous, arbitrary or perverse. The Hon'ble Supreme Court in ***K. Ravi. v. State of Tamil Nadu*** **2024 INSC 642** relying on its earlier judgment passed in ***Amit Kapoor v. Ramesh Chander*** **(2012) 9 SCC 460**, has categorically held that revisional powers cannot be invoked to re-evaluate any evidence. A revisional court must examine whether the impugned order suffers from a patent error of law, jurisdictional defects or non-compliance with mandatory provisions of law rather than reassessing the merits of the case or re-evaluating evidence.

34. Additionally, framing of charges is a crucial stage in criminal proceedings, and while a meticulous evaluation of evidence is not required, there must still be some tangible material to suggest the accused's involvement.

35. In the present case, the learned Trial Court has correctly assessed the prosecutrix's statement observing to the effect that the same did not reveal any actionable offence against the respondent, and therefore, discharging her was the appropriate course of action.

36. This Court is of the view that the learned Trial Court, after carefully scrutinizing the prosecutrix's statement under Section 164 of the CrPC, chargesheet and other materials reached a well-reasoned conclusion that



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there was no sufficient ground to proceed against the respondent. In view of the same, it is held that the impugned order does not suffer from any legal infirmity, misapplication of law or perversity that would necessitate interference under the revisional jurisdiction of this Court.

37. In view of the failure of the petitioner to demonstrate an error in the impugned order, this Court finds no reason to interfere with the impugned order dated 11th December, 2015 passed in SC No. 135/2015 by the learned Additional Sessions Judge, Karkardooma Courts, Delhi and the same is hereby, upheld.

38. Accordingly, the present petition stands dismissed along with the pending applications, if any.

39. It is made clear that nothing expressed hereinabove shall tantamount to an expression on of this court merits of the case.

40. The order be uploaded on the website forthwith.

CHANDRA DHARI SINGH, J

JANUARY 24, 2025
gs/ryp

Click here to check corrigendum, if any