

Vivek Chandela vs State Of Nct Of Delhi on 8 April, 2025

Author: Swarana Kanta Sharma

Bench: Swarana Kanta Sharma

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IN THE HIGH COURT OF DELHI AT NEW DELHI

Judgment delivered on: 08.04

CRL.REV.P. 1195/2024

VIVEK CHANDELA

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Through: Mr. Nitin Mehta, Mr. Sar
Jain and Mr. Arpit Rawat
Advocates.

versus

STATE OF NCT OF DELHI

.....Resp

Through: Mr. Manoj Pant, APP for
State

CORAM:

HON'BLE DR. JUSTICE SWARANA KANTA SHARMA

JUDGMENT

DR. SWARANA KANTA SHARMA, J

1. By way of the present revision petition, the petitioner seeks setting aside of the order dated 04.06.2024 [hereafter 'Impugned order'] passed by the learned Additional Sessions Judge, Special Fast Track Court, New Delhi District, Patiala House Courts, Delhi [hereafter 'Trial Court'] vide which charges were framed against the revisionist for offence punishable under Sections 328/376D/354C of the Indian Penal Code, 1860 [hereafter 'IPC'], Section 66E of Information Technology Act, 200 [hereafter 'IT Act'] read with Section 34 of IPC, Section 67A of IT Act and Section 201/174A of IPC.

2. The brief facts of the case, as per prosecution, are that on 29.09.2018, the victim had been called by one Ankit Jain and the revisionist Vivek Chandela to Twin Tree Hotel, Naraina, Delhi, for the purpose of having a party. On the same day, he had picked up the victim from Subhash Nagar Metro Station and had taken her to the said hotel in his car, where she had been accompanied by another girl, 'G'. After reaching the said hotel, at about 8:00-9:00 PM, Ankit Jain and the revisionist herein had allegedly forced the victim to consume alcohol. Thereafter, under the influence of alcohol, both Ankit Jain and the revisionist had forcibly established sexual relations with the victim and had also recorded a video of the said act. The victim, in her complaint, had alleged that she had come to know about the said video when both Ankit Jain and the revisionist had threatened to make the said video public. Therefore, on 19.10.2018, the victim had filed a complaint at Police Station Naraina, and the present FIR was registered on 20.10.2018 against co-accused Ankit Jain and the present revisionist

Vivek Chandela for offence punishable under Sections 376D/506 of IPC, and the accused persons were arrested.

3. The record reveals that the revisionist herein had absconded and had later been declared a proclaimed offender by the learned Metropolitan Magistrate vide order dated 22.04.2019. After completion of investigation, chargesheet had been filed against the accused persons, and charges had been framed against co-accused Ankit Jain. During the pendency of the trial, the victim had been examined, cross-examined, and discharged by the learned Trial Court. However, later i.e. on 28.07.2022, the revisionist Vivek Chandela was arrested, and the supplementary chargesheet was filed against him.

4. Thereafter, the learned Trial Court was pleased to frame charges against the revisionist for offence punishable under Sections 328/376D/354C of IPC, Section 66E of the IT Act read with Section 34 of IPC, Section 67A of the IT Act, and Sections 201/174A of IPC vide the impugned order dated 04.06.2024. The relevant portion of the impugned order is set out below:

□...Arguments on the point of charge qua accused Vivek Chandela heard. The co-accused has already been charged and has been facing the trial.

As per FIR, both the accused forcibly administered alcohol to the prosecutrix and in the state of her intoxication, she was subjected to sexual intercourse by both the accused. It is further alleged that the accused persons had made obscene video of the prosecutrix. Later on, it was revealed that the obscene video of the prosecutrix was circulated to the public. Further, the accused was declared PO and he did not appear in the court on the date given in the proclamation. During the investigation, it was revealed that the accused had disposed off his mobile phone being used by him at the time of alleged incident. On the basis of the statement of the prosecutrix and other evidence on record, the court is of the considered view that there is sufficient evidence on record to make out a prima facie case for the offences punishable under Section 328/376D IPC/Section 66E of Information Technology Act, 2000 r/w Section 34 IPC, Section 67A of Information Technology Act/201/174A IPC. Accordingly, charge is framed to which accused Vivek Chandela pleads not guilty and claims trial. In the present case, the trial of the co-accused Ankit Jain was going on and thereafter, the accused Vivek Chandela was arrested being declared proclaimed offender.

Ld. Counsel for the accused submits that he needs some time to go through the file to apprise the court as to which of the witnesses he wants to recall for the purpose of re-examination. Further he wish to re-examine the prosecutrix. Let the prosecutrix be summoned again through IO/SHO concerned for her evidence qua accused Vivek Chandela for the next date...

5. The learned counsel appearing for the revisionist argues that the impugned order is arbitrary, erroneous, and passed without due application of mind. It is argued that the complaint in this case was lodged after an unexplained delay of 20 days, as the

alleged sexual assault had occurred on 29.09.2018, but no complaint was filed until 19.10.2018. The learned counsel asserts that the sexual intercourse between the victim, Ankit Jain, and the revisionist was consensual, and no complaint was initially filed against them. It is only after their video became public that the victim had filed a complaint, indicating that her grievance was against the circulation of the said video, rather than the sexual act itself. Further, it is contended that co-accused Ankit Jain owed approximately 74 lakhs to the revisionist, Vivek Chandela, who had initiated legal proceedings for recovery, and to evade liability and pressurize the revisionist, Ankit Jain had falsely implicated him in the present case. The learned counsel argues that the charges were framed mechanically by the learned Trial Court, without there being any substantial material against the revisionist. It is also contended that the learned Trial Court should have taken into consideration both the victim's examination-in-chief and cross-

examination, where she has given contradictory statements. It is also pointed out that initially, the victim had alleged that both accused persons had forcibly established sexual relations with her, but before the learned Trial Court, she stated uncertainty about whether both had committed the said acts. It is also stated that the eyewitness 'G' did not support the prosecution's case, and denied that the victim was forced to consume alcohol or was assaulted against her will. As per the prosecution, co-accused Ankit Jain had recorded the video of the victim and her friend 'G'. However, the victim's statements regarding when she became aware of the video are contradictory-- her complaint states she learnt of it when it became public, whereas her statement under Section 164 of Cr.P.C. claims that Ankit Jain had sent it to her the next day. Therefore, on these grounds, it is prayed that the present petition be allowed and impugned order be set aside.

6. On the other hand, the learned APP for the State argues that the allegations against the present revisionist are serious in nature. It is pointed out that he had absconded and was declared proclaimed offender due to which charges were not framed against him initially, but were framed against co-accused Ankit Jain. It is submitted that at the stage of charge, only prima facie view is to be taken and considering the contents of the chargesheet, including the statements of the victim and other evidence on record, the present petition ought to be dismissed.

7. This Court has heard arguments addressed on behalf of both the parties and has perused the material available on record.

8. The allegations against the revisionist, in a nutshell, are that he, along with co-accused Ankit Jain, had called the victim to Twin Tree Hotel, Naraina, on 29.09.2018 under the pretext of attending a party. He had allegedly forced the victim to consume alcohol, sexually assaulted (raped) her, and had recorded an obscene video involving her and another girl, 'G'. He had later, along with co-accused Ankit Jain, threatened to make the said video public. Based on these allegations, charges were framed against him for offence under Sections 328/376D/354C/201/174A of IPC, along with Sections 66E/67A of the IT Act.

9. This Court has perused the statement of the victim recorded under Section 164 of Cr.P.C., which reveals that she was introduced to the revisionist Vivek Chandela by co-accused Ankit Jain a day before the incident. On 29.09.2018, she was invited to a party at Twin Tree Hotel, Naraina, where she was allegedly compelled to consume alcohol despite her initial reluctance. Under the influence of alcohol, she became intoxicated, following which revisionist Vivek Chandela had allegedly established physical relations with her forcibly and had recorded an obscene video involving her and another girl, [G]. The victim became aware of the existence of these videos when co-accused Ankit Jain later sent them to her via WhatsApp and informed her that Vivek Chandela had recorded them. Subsequently, the videos were circulated in various WhatsApp groups, including those involving [G]'s family members and colleagues, leading to immense distress and humiliation for both the victim and [G]. The victim had thereafter confronted Ankit Jain, who admitted that the videos had been made public and assured her that he would have them deleted, but despite such assurances, the videos continued to spread, prompting the victim to file a police complaint on 19.10.2018.

10. It is well-settled that at the stage of framing of charge, the Courts are required to give due consideration to the material placed on record along with the investigation and the facts determined therefrom. At this stage, the Courts are not vested with the authority to delve into the probative value of evidence, nor are they permitted to engage in a mini-trial. The Court's role remains circumscribed, i.e. confined to the determination of whether there exists a prima facie case and suspicion against the accused that justifies the framing of charges and initiation of trial. In this regard, the Hon'ble Supreme Court in Bhawna Bai v. Ghanshyam: (2020) 2 SCC 217, has observed as under:

[3]. ...At the time of framing the charges, only prima facie case is to be seen; whether case is beyond reasonable doubt, is not to be seen at this stage. At the stage of framing the charge, the court has to see if there is sufficient ground for proceeding against the accused. While evaluating the materials, strict standard of proof is not required; only prima facie case against the accused is to be seen.

11. In Manendra Prasad Tiwari v. Amit Kumar Tiwari and Anr.:

2022 SCC OnLine SC 1057, the Hon'ble Supreme Court explained the well-settled law on exercise of powers under Section 397 and 482 of Cr.P.C., while adjudicating a challenge to an order on charge. The relevant observations are set out below:

[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, the 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, 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.

12. The learned counsel for the revisionist argued that the complaint was lodged 20 days after the alleged incident, without any explanation for the delay. This Court, however, notes that it is well established that minor delays in reporting sexual offences are not uncommon and do not, by themselves, discredit the version of the complainant/victim. Victims of sexual assault often experience trauma, fear of social stigma, and intimidation, which may prevent immediate reporting. At the stage of framing charges, the Court is only required to take a prima facie view to ascertain whether a case, warranting a trial, is made out. Any argument regarding the delay in lodging the complaint can be appropriately raised during the course trial.

13. Further, the argument that the victim had filed the complaint only after the video had become public also does not absolve the accused persons of the charges. The unauthorized recording and

circulation of such content prima facie constitute offences under Sections 66E and 67A of the IT Act. Furthermore, the very existence and circulation of such a video also prima facie substantiates the victim's claim of commission of sexual assault upon her by the accused persons and absence of her consent.

14. Insofar as the arguments regarding discrepancies in statements of victim is concerned, it is well-settled that at the stage of charge, an accused, especially in case of sexual assault, cannot be discharged only on the ground of discrepancies in the FIR and statement under Section 164 of Cr.P.C. [Ref: Hazrat Deen v. State of Uttar Pradesh:

2022 SCC OnLine SC 1781]

15. The learned counsel for the revisionist further contends that while the revisionist was declared a proclaimed offender, the testimony of the victim was recorded in the trial against the co-accused, wherein material contradictions have emerged. He argues that this testimony, recorded during the co-accused's trial, should also have been considered, along with other material submitted with the chargesheet, for the purpose of framing charges against the revisionist, which would have made it clear that no prima facie case was made out against the revisionist.

16. However, this Court finds no merit in the aforesaid contention. At the stage of framing charges, the Court is required to assess whether a prima facie case is made out - solely on the basis of the material brought on record by the prosecution during the course of investigation and after hearing the arguments of both sides. Even the defence of an accused is not to be considered at this stage, unless in rare cases, where it is of such sterling quality that it completely undermines the prosecution's case, rendering it inherently improbable.

17. In the present case, the testimony of the victim, recorded during the trial of the co-accused, pertains to proceedings conducted after the stage of charge and, therefore, cannot be imported into the present proceedings for determining whether charges should be framed against the revisionist, who had been declared a proclaimed offender and was apprehended at a later stage. Moreover, the testimony has been recorded qua the co-accused and tested on touchstone of cross-examination by the co-accused. The evaluation of contradictions or inconsistencies in such testimony is a matter to be assessed during the trial through cross-examination by present accused and not at the threshold stage of framing of charge. Accordingly, this argument is rejected.

18. It was also argued before this Court that the alleged acts between the revisionist and the victim were consensual in nature, and that the victim and the accused persons were friends. However, this Court is of the opinion that friendship, by its very nature, is founded on mutual respect, trust, and personal boundaries. The accused's alleged actions not only prima facie betray this trust but also constitute a serious violation of the complainant's dignity and privacy. Furthermore, the situation is aggravated by the accused's alleged act of circulating the victim's inappropriate videos on social media platforms, causing irreparable harm to her dignity, reputation, and mental well-being. Such actions cannot be justified under the guise of consent.

19. Thus, in view of the foregoing discussion, this Court is of the considered opinion that the victim in this case has levelled specific and serious allegations against the revisionist and co-accused Ankit.

The victim's statement recorded under Section 164 Cr.P.C., coupled with the evidence on record - including allegations that the accused had forcibly administered alcohol to the victim, sexually assaulted her, recorded obscene videos, and circulated them - prima facie establishes a case against the accused. The fact that the revisionist herein was declared a proclaimed offender and had subsequently disposed of the mobile phone used at the time of the commission of alleged offence further aggravates the concerns surrounding his conduct.

20. Therefore, for the reasons recorded hereinabove, this Court finds no reasons to interfere with the impugned order.

21. The revision petition is accordingly dismissed.

22. Nothing expressed hereinabove shall tantamount to an expression of opinion on the merits of the case.

23. The judgment be uploaded on the website forthwith.

DR. SWARANA KANTA SHARMA, J APRIL 8, 2025/ns