

The State Govt Of Nct Of Delhi vs Mohd Anees on 11 July, 2024

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IN THE HIGH COURT OF DELHI AT NEW DELHI

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CRL.REV.P. 931/2017

THE STATE GOVT OF NCT OF DELHI ...

Through: Mr. Naresh Chaha

for the State w

Chetan Kumar Ga

Mandakini Ghosh

Sudhir Kumar, A

W/SI Anita Kuma

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HON'BLE MR. JUSTICE AMIT MAHAJAN
ORDER

% 11.07.2024

1. The present petition is filed under 397/401 of the Code of Criminal Procedure ('CrPC'), assailing the order dated 06.10.2017 (hereafter 'the impugned order'), passed by the learned Additional Sessions Judge ('ASJ'), (SFTC), Tis Hazari Courts, Delhi in the case arising out of FIR No. 38/2017 registered at Police Station Jama Masjid for offences under Sections 451/354/354A/376/323 of the Indian Penal Code ('IPC').

2. The seminal facts relevant for the adjudication of the present petition are as follows:

3. The complainant is related to the accused/petitioner who is This is a digitally signed order.

The authenticity of the order can be re-verified from Delhi High Court Order Portal by scanning the QR code shown above. The Order is downloaded from the DHC Server on 09/08/2024 at 20:39:47 her brother-in-law and lives on the second floor of the same house. The FIR was registered on the complaint given by the complainant who alleged that on 29.04.2017 at about 4:00 PM, while she was alone in her room, the accused knocked on the door of the room and asked to enter on the pretext of having a conversation with her. The complainant inquired about what the complainant wanted to talk about, however by this time, the accused came into the room and closed the door behind him.

4. It is alleged that the accused came from behind and caught hold of the complainant after which, the accused tried to kiss the complainant and touched her breasts. Allegedly, the accused also pulled the complainant's shirt/kurta, after which she fell on the bed and the accused started untying his pajama. The complainant objected to the behaviour of the accused and threatened to call the police, following which, the accused ran away.

5. After completion of the investigation, charge sheet was filed against the petitioner herein for offences under Sections 451/354/354(A)/376/323 of the IPC.

6. The learned ASJ, vide order dated 06.10.2017, after perusing the statements of the complainant, and noting that there were substantial improvements in the statement under Section 164 of the CrPC and that the MLC of the complainant also did not suggest any history of sexual intercourse, had discharged the accused/petitioner for the alleged offence under Section 376 of the IPC. Additionally, the learned ASJ noted that since the offences under Sections 451/354/354A/323 of the IPC are triable by the court of Metropolitan Magistrate (MM), the matter was sent to the learned MM and charges were framed against the respondent under Sections 451/354/354A/323 of the IPC. The relevant portion of the said order reads as under:

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The authenticity of the order can be re-verified from Delhi High Court Order Portal by scanning the QR code shown above. The Order is downloaded from the DHC Server on 09/08/2024 at 20:39:47 "Arguments heard. Record perused. As per complaint, the allegations against accused are that he entered the room of complainant, pulled her shirt due to which she fell down on the bed and thereafter, he kissed her, inasmuch as, touched her breasts. Further, MLC of complainant also does not suggest any history of sexual intercourse. Since allegations levelled by prosecutrix are exclusively triable by the court of magistrate.

Hon'ble Supreme Court of India in case titled as "Vijayan v. State of Kerala, AIR 2010 SC 653' has held that:

"The Judge is not a mere Post Office to frame the charge, but has to exercise his judicial mind to the facts of the case in order to determine whether a case for trial has been made out by the prosecution. The sufficiency of ground would take within its fold the nature of the evidence recorded by the police or documents produced before the court which ex- facie disclosed that there was suspicious circumstances against the accused."

In these circumstances, it would not be appropriate to try this case u/s 376 IPC. Hence, prima facie no offence punishable under section 376 IPC is made out against the accused. Accordingly, accused Mohd. Anees is discharged for the offence of rape u/s 376 IPC. Since the offences u/s 451/354/354A/323 IPC are only the offences in the present charge sheet triable by the court of Metropolitan Magistrate, let, the matter be sent to Ld. CMM (Central), Delhi, for further

proceedings for other offences charged against the accused."

7. Aggrieved by the aforesaid discharge order, the petitioner had preferred the present petition.

8. The learned Additional Public Prosecutor for the State submits that the impugned order is manifestly erroneous and the learned ASJ failed to appreciate that the complainant in her statement under Section 164 of the CrPC categorically stated that the respondent sexually molested her. He submits that the veracity of the complaint cannot be tested at this stage. He further submits that only a prima facie view of the matter has to be formed so as to frame a charge.

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9. Per contra, the learned counsel for the respondent submits that the respondent has now been acquitted by the learned Trial Court by judgment dated 23.12.2023 for the offences under Sections 451/354/354A/323 of the IPC, arising out of the same incident, the challenge of the State to the order passed by the learned ASJ discharging the petitioner for offence under Section 376 of the IPC, would not be maintainable.

10. This Court has heard the arguments addressed by the learned counsel for the parties, and has perused the material on record.

11. Since the prosecution has assailed the impugned order discharging the respondents, it will be apposite to succinctly discuss the statutory law with respect to framing of charge and discharge as provided under Sections 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 This is a digitally signed order.

The authenticity of the order can be re-verified from Delhi High Court Order Portal by scanning the QR code shown above. The Order is downloaded from the DHC Server on 09/08/2024 at 20:39:48 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 sub-section (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."

12. The scope of interference by High Courts while exercising revisional jurisdiction in a challenge to order framing charge is well settled. The power ought to be exercised sparingly, in the interest of justice, so as to not impede the trial unnecessarily. [Ref: Amit Kapoor v. Ramesh Chander : (2012) 9 SCC 460].

13. 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.

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(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)

14. In a recent decision in *Manendra Prasad Tiwari v. Amit Kumar Tiwari and Anr.* 2022 SCC OnLine SC 1057, the Hon ble Apex Court has explained the well settled law on charge as under:

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The authenticity of the order can be re-verified from Delhi High Court Order Portal by scanning the QR code shown above. The Order is downloaded from the DHC Server on 09/08/2024 at 20:39:48 "21. The law is well settled that although it is open to a High Court entertaining a petition under Section 482 of the CrPC or a revision application under Section 397 of the CrPC 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 CrPC or a revision Petition under Section 397 read with Section 401 of the CrPC seeking for the quashing of charge framed against him, 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 CrPC has been time and again explained by this Court. Further, the scope of interference under Section 397 CrPC 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, This is a digitally signed order.

The authenticity of the order can be re-verified from Delhi High Court Order Portal by scanning the QR code shown above. The Order is downloaded from the DHC Server on 09/08/2024 at 20:39:48 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 CrPC 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."

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. Though, for the purpose of conviction, the same must be proved beyond reasonable doubt.

16. From the perusal of the statement of the prosecutrix, it is apparent that no allegation of rape was made against the petitioner. She alleged that the petitioner touched her body and kissed her on her face. He then pressed her breast and took out his payjama and when the prosecutrix raised the alarm, he fled away from the spot. It is apparent that no allegation of rape was made. Thus, the impugned order discharging the petitioner for offence under Section 376 of the IPC, cannot be faulted.

17. Even otherwise, once an accused has been acquitted of related charges arising from the same incident, it becomes legally unsound to maintain charges for a more severe offence, such as under Section 376 IPC, especially when the factual matrix and evidence overlap. This principle aligns with the broader legal doctrine that an acquittal for lesser offences can preclude the maintenance of charges for greater or associated offences.

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18. In the present case, the acquittal of the respondent for lesser charges would imply a lack of substantial evidence for maintaining the graver charge under Section 376 IPC.

19. When the petitioner, on the set of allegations, has been acquitted for the charges under Sections 354/354A/451/323 of the IPC, no offence can be alleged under Section 376 of the IPC. The prosecutrix has not been able to prove beyond reasonable doubt that on a given set of allegations, the petitioner has committed any offence. The allegations have not been proved and, thus, no offence under Section 376 can be made out.

20. In light of the respondent's acquittal for offences arising from the same incident under Sections 354/354A/451/323 of the IPC, the challenge by the State to the learned ASJ's order discharging the respondent for offence under Section 376 IPC is unsustainable and maintaining such a challenge would be an abuse of the judicial process. In such circumstances, no ground is made out to warrant any interference in the impugned order.

21. Accordingly, the present petition is dismissed.

AMIT MAHAJAN, J JULY 11, 2024 "SS"

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