

The State Govt Of Nct Of Delhi vs Mahinder Singh Kataria & Ors on 13 September, 2023

Author: Sudhir Kumar Jain

Bench: Sudhir Kumar Jain

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IN THE HIGH COURT OF DELHI AT NEW DELHI

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CRL.REV.P. 874/2017 & CRL.M.A. 19049/2017

THE STATE GOVT OF NCT OF DELHI

Through: Mr. Utkarsh, APP f

Vijay Dutt, P.S.

versus

MAHINDER SINGH KATARIA & ORS

Through: Mr. Hari Shanker,

and Mr. Shoaib, Ad

CORAM:

HON'BLE DR. JUSTICE SUDHIR KUMAR JAIN

ORDER

% 13.09.2023

1. The present revision petition is filed under section 397 Cr.P.C. read with section 401(5) Cr.P.C. for setting aside/quashing of order dated 11.08.2017 passed by the court of Sh. Ashwini Kumar Sarpal, ASJ-01, East District, Karkardooma Courts, Delhi in FIR bearing no. 2481/2014 registered under sections 354/506/509/451/342/34 IPC and section 12 of the Protection of Children from Sexual Offences Act, 2012 (hereinafter referred to as the "POCSO Act") at P.S. Shakarpur.

2. The charge-sheet as per section 173 Cr.P.C. was filed under sections 354/506/509/451/342/34 IPC and under section 12 of the POCSO Act after conclusion of investigation in pursuance of FIR bearing no. 2481/2014 registered at P.S. Shakarpur.

3. The concerned trial court vide order dated 11.08.2017, which is under challenge, discharged the respondents for the offence punishable under section 12 of the POCSO Act regarding commission of sexual harassment 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 16/09/2023 at 19:05:15 made to the complainant/victim. The relevant portion of the order dated 11.08.2017 is reproduced as under:-

"In my opinion, simple vague and unspecific allegations made against the accused

persons that they used to follow the victim and her sister, used to made obscene gestures or used to utter bad words and used to give abuses without specifying what type of words were used and by whom, how and in which manner and at which place, the victim and her sister were followed as well as how and in which manner they were misbehaved itself are not sufficient to invoke the provisions of POCSO Act against the accused persons. The sister and mother of the victim has also not specified the roles of each and every accused persons with specific details even in their statements u/s 161 Cr.P.C. Here in this case, there are total 10 accused and it was required that there must be a specific role of each one in committing the offence of sexual harassment and that is also with a specific sexual intent. Even in respect of the incidents dated 18.10.2014 and 21.11.2014 regarding the quarrels taken place between both the parties, the act and conduct of the accused persons does not even point out that there was a sexual intent on their part in touching the hand of the victim or giving her beatings etc. The record point out that it was the incidents of simple quarrels which cannot be stretched into sexual harassment. Even if, during quarrel any of the accused gave slaps to victim or caught her from her hairs or abused her, then that act will not amount to show any feeling or indication of sexual intent. Accordingly, after considering the chargesheet, I am of the opinion that no offence u/s 12 of the POCSO Act regarding commission of sexual harassment is made out. The other offences which may be made out from the allegations are triable by the Magistrate. The present court is a designated court under POCSO Act so it is desirable that this matter be transferred to the court of Ld. CMM u/s 228 Cr.P.C. who is directed to proceed with the case after taking an independent decision whether any other offence is made out or not. If after considering the chargesheet and after hearing the arguments afresh. Ld. CMM is of the opinion that a charge of particular offence is made out, then it should be framed accordingly, otherwise the accused may be discharged. Ld, CMM This is a digitally signed order.

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4. The Additional Public Prosecutor for the State/petitioner during the course of arguments, referred the statement of the victim/complainant under section 164 Cr.P.C. and argued that sufficient allegations are made against the respondents to constitute the offence punishable under section 12 of the POCSO Act.

5. Chapter XVIII of the Cr.P.C deals with trial before a Court of Session. Section 227 deals with the situation when the accused shall be discharged. Section 228 deals with framing of charge. Sections 227 and 288 of Cr.P.C of read as under:-

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, 3 [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 This is a digitally signed order.

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(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.

6. The purpose of framing a charge is to intimate the accused about the clear, unambiguous and precise nature of accusation that the accused is called upon to meet in the course of a trial as observed in V.C. Shukla V State through C.B.I., 1980 Supp SCC 92. The prosecution is required to establish a prima facie before a charge can be framed. The Supreme Court in Union of India V Prafulla Kumar Samal & another, (1979) 3 SCC 4 considered scope of inquiry at the stage of framing of charge as per section 227 of Cr.P.C. in Sessions trial and observed as under:-

(1) That the Judge while considering the question of framing the charges under section 227 of the Code 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.

(2) 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.

(3) The test to determine a prima facie case would naturally depend upon the facts of each case and it is difficult to lay down a rule of universal application. By and large however if two views are equally possible and the Judge is satisfied that the evidence produced before him while giving rise to some suspicion but not grave suspicion against the accused, he will be fully within his right to discharge the accused.

(4) That in exercising his jurisdiction under section 227 of the Code the Judge which under the present Code is a senior and experienced Judge cannot act merely as a Post office or a mouth-

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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 16/09/2023 at 19:05:15 piece 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 appearing in the case and so on. This however does not mean that the Judge should make a roving enquiry into the pros and cons of the matter and weigh the evidence as if he was conducting a trial.

6.1 The Supreme Court Dipakbhai Jagdish Chandra Patel V State of Gujarat, (2019) 16 SCC 547 discussed the law relating to the framing of charge and discharge and observed as under:-

15. We may profitably, in this regard, refer to the judgment of this Court in State of Bihar v. Ramesh Singh wherein this Court has laid down the principles relating to framing of charge and discharge as follows:

4.....Reading Sections 227 and 228 together in juxtaposition, as they have got to be, it would be clear that at the beginning and initial stage of the trial the truth, veracity and effect of the evidence which the prosecutor proposes to adduce are not to be meticulously judged. Nor is any weight to be attached to the probable defence of the accused. It is not obligatory for the Judge at that stage of the trial to consider in any detail and weigh in a sensitive balance whether the facts, if proved, would be incompatible with the innocence of the accused or not. The standard of test and judgment which is to be finally applied before recording a finding regarding the guilt or otherwise of the accused is not exactly to be applied at the stage of deciding the matter under Section 227 or Section 228 of the Code. At that stage the Court is not to see whether there is sufficient ground for conviction of the accused or whether the trial is sure to end in his conviction. Strong suspicion against the accused, if the matter remains in the region of suspicion, cannot take the place of proof of his guilt at the conclusion of the trial. But at the initial stage if there is a strong suspicion which leads the Court to think that there is ground for presuming that the accused has committed an offence then it is not open to the Court to say that there is no sufficient ground for proceeding against the accused. The presumption of the guilt of the accused which is to be drawn at the This is a digitally signed order.

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initial stage is not in the sense of the law governing the trial of criminal cases in France where the accused is presumed to be guilty unless the contrary is proved. But it is only for the purpose of deciding prima facie whether the court should proceed with the trial or not. If the evidence which the prosecutor proposes to adduce to prove the guilt of the accused even if fully accepted before it is challenged in cross examination or rebutted by the defence evidence, if any, cannot show that the accused committed the offence, then there will be no sufficient ground for proceeding with the trial....

If the scales of pan as to the guilt or innocence of the accused are something like even at the conclusion of the trial, then, on the theory of benefit of doubt the case is to end in his acquittal. But if, on the other hand, it is so at the initial stage of making an order under Section 227 or Section 228, then in such a situation ordinarily and generally the order which will have to be made will be one under Section 228 and not under Section 227.

23. At the stage of framing the charge in accordance with the principles which have been laid down by this Court, what the Court is expected to do is, it does not act as a mere post office. The Court must indeed sift the material before it. The material to be sifted would be the material which is produced and relied upon by the prosecution. The sifting is not to be meticulous in the sense that the Court dons the mantle of the Trial Judge hearing arguments after the entire evidence has been adduced after a full- fledged trial and the question is not whether the prosecution has made out the case for the conviction of the accused. All that is required is, the Court must be satisfied that with the materials available, a case is made out for the accused to stand trial. A strong suspicion suffices. However, a strong suspicion must be founded on some material. The material must be such as can be translated into evidence at the stage of trial. The strong suspicion cannot be the pure subjective satisfaction based on the moral notions of the Judge that here is a case where it is possible that accused has committed the offence. Strong suspicion must be the suspicion which is premised on some material which commends itself to the court as sufficient to entertain the prima facie view that the accused has committed the offence.

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7. The perusal of FIR bearing no.2481/2014 and statement of the victim/complainant under section 164 Cr.P.C. reflects that general and vague allegations without minimum specification have been made. It is also reflecting that around 18-20 cases were pending between the concerned parties of present FIR. The trial court has rightly observed that the allegations as made by the victim/complainant are vague and not specific and it appears to be an incident of simple quarrel, which cannot be considered as sexual harassment. The impugned order dated 11.08.2017 does not call for any interference even if the allegations as made in the FIR and other materials as accepted and considered as true, even then, no offence punishable under section 12 of the POCSO Act is made

out against the respondents.

8. Hence, the present petition along with pending applications stands disposed of.

DR. SUDHIR KUMAR JAIN, J SEPTEMBER 13, 2023 N/AK/AM This is a digitally signed order.

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