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

+ **CRL.REV.P. 740/2014**

STATE (GNCT) OF DELHI

.....Petitioner

Through: Ms. Richa Dhawan, APP
for the State
SI Arvind Kumar Saini,
PS- Geeta Colony

versus

RAHUL DAS & ORS

.....Respondents

Through: Mr. Lalit Sardana, Adv.
for R1 with R1 in person
R2 in person

CORAM:

HON'BLE MR. JUSTICE AMIT MAHAJAN

ORDER

% **12.08.2025**

1. The present petition is filed against the order dated 20.09.2014 (hereafter '**impugned order**') passed by the learned Additional Sessions Judge ('ASJ'), Karkardooma Courts, Delhi in SC No. 130/2014 whereby the respondents were discharged of the offences under Sections 372/373/201/120B/34 of the Indian Penal Code, 1860 ('IPC') in FIR No. 365/2006.

2. Briefly stated, it is alleged that an information was received *vide* DD No. 28A dated 18.01.2006 that at 6/209, Geeta Colony, Respondent No. 2 was indulging in selling children. Thereafter, ASI Deen Mohd. went to the said house and found that public persons had gathered there and also saw that one reporter of Star News namely Ms. Saroj was video recording Respondent No. 2 with her camera. It is alleged that upon inquiry, ASI Deen Mohd. learnt that Respondent No. 2 indulged in the sale and purchase of minor children. Ms. Saroj then

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informed ASI Deen Mohd. that she had come to the house of Respondent No. 2 as a decoy customer to purchase children and that Respondent No. 2 had showed her three children at different places. Ms. Saroj further informed that she had given a sum of ₹15,000/- to Respondent No. 2 for the said purpose. Ms. Saroj further stated that Respondent No. 2 had informed her regarding the involvement of Respondent No. 1 in the said act. She further stated that a CD had also been prepared in the said regard.

3. In relation to Respondent No. 1, it was alleged that he used to give advertisements in newspapers under different pretexts and used to indulge in the sale and purchase of children. It was further alleged that Respondent No. 1 was running a racket of illegal adoptions. During the course of investigation, Respondent No. 1's laptop and one diary containing the names of newly born children and other persons was seized.

4. After the completion of investigation, chargesheet was filed under Sections 372/373/201/120B/34 of the IPC.

5. By the impugned order, the learned ASJ discharged the respondents of the offences under Sections 372/373/201/120B/34 of the IPC. It was noted that the CD/DVD allegedly containing the recording made by the Star News Reporter was not available. It was noted that the Investigating Officer had informed that the recording was not available. It was further noted that the laptop sent for FSL revealed that except the photographs of some newly born children and some other persons, nothing had been found on the said laptop. It was noted that no investigation was conducted to decipher who those children and persons were or the whereabouts of such persons.

6. The learned ASJ noted that the allegations, even when
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taken on face value, did not fulfil the ingredients of Sections 372/373 of the IPC. It was noted that there did not exist any evidence to suggest that any child was ever sold for the purposes of prostitution or illicit intercourse with any person. It was noted that the various advertisements published in the newspapers were in relation to providing surrogate mothers or to help in the adoption of newly born and minor children. It was noted that no child had been recovered till that date and admittedly the families by whom and to whom such children were sold had also not been identified. Consequently, considering the deficiency of any material on record to *prima facie* point towards their guilt, the respondents were discharged of the offences under Sections 372/373/201/120B/34 of the IPC.

7. The learned Additional Public Prosecutor for the State submits that the learned ASJ erred in discharging the respondents of the offences under Sections 372/373/201/120B/34 of the IPC. She submits that at the stage of framing of charge, the Court is only tasked with evaluating the material and documents on record with a view to finding if the facts, when taken at face value, disclose the ingredients of the alleged offences. She submits that at the stage of framing of charge, the Court is not required to assess the materials placed on record in detail.

Analysis

8. Since the State has assailed the impugned order whereby the respondents were discharged of the offences under Sections 372/373/201/120B/34 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.”

9. 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)

10. In a recent decision in **State of Gujarat v. Dilipsinh Kishorsinh Rao** : 2023 SCC OnLine SC 1294, 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.”

11. It is pertinent to note that 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.

12. From a perusal of the impugned order, it is apparent that the learned ASJ took into consideration all the contentions advanced by the State. Now what remains to be seen is whether



there is any infirmity in the impugned order whereby the respondents were discharged of the offences under Sections 372/373/201/120B/34 of the IPC. In that light, it is pertinent to examine the contours of Sections 372 and 373 of the IPC.

“372. Selling minor for purposes of prostitution, etc.—Whoever sells, lets to hire, or otherwise disposes of any [person under the age of eighteen years with intent that such person shall at any age be employed or used for the purpose of prostitution or illicit intercourse with any person or for any unlawful and immoral purpose, or knowing it to be likely that such person will at any age be] employed or used for any such purpose, shall be punished with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine.

[Explanation I.—When a female under the age of eighteen years is sold, let for hire, or otherwise disposed of to a prostitute or to any person who keeps or manages a brothel, the person so disposing of such female shall, until the contrary is proved, be presumed to have disposed of her with the intent that she shall be used for the purpose of prostitution.

Explanation II.—For the purposes of this section “illicit intercourse” means sexual intercourse between persons not united by marriage, or by any union or tie which, though not amounting to a marriage, is recognized by the personal law or custom of the community to which they belong or, where they belong to different communities, of both such communities, as constituting between them a quasi-marital relation.]

373. Buying minor for purposes of prostitution, etc.—Whoever buys, hires or otherwise obtains possession of any [person under the age of eighteen years with intent that such person shall at any age be employed or used for the purpose of prostitution or illicit intercourse with any person or for any unlawful and immoral purpose, or knowing it to be likely that such person will at any age be] employed or used for any such purpose, shall be punished with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine.

[Explanation I.—Any prostitute or any person keeping or managing a brothel, who buys, hires or otherwise obtains possession of a female under the age of eighteen years shall, until the contrary is proved, be presumed to have obtained possession of such female with the intent that she shall be used for the purpose of prostitution.

Explanation II.—“Illicit intercourse” has the same meaning



as in Section 372.]”

13. It is pertinent to note that in order to attract the offences under Sections 372/373 of the IPC, it is imperative for the accused persons to engage in selling or buying minor children with the intent that they would be employed or used for the purpose of prostitution or illicit intercourse with any person or for any unlawful and immoral purpose.

14. In the present case, it is borne out from the record that the CD/DVD allegedly containing the recording made by the Star News Reporter was not available. The laptop sent to FSL revealed that except the photographs of some newly born children and some other persons, nothing had been found therein. As is apparent from a perusal of the record, no investigation was carried out to find out who such children and persons were or their whereabouts. Further, nothing had been brought forth to suggest that any child was ever sold for the purpose of prostitution or illicit intercourse with any person or for any unlawful and immoral purposes knowing it to be likely that such children would be employed or used for any such purposes.

15. The various advertisements published in the newspapers, as noted by the learned ASJ were in relation of providing surrogate mothers or help in adoption of newly born and minor children. As rightly noted by the learned ASJ, the same by itself cannot be taken to be any offence. It is further pertinent to note that no child had been recovered and the families by whom and to whom such children were allegedly sold had also not been identified.

16. In the present case, from a perusal of the impugned order,



and the material on record, it is apparent that there is no grave suspicion against the respondents which was not properly explained.

17. In view of the aforesaid discussion, this Court does not find any infirmity in the impugned order, and the same cannot be faulted with.

18. The present petition is accordingly dismissed.

AMIT MAHAJAN, J

AUGUST 12, 2025