

(2017) 11 DEL CK 0743

In the Delhi High Court

Case No : Criminal Revision Petition No. 613 Of 2017, Criminal Miscellaneous Application No. 14915, 13394 Of 2017

Lenin Raghuvanshi

APPELLANT

Vs

State Nct Of Delhi

RESPONDENT

Date of Decision : 03-11-2017

Acts Referred:

Code Of Criminal Procedure, 1973 — Section 161, 164, 397, 401
Indian Penal Code, 1860 — Section 328, 376

Citation : (2017) 11 DEL CK 0743

Hon'ble Judges : I.S. Mehta, J

Bench : Single Bench

Advocate : Satish Tamta, Vikram Aditya Bhaskar, Dhruv Tamta, Abhishek Vikram, Shariq Iqbal, Izhar Ahmad

Final Decision : Dismissed

Judgement

I.S. Mehta, J

1. Instant revision petition under Section 397 read with Section 401 of the Code of Criminal Procedure, 1973 has been preferred by petitioner for setting aside the impugned order on charge dated 06.06.2017 and subsequent charge so framed vide order dated 10.07.2017 passed by the learned Additional Session Judge/SFTC-2 (Central), Tis Hazari Courts, Delhi in case No. 51/2017 titled "State vs. Lenin Raghuvanshi" arising out of FIR No. 226/2015 registered under Sections 328/376 IPC at police station Pahar Ganj.

2. Brief facts as per the written complaint of the prosecutrix are that the petitioner is the Executive Director of the People's Vigilance Committee on Human Rights (PVCHR) (herein after referred to as Organisation) situated at SA 4/2A, Daulatpur, Varanasi, Uttar Pradesh. The prosecutrix has a strong desire to help and work for social work and to achieve social justice, that is the reason while she was living and working in Pune as a film curator, where she found out about the Organisation. On April, 2012 she visited the said Organisation where

she met with their staff member, where she was told about all their work is related to social work and their work was backed up with books, articles, conferences, award they received nationally and abroad. The prosecutrix became true believer in social work the Organisation engaged in. On May, 2013 when the prosecutrix was in Rishikesh, Uttarakhand doing yoga, she decided to visit the said Organisation to continue to support their noble work instead of going to Mumbai as originally planned. The petitioner reminded her that she had to go to Delhi first in order to go to Varanasi and he facilitated the process. The said conversation was documented via Gmail chat, then the petitioner told her to stay at same hotel where he would be staying and booked the room for them. On this the prosecutrix insisted to the petitioner that he must be accompanied by his wife or someone from his staff.

3. On the intervening night of May, 13/14, 2013 the petitioner knocked the door of the prosecutrix's room and said that he had got food and cake to celebrate her birthday in his room. At this, the prosecutrix went to the room of the petitioner and had a bite of cake, the petitioner offered her alcoholic drink and upon consumption of the said alcoholic drink everything become blur and somehow the prosecutrix fell asleep in the petitioner's room. When the prosecutrix woke up in the morning, she found that she was naked and noticed that the petitioner had bit her breast, and feeling violated she left the room of the petitioner.

4. On 08.04.2015 the prosecutrix lodged a complaint at police station Phar Ganj, which was registered as FIR No. 226/2015 under Sections 328/376 IPC.

5. Subsequently, vide order dated 19.10.2016 the learned ACMM-01, (Central) took cognizance for the offence punishable under Sections 328/376 IPC and issued summons to the accused. Since the offences under sections 328/376 IPC are exclusively triable by the Court of Sessions therefore, the learned ACMM-01, (Central) Tis Hazari Courts, Delhi vide order dated 14.12.2016 committed the case to the Court of learned District & Sessions Judge, (Hq.), Delhi.

6. Consequently, the learned Additional District Judge on the basis of complaint forming basis of the FIR, history mentioned in the MLC of the prosecutrix and the statements of the prosecutrix under Section 161 Cr.P.C. and Section 164 Cr.P.C. vide order dated 06.06.2017 charged the petitioner under Sections 328/376 IPC. Subsequently, the learned ASJ vide order dated 10.07.2017 framed charge against the petitioner for the offence committed under Sections 328/376 IPC.

7. Aggrieved from the aforesaid orders on charge dated 06.06.2017 and framing of charge dated 10.07.2017 the petitioner has preferred the present revision petition before this Court to set aside the aforesaid orders in case No. 51/2017.

8. The learned senior counsel for the petitioner has submitted that the FIR was filed after a delay of more than 2 years, and the learned Sessions Court while passing order on charge has clearly misconstrued this by stating that "in a traditional bound society prevalent in India ,more particularly, rural area, it be quite unsafe to throw out the prosecution case merely on the ground that there

is some delay in lodging the FIR" on the basis of said opinion it is conveyed as if the prosecutrix belongs from a rural area and bounded by societal pressure which resulted in delay of lodging of FIR. Whereas the fact is this that the prosecutrix is not a citizen of India but resident of Los Angeles, U.S.A and mature independent women aged around 34 years at the time of the incident and highly qualified person who holds a Master of Education degree from Harvard University and High Honour Graduate from UC Berkeley University, which vitiates the claim of the prosecution that she was bound by social pressure.

9. The learned senior counsel has further submitted that in order to establish the claim of the prosecutrix the prosecution would rely on the MLC report, which establishes the occurrence of the incident. In the present case same cannot be ascertained as the prosecutrix had clearly refused to go through any medical examination which further gives benefit of doubt to the petitioner. It is imperative to note that there was no CFSL report filed as there was no recovery of any food stuff or drink to establish the claim of the prosecutrix.

10. The absence of the CFSL report reflects clear fabrication on the part of the prosecution. Moreover, the refusal of the prosecutrix to go through medical examination reflects a huge lacuna in the present case.

11. The learned senior counsel has further submitted that there is no sufficient evidence qua against the present petitioner under section 328/376 IPC. He has further stated that in the present petition there is no medical evidence of the present prosecutrix qua against the present petitioner. Further, there is delay in submitting the complaint and only allegation qua against the present petitioner is made out after a gap of 2 years. The present prosecutrix is an American citizen and during the relevant period she was very much present in India and further submitted that the present petition qua against the petitioner is without sufficient evidences and is not a good law but is misuse of judicial proceedings.

12. The learned senior counsel has submitted that as per the evidence and the statement collected by the police it only shows that after staying for more than 2 hours, the prosecutrix has left the place after she checked in at 10 pm which dose not corroborate with the documentary evidence as filed by the prosecution. Therefore, the charge framed by the lower court is not good law and submitted that impugned order dated 06.06.2017 be set aside.

13. In support of his contentions the learned counsel for the petitioners has relied on the following judgments:-

- i. Rai Sandeep Alias Deepu vs. State (NCT of Delhi); (2012) 8 SCC 21.
- ii. Tameezuddin Alias Tammu vs. State (NCT of Delhi); (2009) 15 SCC 566.
- iii. Santosh Kumar vs. State; 2008 (4) JCC 2919.

14. On the contrary the learned Additional Public Prosecutor for the State has submitted that there are sufficient evidences available against the petitioner

therefore, the present petition be dismissed.

15. Instant revision petition is filed by the petitioner to set aside the impugned order dated 06.06.2017 on the ground that there is no prima facie evidence qua against the petitioner.

16. On perusal of the material placed on record, it appears that the prosecutrix made statement to the police under Sections 161 Cr.P.C. on 09.04.2015 and supplementary statement on 15.10.2015. She has further made statement under Section 164 Cr.P.C. to the learned Magistrate on 09.04.2015 which is supported with the complainant's evidence.

17. It is further in the statement of the victim/prosecutrix that before she was subjected to the sexual assault on her person, she was offered/given alcohol laced with some intoxicant substance because of which she lost consciousness. The incident took place on the intervening night of May, 13/14, 2013. The victim/prosecutrix was examined on 08.04.2015. The MLC of the victim/prosecutrix coupled with the statement of the victim/prosecutrix shows that there is a prima facie case against the petitioner.

18. In the present case there is statement of the victim/prosecutrix under Sections 161 & 164 Cr.P.C. qua the petitioner, and appreciation of the evidence would be seen during the trial. Since the statement of the victim is coming against the petitioner at this stage. The delay of lodging the FIR which is registered on the basis of the said statement could be seen in the light of other factors in the instant case which will be determined during the trial only. Therefore, at this stage there is a sufficient prima facie case for trial is made out against the petitioner and it is not proper to interfere with the Lower Court's order at this stage. Reliance is placed on the judgment of the Apex Court in Hem Chand vs. State of Jharkhand; AIR 2008 SC 1903 wherein the Court has observed as under:-

"The Court at the stage of framing charge exercises a limited jurisdiction. It would only have to see as to whether a prima facie case has been made out. Whether a case of probable conviction for commission of an offence has been made out on the basis of the materials found during investigation should be the concern of the Court. It, at that stage, would not delve deep into the matter for the purpose of appreciation of evidence. It would ordinarily not consider as to whether the accused would be able to establish his defence, if any."

19. Consequently, the present petition is dismissed in the above terms.

20. All pending applications (if any) are also disposed of.

21. One copy of this judgment be placed on the LCR and be sent back forthwith.

22. No order as to costs.