Supreme Court of India
State Of Maharashtra vs Priya Sharan Maharaj & Ors on 11 March, 1997
Bench: G.N. Ray, G.T. Nanavati

PETITIONER:
STATE OF MAHARASHTRA

Vs.

RESPONDENT:
PRIYA SHARAN MAHARAJ & ORS.

DATE OF JUDGMENT: 11/03/1997

BENCH:
G.N. RAY, G.T. NANAVATI

ACT:

HEADNOTE:

JUDGMENT:

J U D G M E N T NANAVATI Leave granted.

Heard the learned counsel.

On 11.5.91, one Purushottam Wasudeo Deshpande lodged a complaint at the Dhantoli Police Station, Nagpur that his two young daughters, Hema and Meera were kidnaped by Priya Sharan Maharaj (Respondent No.1) with the help of Suhasini (Respondent No.6) and Sharwari Devi (Respondent No.7.) On the basis of this report an offence was registered under Section 365 and 366 IPC. Investigation of that offence disclosed that Kripalu maharaj (respondent No.2), who claims to be a spiritual teacher and has his Ashrams at Vrindavan and Mangadh, is a highly immoral person and in order to satisfy his lust he, with help of his disciples, including Respondent Nos. 1 and 3 to 7, used to entice young girls and have sexual intercourse with them against their wish Respondent No.2, through his disciples, used to impress upon the young girls that he is the incarnation of Lord Krishna, that they should treat him as their husband and that what he was doing with them was in the nature of 'Prasad' of God and by such acts they were really blessed. The investigation further disclosed that Meera, Hema and one Sulakshana were thus subjected to sexual intercourse by Kripalu Maharaj. Accordingly, the offence which was registered against them earlier under Section 363 and 366 IPC was altered to an offence under Section 376 IPC and all the seven respondent were shown as accused.

On being chargesheeted, they were put up for trial before the learned Second Additional Sessions Judge, Nagpur who had framed the following charge :

> "1. That, you above named accused No.2, prior to 1987 at the house of one Nilu Chaurasia, in front of Vijay Talkies, Nagpur, committed rape on one Kum. Meera D/o Purushottam Deshpande, aged 26 years, r/o Nagpur, against he will and with her consent, posing yourself, you are a devine spirit or Lord Krishna. So also, again in the month of February, 1991, you accused No.2, posing yourself that your are a divine spirit of Lord Krishna, committed rape on said Kum. Meera Deshpande, at the house of one Shrivastava, Near Previnamee School, Nagpur.
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> Again on 16th day of January, 1980 at about 5.00 p.m. at the house of one Khatri, Kadhi Chowk Nagpur, committed rape on one Sulakshana D/o Shyamsundar Pehankar, a girl aged about 14 years, r/o Juni Shukrawari, Nagpur. Again on 14.4.1990, at about 5 p.m. at the house of one R.P. Shrivastava, nagpur you committed rape on said Kum. Sulakshana, posing yourself that you are a Divine Spirit of Lord Krishna.
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> So also, in the month of Sept. 1986, at the house of one Chaurasia, Near Vijay Talkies, nagpur, You accused No.2, posing yourself, you are a Divine spirit of Lord Krishna, committed rape on one Kum. Hema @ Brijgauri d/o Purushottam Deshpande, aged about 19 yrs., against her will and without her consent, and thereby you above named accused No.2, committed an offence punishable under Section 376 of Indian Penal Code, within my congnizance.
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> 2. Secondly, that above named accused No.2 one the aforesaid day, date, time and place, committed the offence of rape on the said girls, and that you above named accused Nos. 1,3,4,5,6 and 7, in furtherance of your common intention, abetted the said accused No.2 in the commission of the consequence of your abetment. So also, you about named accused Nos.

1, 3 to 7 were personally present at the time of commission of said offence, and that your all thereby committed offences punishable under Section 109, 114/R/W Section 34 of Indian Penal Code, within my cognizance.' Aggrieved by framing of the charge the respondents had preferred a revision application but High Court declined to interfere as it was open to the respondents to approach the Sessions Court itself for granting the reliefs prayed for. The respondents, therefore, filed three applications in the Sessions Court. Exhibit 36 was for modification of the charge and Exhibits 37 and 41 were for discharging them. At the time of hearing of these applications, Exhibit 36 was not pressed. The learned Additional Judge rejected both the applications for discharge.

Against the order passed by the learned Additional Session Judge, the respondents preferred Criminal Revision Application No. 130 to 1994 before the Nagpur Bench of the High Court of Bombay. The High Court, by an unduly long order running into 89 pages, allowed the Revision Application, quashed the charge framed against the respondents and discharged them. The High

Court was of the view that as five acts of rape were committed during the period from September, 1986 to February, 1991 on three different girls, the charge as framed was i n contravention of the provisions of Section 219 of the Code of Criminal Procedure. It also held that the three girls had told lies and developed a false story against the respondents and that "no prudent man can dare to accept of believe" it. The state has, therefore, filed this appeal.

The learned counsel for the appellant contended that the High Court far exceeded the limits of consideration at Section 227 stage and that has led to failure of justice. It committed an error of sifting and weighing the material placed before the Court by applying the standard of test and proof which is to be applied finally for deciding whether the accused is guilty or not. What was required to be considered at that stage was whether the material placed before the Court disclosed a strong suspicion against the accused. On the other hand, relying upon the judgments of this Court in Union of India vs. Prafulla Kumar Samal & Anr. (1979) 2 SCR 229 and Niranjan Singh Karam Singh Punjabi vs. Jitendra Bhimraj Bijja & Ors. (AIR 1990 SC 1962), the learned counsel for the respondents submitted that while considering and application for discharge, If there is no sufficient ground for proceeding against the accused, the Court 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 is made out. The material placed before the Court must disclose grave suspicion against the accused. When two views are equally possible and if the Court finds that the material produced before it while giving rise to grave suspicion against the accused, it will be fully within its right to discharge the accused. He also submitted that at Section 227 stage the Judge 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 appearing in the case and so on. This is what the learned Additional Sessions Judge failed to do and the High court has done. He has thus supported the judgment passed by the High Court.

The law on the subject is now well-settled, as pointed out in Niranjan Singh Punjabi vs. Jitendra Bijjaya (1990) 4 SCC 76, that at Sections 227 and 228 stage the Court is required to evaluate the material and documents on record with a view of finding out if the facts emerging therefrom taken at their face value disclose the existence of all the ingredients constituting the alleged offence. The Court may, 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. Therefore, at the stage of framing of the charge the Court has to consider the material with a view to find out if there is ground for presuming that the accused has committed the offence or that there is not sufficient ground for proceeding against him and not for the purpose of arriving at the conclusion that it is not likely to lead to a conviction.

What we find from the judgement of the High Court is that the learned Judge, in order to ascertain the correct legal position, referred to various decisions and quoted extensively from them but did not apply the law correctly. The judgment also contains some quotations which have no relevance. After referring to the case law, the learned Judge has observed as under :-

"Considering the facts and circumstances as obtained in the instant case, I am reminded of the learned observation of their Lordships while discussing or reflecting on the criminal cases."

and thereafter quoted the following passage from the decision of this court in State of Punjab vs. Jagir Singh Baljit Singh and Karam Singh (AIR 1977 Supreme Court 2407) :

> "A Criminal trial is not like a fairy tale wherein one is free to give flight to itself with the question as to whether the accused arrainged at the trial is guilty of the crime with which he is charged. Crime is an event in real life and is the product of interplay of different human emotions. In arriving at the conclusion about the guilt of the accused charged with the commission of a crime, the court has to judge the evidence by the yardstick of probabilities, its intrinsic worth and the animus of witnesses. Every case in the final analysis would have to depend upon its own facts. although the benefit of every reasonable doubt should be given to the accused, the courts should not at the same time reject evidence which is ex facie trustworthy on grounds which are fanciful or in the nature of conjectures."

That was not a case dealing with the scope and nature of enquiry at the stage of framing of charge. Those observations were obviously made in the context of appreciation of evidence and standard of proof required for convicting the accused. This clearly indicates that the learned Judge failed to apply the correct test.

The following observations again lead us to that conclusion:

> "Giving conscious thought to the rival submission of the learned counsel or the parties, it is abundantly clear that except the statements of prosecutrix, there is no evidence directly or indirectly to corroborate their testimonies. According to Kr. Sulakshana she was molested initially on 16.1.1990 an subsequently on 14.4.1990 however there is no disclosure to anyone including her parents. Considering her age at the relevant time, no injuries were found as indicated by Modi. Similarly though Ku. Meera alleged that she was molested prior to 1987 and in February, 1991, instead of disclosing to stay in the company of the applicant No.2 Kripaluji Maharaj and his disciples. She not from place to place to preach the tenents of the cult of Kripaluji Maharaj. Similarly, though it is alleged by Ku. Hema and she was molested in the month of September, 1986, she is not the case of the prosecution that these two sisters disclosed about the indence activities of Kripaluji Maharaj amongst themselves. Meera and Hema both are graduates and Ku. Sulakshna was adolesent. It cannot be expected from such educated girls to continue to accompany the person who according to them, proved to be demon and to continue in his cult propagating his teachings. The conduct of all three girls not being in consonance with normal dispositions of prudent human beings corroboration thus, becomes a necessity or eminent. Taking broad view of the matter, particularly various infirmities and improbabilities, no man of prudence will any importance to the story unfolded. It is, thus, clear that except the bare words of these three girls, their is no other evidence to corroborate their story. Anything said by victim at or about the time of occurrence, to their parents/and/or others, would form part of res-gestae. Such conduct can be a corroborative piece of evidence of her/their evidence. In other words, subsequent

conduct not only is relevant but important and material.

These three girls levelled allegations against the applicant No.2 Kripaluji Maharaj after the lapse of considerable time i.e. after months and years and, therefore, the probability as depicted by the defence that if was at the instance of Nityanand, cannot be overruled. I needs mention that no report was lodged by either of the girls ay any time. It is also clear from the record that Nityanand's statement which was recorded on 11.5.1991 i.e. on the day on which the F.I.R.

was lodged by Purushottam Deshpande. Subsequently only the statements of all the three prosecutrix came to be recorded. Even in the F.I.R. there is no whisper that at any time, the applicant no.2 had committed rape on any of the prosecutrix or on any other disciples.

So the evidence does not become reliable merely because it has been corroborated by number of witnesses of the same brand. In this case, there is unreasonable inordinate or extra- ordinary delay in leveling allegations of physical molestation or rape committed, by all the three prosecutrix against a saintly old man of 69 years of age who renounced the world and engrossed in spiritual world. The explanation as could be revealed from the statements as could be revealed from the statements of the prosecutrix that the disciples of Kripaluji Maharaj all the while stated that he is an incarnation of God and whatever happened with them, be taken as a 'Prasad' or blessing of God and so not to the chestity is the jewel of the Indian woman and no woman will consider the sexual intercourse against her will as 'Prasad' or 'Blessing of God'.

It also does not stand to reason that a saintly man who has thousands/millions of disciples all over India, direct his own disciple and in their presence will commit sexual intercourse the pracharak of his cult.

Considering the overall effect of the evidence collected by the prosecution, there is according to me, no ring of truth. No prudent man can dare to accept or believe the infirm and improbable evidence of the prosecutrix.

All these facts go to show that the girls evidently told lies and developed false story against the applicant no.2 and his disciples."

The above quoted paragraphs from the judgment clearly disclose that the High Curt was much influenced by the submission made on behalf of the defence that Kripalu Maharaj is a saintly old man, who has renounced the world, who is engrossed in spiritual activity and who has thousands/millions of disciples all over India and, therefore, he was not likely to indulge in the illegal acts alleged against him. It failed to appreciate that it is not unusual to come across cases where the so-called spiritual heads exploit you girls and women who become their disciples and come under their spell. Moreover, the reasoning of the High Court that it also does not stand to

reason that a saintly man who has thousand/millions of disciples all over India would commit sexual intercourse with the praharak of his cult in presence of his disciples stands vitiated because of the vice of misreading the statements. The three girls have nowhere stated in their statements that R-2 had sexual intercourse with them in presence of other disciples. The High Court gave too much importance to the conduct of the three victims and the delay in disclosing those illegal acts to their parent and the police. What the High Court has failed to appreciate is how a victim of such an offence will behave would depend upon the circumstances in which she is placed. It often happens that such victims do not complain against such illegal acts immediately because of factors like fear or shame or uncertainties about the reactions of their parents or husbands in case of married girls or women and the adverse consequences which, they apprehend, would follow because of disclosure of such acts. What the three girls had stated i n their statements was not inherently improbable or unnatural. They have disclosed the reasons why they could not immediately complain about those illegal acts for such a long time. What the High Court has failed to appreciate is that while making complaint to the police or giving their statements they were not required to give detailed explanations. As stated earlier, what the Court has failed to appreciate is that while making a complaint to the police or giving their statements they were not required to give detailed explanations. As stated earlier, what the Court has to consider at the stage of framing of the charge is whether the version of the person complaining together with his/her explanation is prima facie believeable or not. It was, therefore, not proper for the High Court to seek independent corroboration at that stage and to quash the charge and discharge the accused in absence thereof. It was also improper to describe the version of Sulakshana as false because no extensive injuries were noticed on her person while she was examined by a doctor on the basis of some observations made in Modi's textbook on "Medical Jurisprudence and Toxicology". We do not think it proper to say anything further as, in the view that we are taking, the accused will have to face a trial and whatever observations we make now may cause some prejudice to them at the trial. We would only say that the High Court was wholly wrong in discarding the material placed before the Court as false and discharging the accused on the ground.

Before us also the learned counsel for the respondents had made a grievance that the charge as framed was not in accordance wit Section 219 of the Criminal Procedure Code. The Application, Exhibit 36, was made to the Sessions Court for modifications of the charge so as to make it consistent with Section 219. That application was not pressed and the Court was invited to dispose of the other application made by them for quashing the charge and discharging them. As we are inclined to allow this appeal the Sessions Court will have to now consider afresh whether the charge is required to be altered or amended.

We, therefore, allow this appeal, set aside the judgement and order passed by the High Court and direct the Sessions Court to proceed further with the trial in accordance with law. The trial Court shall do so after re- examining the material and hearing the learned Public Prosecutor and the lawyer for the accused on the question of amending or altering the charge so as to make it consistent with the relevant provisions of the Code and also after considering whether it will be possible to try all the offences at one trial or that they will have to be tried separately.