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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

Date of decision: 06.05.2024

\+ CRL.REV.P. 606/2024

S ..... Petitioner

Through: Mr.Rohit Shukla, Mr.Vivek Kumar Gaurav, Mr.Shawez Chaudhary & Mr.A. Solanki, Advs.

versus

THE STATE OF NCT OF DELHI & ANR. ..... Respondents

Through: Mr.Satinder Singh Bawa, APP. SI Reena, PS Anand Vihar.

CORAM:
HON'BLE MR. JUSTICE NAVIN CHAWLA

NAVIN CHAWLA, J. (ORAL)

CRL.M.A. 13745/2024 (Exemption)

1. Allowed, subject to all just exceptions.

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2. Issue notice.

3. Notice is accepted by Mr.Satinder Singh Bawa, learned APP.

4. This petition has been filed under Sections 397/401 read with Section 482 of the Code of Criminal Procedure, 1973 (in short, 'Cr.P.C.') challenging the order dated 02.04.2024 passed by the learned Additional Sessions Judge (SC-RC), East District, Karkardooma Courts, Delhi in SC No. 223/2024, titled ***State v. Ashish Sharma***, discharging the respondent no.2 from the said case which had been registered pursuant to the Final

Report filed in FIR No. 587/2023 registered at Police Station Anand Vihar, under Section 376 of the Indian Penal Code, 1860 (in short, 'IPC').

Case of the prosecution

5. It was the case of the prosecution that on 29.01.2023, a complaint was received from the petitioner making allegations of rape against respondent no.2, stating that she had met the respondent no.2 on 18th May/June 2018 through Facebook. After a few days, they exchanged telephone numbers and started talking to each other. The petitioner stated that the Respondent no.2 informed her that he used to work in Mumbai and used to do modelling. They then started chatting on WhatsApp. As the petitioner's birthday was on 02.08.2019, respondent no.2 insisted on meeting her in a hotel, which was denied by the petitioner. He then stopped contacting the petitioner. After some time, he again started sending messages to the petitioner, insisting upon meeting her. During that time, the marriage of the petitioner was fixed, and a pre-marriage ceremony was to be performed in September 2021. The same was then cancelled in October 2021 as the brother of the petitioner did not like the family of the prospective boy. Due to constant calls from respondent no.2, the petitioner agreed to meet him, and they met in December 2021/January 2022. They started talking to each other regularly. He then got a booking done in a hotel, but as the petitioner refused to go, the same had to be cancelled. He then again promised to marry the petitioner

and, in April 2022, convinced her to meet him at Park Plaza Hotel Shahdara. He made the petitioner deposit an amount of Rs.2000/- in the Hotel. He also got a bottle of alcohol and forced the petitioner to have sexual relationship with him saying that he was very keen to marry her. The petitioner states that on this promise, she agreed for the same. In May 2022, the marriage of the petitioner was again fixed with another boy belonging to the State of Bihar. A pre-marriage ceremony was done and the marriage was fixed for November 2022. On the asking of respondent no.2, the petitioner again met respondent no.2 in May 2022 at Park Plaza Hotel Shahdara. As respondent no.2 promised to marry her, the petitioner cancelled her *Roka* that was done in Bihar. The complainant also talks about further sexual relationships being established between the parties at Hotel Country INN, Sahibabad, and at Hotel Ginger, in Vivek Vihar. The complainant states that in October 2023, respondent no.2 said that he would not marry the petitioner and admitted that it was only a trap, and he had no intentions to marry her right from the beginning.

6. The above mentioned FIR was registered on the above complaint of the petitioner.

7. On completion of investigation and on basis of the above complaint, a charge-sheet was filed against respondent no.2.

8. As noted hereinabove, the learned Trial Court, by way of the Impugned Order, has discharged respondent no.2.

9. Aggrieved of the same, the petitioner has filed the present

petition.

Submissions by the learned counsel for the petitioner

10. The learned counsel for the petitioner submits that the learned Trial Court has erred in not appreciating that respondent no.2 exercised financial and muscle clout over the petitioner. He had been repeatedly promising the petitioner for marriage, and on the basis of this false promise, had established physical relationship with her. The consent of the petitioner was, therefore, obtained by exercising fraud and deception.

11. He submits that the learned Trial Court has also acted in haste. He submits that a supplementary charge-sheet was filed by respondent no.1, wherein it was stated that the Call Data Records (in short, 'CDRs') analysis of the other mobile number of the victim and the accused was still awaited. The petitioner had also accused the brother, mother, and sister-in-law (Bhabhi) of respondent no.2 of trying to put pressure on her so as to drop the complaint or face defamation in the society. This complaint was also being investigated by asking for a report of the CDRs of the victim's mobile phone. He submits that without awaiting the said reports, the learned Trial Court has proceeded to discharge respondent no.2 in the case.

12. He further submits that respondent no.2, through his brother, got a Memorandum of Understanding (MoU) and certain other papers signed from the petitioner, purporting to be a settlement wherein the petitioner is purported to have agreed to withdraw her complaint against respondent no.2 in exchange

of money. He submits that the petitioner did not receive any amount against the said MoU, and her statement was, on this false pretext, also got recorded under Section 164 of the Cr.P.C., before the learned Magistrate. He submits that in fact, on this very ground, respondent no.2 had also been denied bail.

Analysis and Finding

13. I have considered the submissions made by the learned counsel for the petitioner.

14. At the outset, the Court is cognizant of the test to be applied at the stage of framing of a charge/discharging an accused, which is to find out as to whether the prosecution has been able to make out a case of a strong suspicion that the accused has committed an offence, which, if put to trial, would prove him guilty. The final test of guilt is not to be applied at this stage. However, at the same time, the court is not to act as a mere post office or a mouth piece of the prosecution, but has to consider broad probabilities of the case, the total effect of the evidence and the documents produced before the Court, and any basic infirmity appearing in the case, and other relevant material. If two views are possible and one of them gives rise to suspicion only, as distinguishable from grave suspicion, the Trial Judge will be empowered to discharge the accused. Reference in this made is placed on the judgements of the Supreme Court in ***P.Vijayan v. State of Kerela & Anr.,*** (2010) 2 SCC 398 and ***State of Rajasthan v. Ashok Kumar Kashyap,*** (2021) 11 SCC 191.

15. In ***State of Gujarat v. Dilipsinh Kishorsinh Rao,*** 2023 SCC OnLine SC 1294, the Supreme Court has discussed the parameters that would be appropriate to keep in mind at the stage of framing of charge/discharge, as under:-

> *"**7.** It is trite law that application of judicial mind being necessary to determine whether a case has been made out by the prosecution for proceeding with trial and it would not be necessary to dwell into the pros and cons of the matter by examining the defence of the accused when an application for discharge is filed. At that stage, the trial judge has to merely examine the evidence placed by the prosecution in order to determine whether or not the grounds are sufficient to proceed against the accused on basis of charge sheet material. The nature of the evidence recorded or collected by the investigating agency or the documents produced in which prima facie it reveals that there are suspicious circumstances against the accused, so as to frame a charge would suffice and such material would be taken into account for the purposes of framing the charge. If there is no sufficient ground for proceeding against the accused necessarily, the accused would be discharged, but if the court is of the opinion, after such consideration of the material there are grounds for presuming that accused has committed the offence which is triable, then necessarily charge has to be framed.*
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> xxxxx
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> ***12.** The primary consideration at the stage of framing of charge is the test of existence of a prima-facie case, and at this stage, the probative value of materials on record need not be gone into. This Court by referring to its earlier decisions in the State of Maharashtra v. Som Nath Thapa, (1996) 4 SCC 659 and the State of MP v. Mohan Lal*

Soni, (2000) 6 SCC 338 has held the nature of evaluation to be made by the court at the stage of framing of the charge is to test the existence of prima-facie case. It is also held at the stage of framing of charge, the court has to form a presumptive opinion to the existence of factual ingredients constituting the offence alleged and it is not expected to go deep into probative value of the material on record and to check whether the material on record would certainly lead to conviction at the conclusion of trial."

16. Applying the above test to the facts of the present case, the learned Trial Court has observed that it is the own case of the petitioner herein, that the petitioner of her own free will made physical relations with respondent no.2, though she now claims that her consent was based on a promise by the respondent no. 2 to marry her. She also admitted that in the course of her relationship with the respondent no. 2, she had travelled to Bihar in relation to her own marriage ceremony with another boy. The petitioner is a mature lady of 34 years and would, therefore, be not so naive to have regular sexual intimacy with the respondent no.2 only on basis of his oral words and promise. It is not her case that such sexual relationship was established by respondent no.2 by force or coercion or through blackmail or otherwise. The learned Trial Court, therefore, found that there was no sufficient material to proceed against the respondent no. 2 and it is a fit case to discharge the respondent no.2.

17. I find no infirmity in the above finding of the learned

Trial Court. It is important to note here that the petitioner herself now admits that she entered into a MoU dated 01.12.2023, wherein she had agreed to the quashing of the FIR resulting in the above criminal case. She also admits to have executed an affidavit, wherein at least on the page she admits to have signed, it is mentioned that she has no objection to the respondent no.2 being granted bail and to the FIR being quashed. She also admits to having made a similar statement under Section 164 of the Cr.P.C. before the learned Magistrate. She passes of all these documents and statements by stating that these were made due to threats from the family members of the respondent no.2. It appears that influenced by the said submissions, the learned Trial Court, in fact, by an order date 14.12.2023, refused to grant bail to the respondent no.2. However, in my view, these documents and statements cannot be so easily brushed aside by the petitioner. The petitioner, as noted hereinabove, is a mature lady of 34 years. She had already filed a complaint to the Police against the respondent no.2 and the respondent no.2 was in custody. Even in the statement given before the learned Magistrate under Section 164 of the Cr.P.C, the petitioner never alleged any coercion.

18. Be that as it may, the respondent no.2 has not been discharged on the basis of consent of the petitioner to have the FIR quashed. The order of discharge has been passed on merit after considering the material placed before the learned Trial Court. There is no perversity or unreasonableness in the said

finding.

19. It is to be borne in mind that this Court, in exercise of its revisional jurisdiction, does not sit as a Court of appeal. The powers of revision are extremely narrow and have to be used with due circumspection. The mandate of a revisional Court is to only interfere if and when finding of the Court, whose order is to be revised, is perverse or untenable or erroneous or unreasonable or is based on no material or has ignored the material or where judicial discretion has been exercised arbitrarily or capriciously such that it has resulted in manifest error of law or a flagrant miscarriage of justice. Reference in this regard can be made to the judgement of the Supreme Court in ***Sanjaysinh Ramrao Chavan v. Dattatray Galabrao Phalke,*** (2015) 3 SCC 123. In the present petition, no such case is made out, nor any such infirmity is found in the Impugned Order.

Conclusion

20. Accordingly, I find no merit in the present petition. The same is dismissed.

21. There shall be no order as to costs.

NAVIN CHAWLA, J

MAY 6, 2024/*rv*

Click here to check corrigendum, if any