

# Ms S vs State And Others on 8 April, 2025

**Author: Swarana Kanta Sharma**

**Bench: Swarana Kanta Sharma**

\$~  
\* IN THE HIGH COURT OF DELHI AT NEW DELHI  
% Judgment delivered on  
+ CRL.REV.P. 629/2024  
MS S  
Through: Mr. Ranbir Singh,  
Vardhan Shar  
Harsh Saini, Advo  
versus  
STATE AND OTHERS  
Through: Mr. Naresh Kumar  
APP for the State  
+ CRL.REV.P. 1167/2024 & CRL.M.A. 28708/2024  
THE STATE NCT OF DELHI  
Through: Mr. Naresh Kumar  
APP for the State  
versus  
SATYA PRAKASH  
Through: None.  
CORAM:  
HON'BLE DR. JUSTICE SWARANA KANTA SHARMA  
JUDGMENT

DR. SWARANA KANTA SHARMA, J

1. These criminal revision petitions have been preferred by the prosecutrix „S as well as the State, assailing an order dated 19.03.2024 [hereafter „the impugned order ] passed by the learned Additional Sessions Judge, (S.F.T.C.)-01, Tis Hazari Courts, Delhi [hereafter „Sessions Court ], by way of which the accused Satya Prakash has been discharged in case arising out of FIR No. 388/2021, registered for offence punishable under Sections 354/376/506 of the Indian Penal Code, 1860 [hereafter „IPC ] at Police Station Nangloi, Delhi.

2. Briefly stated, the facts of the present case are that the present FIR was registered on 18.06.2021, on the basis of the statement of the prosecutrix. The prosecutrix had alleged that two-three years prior to the date, she used to live with her husband and children in a flat situated in Mundka, Delhi; however, the maternal uncle of her husband i.e. accused Satya Prakash had fraudulently got the

same registered in his name. She disclosed that in April 2021, her husband had got infected with Covid-19 and the accused Satya Prakash, had got her a room near Nangloi metro station, stating that her children and she may also contract Covid-19. Then the accused had started visiting her residence again and again, and deceptively, he had made her sign documents of her flat. Making further use of the opportunity, he had started doing „chhed-chhad with her. She further stated that when her husband had returned from hospital, she had informed everything to him and they had started residing in Gurugram. The prosecutrix also alleged that earlier, when they used to live in Mundka, the accused never used to visit them; however, when her husband had got admitted in the hospital, the accused had started repeatedly visiting her after deceptively sending her at a room in Nangloi, and that he had „bad eyes upon her . The FIR was initially registered for offence under Section 354 of IPC.

3. In her statement recorded under Section 164 of Cr.P.C., the prosecutrix alleged that in April 2021, when her husband was infected with Covid-19 and admitted to the hospital, she had received a call from her husband s maternal uncle, the accused Satya Prakash. He had persuaded her to accompany him along with her children, assuring her that he would keep them safe from the infection. Concerned for the well-being of her minor children i.e. a six-year-old daughter and a two-and-a-half-year-old son, the prosecutrix had agreed and, at his behest, proceeded to Mundka Metro Station, from where they had boarded a bus to Uttam Nagar. The prosecutrix stated that they had stayed in Uttam Nagar for a day before being sent to Najafgarh, where two men, allegedly relatives of the accused, had attempted to molest her. They had allegedly touched her inappropriately on her chest and back and, when she had resisted, they had threatened to kill her children. Out of fear, she had remained silent and continued to stay there for a week. Subsequently, the accused Satya Prakash had taken her to a room near Nangloi Metro Station, where she was allegedly confined for 25 days. He had prohibited her from stepping out, warning her that he had stationed his men outside. Around 15.04.2021, the accused had separated her from her children and coerced her into transferring ownership of her flat in Mundka to his name, threatening that he would only release her children if she complied with his demand. Three men, including one who had whispered instructions to her, had then taken her to an office that was purportedly a registration center, where they had compelled her to sign documents. The prosecutrix further alleged that during her confinement in the room situated in Nangloi, the accused Satya Prakash had raped her multiple times, warning her that if she resisted, he would kill her children. She disclosed that she had eventually managed to approach the Nangloi Police Station and lodged a complaint on 18.06.2021; however, the police recorded the offence as „chhed-chhad instead of the more serious allegations of „galat kaam .

4. The medical examination of the prosecutrix was conducted on 22.06.2021 wherein she reiterated her allegations as levelled in statement recorded under Section 164 of Cr.P.C., and it was specifically recorded that accused Satya Prakash had done sexual intercourse with her without her consent.

5. After completion of investigation, chargesheet was filed against the accused Satya Prakash for offence under Sections 354/376/506 of IPC. By way of the impugned order, the learned Sessions Court was pleased to discharge the accused in the present case.

6. The learned counsel appearing for the prosecutrix as well as learned APP for the State argue that the impugned order is perverse, manifestly erroneous and demonstrably unsustainable in the eyes of law, and requires interference of this Court, as the learned Sessions Court has erroneously discharged the accused, by conducting a mini trial at the stage of charge itself. It is contended that at the stage of framing of charge, the truth of the allegations and the veracity of the evidence is not to be meticulously judged, and at this stage, the Court is only required to find out if there is a prima facie case made out against the accused. The learned counsel argues that there are specific allegations levelled by the prosecutrix against the accused, that he has committed sexual assault upon him on several occasions, however, the learned Sessions Court has discharged the accused on the basis of contradictions in the statements of the prosecutrix, which is impermissible in law. Therefore, it is prayed that the present petitions be dismissed.

7. It is apposite to mention that the learned counsel for the accused had appeared on the last date of hearing i.e. 20.12.2024, but on the day when this case was finally heard, no one was present on his behalf. The Court had thus proceeded to hear arguments on behalf of the prosecutrix and the State.

8. This Court has heard arguments addressed by the learned counsel, and has perused the material placed on record.

9. In the present case, it is evident from the perusal of the impugned order that the learned Sessions Court has discharged the accused, primarily on the following grounds: first, that there were contradictions in the statements of the prosecutrix i.e. in the FIR, MLC and statement under Section 164 of Cr.P.C.; second, that there was unexplained delay in lodging the present FIR; and third, that the prosecutrix had motive to falsely implicate the accused.

10. A perusal of the record reveals that the prosecutrix in her statement recorded under Section 164 of Cr.P.C. has levelled specific allegations that the respondent herein had committed „galat kaam i.e. wrong act, with her on three occasions, and had threatened to kill her children. The prosecutrix had also specifically disclosed in the said statement that when she had given her statement in the police station, on the basis of which the FIR was registered, the police had not correctly recorded her complaint and had noted that the accused had committed „chhed-chhad instead of „galat kaam .

11. A perusal of the MLC of the prosecutrix reveals that while she was medically examined by the doctor on 22.06.2021, she had given the history of sexual intercourse with force without her consent, on 17.04.2021. Thus, the MLC dated 22.06.2021 mentions episode of sexual assault. It is also material to note that the prosecutrix herein is not highly educated and therefore, she, in her statement recorded by the learned Magistrate a day before she was medically examined by the doctor, had disclosed that the accused Satya Prakash had committed „galat kaam with her on three occasions.

12. At the stage of charge, as per judicial precedents and the principles laid down by the Hon ble Supreme Court, the Court is not to sift evidence and reach to a conclusion as to whether the material on record will lead to conviction of the accused or not. A strong suspicion on the basis of material available on record, is sufficient to frame charge against an accused.

13. In this Court's opinion, the learned Sessions Court has, in the impugned order, not only discussed, examined and given its conclusive opinion in detail upon the contradictions in the statements of the prosecutrix, but has also held that there was a motive for which the prosecutrix had lodged the present FIR and levelled allegations against the accused. Contrary to the principles laid down for framing of charge against an accused, the learned Sessions Court has proceeded to conduct a mini trial where material available on record has been subjected to scrutiny, to the extent of finding contradictions and motives, as there was improvement in the statement recorded under Section 164 of Cr.PC, which is not permissible under the law.

14. The learned Sessions Court has ignored the fact that the prosecutrix, in her statement under Section 164 of Cr.P.C., had clearly disclosed that while recording her complaint, the police had written that „chhed-chhad was committed by the accused whereas she had used the words „galat kaam . While this statement was recorded by the learned Magistrate on 21.06.2021, the medical examination of the prosecutrix was conducted on 22.06.2021, i.e. the next day, wherein the history given by her to the doctor specifically mentions the date and place of sexual assault committed upon her by the accused.

15. Noteworthy is also the fact that the MLC mentions that she was suffering from Covid-19, as it mentions that she was Covid-19 positive when she was examined and, therefore, when the previous day, her statement was recorded before the learned Magistrate, while she gave her statement that „galat kaam was committed on three occasions by the accused under the threat of causing harm to her children, it could not have been presumed by the learned Sessions Court that the prosecutrix was lying and improving upon her versions. The prosecutrix had explained in her statement that her husband was suffering from Covid-19 infection and had been hospitalized, and during those difficult times, the prosecutrix had been subjected to sexual assault by the accused. Following the principles of framing of charge, the learned Trial Court ought not to have conducted a mini trial at the stage of charge itself, where the prosecutrix is not put to examination and cross-examination to explain as to what meant by the word „galat kaam .

16. Therefore, in this Court's opinion the learned Sessions Court had committed an error and the impugned order, so passed, is in the teeth of the judgment passed by the Hon'ble Supreme Court in case of Hazrat Deen v. State of Uttar Pradesh: 2022 SCC OnLine SC 1781, in which it was held as under:

"Discrepancies between the FIR and any subsequent statement under Section 164 of the CrPC may be a defence. However, the discrepancies cannot be a ground for discharge without initiation of trial."

17. Before parting with this case, this Court once again reiterates that a Magistrate, while recording a statement under Section 164 of the Cr.P.C., must remain conscious of the fact that what is recorded therein forms the basis of further trial, which may benefit either the accused or the prosecution. The ultimate aim of the trial is to achieve justice for either party. While not all cases may result in conviction and, at times, the statement may not reflect the absolute truth, the rights of both the accused and the victim are equally significant in the eyes of the law. The Court must decide the case

solely on the basis of the statement and the evidence available before it. Neither the accused nor the victim should be prematurely castigated, given a clean chit, or held guilty without a fair trial. A criminal trial must proceed in accordance with the principles of law, as laid down by the Hon ble Supreme Court and various High Courts.

18. Unfortunately, the same has not been followed in the present case. Had the learned Sessions Court perused the MLC of the prosecutrix and the history given therein, and the fact that her statement under Section 164 of Cr.PC was recorded a day prior to being medically examined, and the fact that she was Covid-19 positive, it would have become clear that the accused could not have been discharged for commission of offence under Section 376 of IPC, as there are clear allegations that the accused had done „galat kaam (sexual intercourse without consent) with her on two-three occasions. At this stage, there are also clear allegations against the accused, of extending threats to the prosecutrix, in the statement recorded under Section 164 of Cr.P.C.

19. Insofar as offence under Section 354 of IPC is concerned, it is material to note that the FIR was initially registered for in respect of said offence, as the allegation noted in the FIR was of „chhed-chhad . However, since it was clarified by the prosecutrix in her statement under Section 164 of Cr.P.C. as well as MLC, that accused had committed „galat kaam (rape) with her and not „chhed-chhad , no offence is made out under Section 354 of IPC.

20. Therefore, in view of the foregoing discussion, this Court is of the opinion that charges ought to be framed against the accused for offence under Sections 376/506 of IPC.

21. The impugned is accordingly set aside. The learned Trial Court is directed to frame charge against the accused and proceed with the case in accordance with law.

22. It is, however, clarified that nothing expressed herein above shall tantamount to an expression of opinion on merits of the case.

23. The petitions are disposed of in above terms.

24. Copy of this judgment be forwarded to the learned Trial Court for information.

25. The judgment be uploaded on the website forthwith.

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