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(2022) 07 DEL CK 0086

In the Delhi High Court

Case No : Criminal Revision Petition No. 458 Of 2019, Criminal Miscellaneous Application No. 10473 Of 2021

Rochish Mathur — APPELLANT

Vs

State Of Nct Of Delhi & Anr — RESPONDENT

Date of Decision : 19-07-2022

Acts Referred:

Code Of Criminal Procedure, 1973 — Section 156(3), 161, 164, 397, 401, 482
Protection of Children from Sexual Offences Act, 2012 — Section 9(l), 9(m), 9(n), 10, 12, 29, 30
Indian Penal Code, 1860 — Section 34, 354, 354A, 354B, 406, 498A, 506, 509
Protection of Women from Domestic Violence Act, 2005 — Section 12

Citation : (2022) 07 DEL CK 0086

Hon'ble Judges : Purushaindra Kumar Kaurav, J

Bench : Division Bench

Advocate : Trideep Pais, Pranav Jain, Sudakshina Prasad, Simon Benjamin, Jasmine Chauhan, Abhinav Sekhri

Final Decision : Dismissed

Judgement

Purushaindra Kumar Kaurav, J

1. This revision under Sections 397/401 read with Section 482 of the Code of Criminal Procedure, 1973 is directed against the order on charge dated 11.02.2019 and consequent framing of charge dated 08.04.2019 against the petitioner, by the learned Additional Sessions Judge- 06 (East) Karkardooma Courts, Delhi in SC No.354/2017.

2. The learned Additional Sessions Judge, vide impugned order, while recording a prima facie finding, has framed charges against the petitioner for offences punishable under Section 10 read with Section 9 (l) (m) (n)/12 of Protection of Children from Sexual Offences Act, 2012 (‘hereinafter referred as ‘POCSO Act’ 2012) as well as offences punishable under Sections 354/354A/354B/506/509 of IPC.

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3. The brief facts of the case are that the respondent no.2/victim (hereinafter referred as 'victim') is the daughter of the accused. On 07.12.2016, an FIR No.0431/ 2016 was lodged by the victim at Police Station Preet Vihar, District-East Delhi, against the petitioner stating therein that the victim was subjected to molestation by the petitioner since 05.06.2012. The full narration of the FIR is not being repeated as the same has been referred by the learned Court below, in extenso. The police after registering the FIR conducted the investigation. The statement under Section 164 of Cr.P.C. was recorded and the MLC of the victim was also got conducted. The victim corroborated her version of the complaint in her statement under Section 164 of Cr.P.C.

4. As per the school record, the date of birth of the victim was found to be 11.04.2002 and, accordingly, on the first date of commission of offence the victim was about 10 years of age. The police during the investigation found that there is sufficient evidence on record to charge-sheet the petitioner for the commission of offence of attempt to rape the victim and further sexual assault on her.

5. After the filing of the chargesheet, the learned Sessions Judge vide first impugned order dated 11.02.2019 has found that the petitioner has prima facie found to have committed offence punishable under Section 10 read with Section 9 (l) (m) (n)/12 of POCSO Act as well as offence punishable under Section 354/354A/354B/506/509 of IPC. Accordingly, vide order dated 08.04.2019 the learned court below has framed charges for the said offence.

6. The petitioner being aggrieved by the order on charge and order on framing of charges has filed this instant revision petition on various grounds. The case of the petitioner is that no case for the aforesaid offences is made out and the entire prosecution is manifestly attended with mala fide and malicious motives for wreaking vengeance against petitioner.

7. The learned Senior Counsel appearing for the petitioner submits that if the entire facts of the case are examined in the right perspective, it would appear that the FIR has been lodged at the behest of the wife of the petitioner and in view of the law laid by the Hon'ble Supreme Court in the matter of State of Haryana & Ors. v. Bhajan Lal and Ors 1992 Supp (1) SCC 335., the same deserves to be quashed. He also placed reliance on decisions of the Hon'ble Supreme Court in the matters of Ahmad Ali Quraishi and Anr. v. State of Uttar Pradesh and Anr. (2020) 13 SCC 435 and Rajiv Thapar and Ors. v. Madan Lal Kapoor (2013) 3 SCC 330. He also placed reliance on two decisions of this Court in the matters of M L Meena v. State (CBI) (2014) SCC OnLine Del 8567 and State v. Dr. Gajraj Singh (2017) SCC OnLine Del 6672.

8. Sh. Trideep Pais, learned Senior Counsel assisted by Sh. Pranav Jain has taken to this Court to various dates which are being summarized as under:

(i) The marriage of the petitioner with the mother of respondent no.2, namely, Mrs. Anu Rochish Mathur, was solemnised on 17.01.2001. The couple was

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blessed with children i.e. victim (D.O.B -11.04.2002) and son Narain Ram Mathur (D.O.B - 03.03.2004).

(ii) They were residing at rental accommodation at Ramesh Park, East Delhi till 2010. Thereafter, they shifted to house no.D-262 UGF Nirman Vihar, Delhi-92.

(iii) On 12.10.2016, Mrs. Anu Mathur (wife of the petitioner) left for her mother's home at Green Park, New Delhi alongwith both the children.

(iv) In the complaint dated 12.10.2016, the wife did not make any allegation.

(v) On 16.10.2016, the wife of the petitioner made another written complaint in Police Station Preet Vihar, DD No.38B dated 16.10.2016 alleging illicit relations of the petitioner with other women.

(vi) On 23.10.2016 the wife of the petitioner came to his house along with one unknown person and had taken away various valuables/goods without the permission of the petitioner.

(vii) On 07.11.2016 the wife of the petitioner made another complaint against the petitioner and his family members alleging allegations of cruelty, harassment, beatings, torture, demand of dowry and retention of dowry/stridhan articles.

(viii) On 18.11.2016 again an improvised criminal complaint was made. On the basis of a complaint dated 18.11.2016 an FIR no.24/2017 dated 07.03.2017 at Police Station Malviya Nagar for offences punishable under Sections 498A/406/34 of IPC was registered.

(ix) On 07.12.2016 another complaint (subject of the present case) has been lodged against the petitioner by the victim where serious allegations of past sexual assault have been made.

9. On the basis of the aforesaid dates and facts, it is argued by the learned Senior Counsel appearing for the petitioner that the entire incident is unnatural and unbelievable. The same is not acceptable and thus, allegations are completely false. To support his submission, he placed reliance on various documents to demonstrate that neither on 05.06.2012 nor on 15.12.2014, the petitioner was at his residence. According to him, the documents placed on record clearly reveal that on 05.06.2012, the petitioner along with his family including his wife and two children boarded into a hotel named 'The Renuka' Shri Renukaji, Himachal Pradesh and the document of the concerned hotel of Himachal Pradesh Tourism Development Corporation has been placed on record which shows that room no.3 was allotted to the petitioner and his family and his arrival was on 05.06.2012 at 8:30 pm and the departure was on 06.06.2012 at 11:00 am. The place where they were to proceed was also mentioned.

10. He further states that even on 15/16.12.2014 in the middle of the month, it is proved by impeccable evidence that the petitioner was not at home on that night and was instead in Sakarpura, Police Station. The petitioner placed reliance on a document received under RTI i.e. DD No. 8B Dated 16.12.2014. According

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to the petitioner the alibi for 05.06.2012 and dated 15/16.12.2014 is established and hence the allegations made in the FIR are completely incorrect. According to him, even the police during the investigation has clearly found that the documents produced by the petitioner after due verification were found to be correct. He further states that the entire story of the sexual assault of the victim has been a concocted at the behest of the wife of the petitioner with an oblique motive to extract huge money from the petitioner.

11. He has specifically pointed out that the victim is changing her stand at each stage. According to him in a handwritten complaint dated 07.12.2016, she stated that she was molested at her residence on the intervening night of 05.06.2012-06.06.2012 and on the intervening night of 15.12.2014 to 16.12.2014. However, she did not mention any date in her statements recorded under Sections 161 and 164 of Cr.P.C. He also submits that both the victim and her mother improved their stand in supplementary statement and examination in chief. He further submits that the wife of the petitioner did arrive at a settlement and executed MoU on 28.11.2017 (P-9). The wife of the petitioner also executed affidavit of no objection in quashing of FIR on the basis of family/mutual settlement. The said MoU was also partly executed upon and case no.2012 of 2017 titled as Anu Rochish Mathur v. Rochish Mathur under Section 12 of the Protection of Women from Domestic Violence Act, 2005 (in short "PWDV Act", 2005) was withdrawn. Application for withdrawal of case No.354/2017 was also filed. Various steps were taken to comply with the terms of the MoU and part amount of the total agreed amount was also received by the wife of the petitioner.

12. They also filed a petition under Section 482 of Cr.P.C before this court for quashment of FIR No.431/2016 which was registered at Police Station Preet Vihar in CRL.M.C.5159/2017, however, after receipt of certain payment the attitude and behaviour of the wife of the petitioner suddenly changed and she abstained from appearance in the proceedings of CRL.M.C.5159/2017. She started demanding further sum of Rs.50,00,000/- more with the transfer of ownership of certain other properties in Delhi to which the petitioner was not agreed to, as he was not in a position to meet the said demand.

13. The learned Senior Counsel appearing for the petitioner, therefore, submits that the entire proceedings are an abuse of the process of law and the same deserves to be set aside by this Court.

14. Mr. Neeraj Grover, learned counsel appearing for the respondents, vehemently opposed the prayer for quashment of the order on charge and he submits that the learned Additional Sessions Judge has considered all the arguments made by the petitioner and it has been held that the plea of alibi has to be proved during the trial and keeping in view of the nature of allegations and peculiar facts of the case, the petitioner has to be put to trial.

15. The learned counsel appearing for the respondents further states that the allegations in the FIR have to be seen irrespective of the MoU or the conduct of

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the wife of the petitioner. The documents relied upon by the petitioner may have relevance during trial but the same cannot be the basis for quashment of the order of framing of charge. According to him, the examination-in-chief of the victim has already been conducted by the court below and the trial is in progress and at this stage, on the basis of the minor contradictions here and there, this court should not exercise its revisional jurisdiction to interdict the trial proceedings. He also points out that the petitioner had earlier filed a petition under Section 482 being CRL.M.C No.5159/2017 for quashment of subject FIR The said petition was filed on the basis of an earlier settlement dated 28.11.2017. This Court, however, declined to allow the said petition and, therefore, the petitioner withdrew the said petition on 25.04.2018. He also submits that another petition being CRL.M.C. 3904/2018 was also filed for quashment of the said FIR based on a plea of alibi. The same was also withdrawn vide order dated 03.08.2018. He also submits that in the instant case the victim of sexual assault is vulnerable and it would be inappropriate at this stage to conduct a mini-trial and analyse inconsistencies in her statements under Sections 161 and 164 Cr.P.C. with her examination in chief. In any case, the narration in the FIR alone cannot be considered at the stage of framing of charges. To support the contentions, he places reliance on the decisions of the Hon'ble Supreme Court in the matters of Union of India (UOI) v. Prafulla Kumar Samal and Ors. (1979) 3 SCC 4, State of Bihar v. Ramesh Singh (1977) 4 SCC 39, State of Orissa v. Debendra Nath Padhi (2005) 1 SCC 568, Darshan Singh v. State of Punjab (2016) 3 SCC 37, State of Punjab v. Gurmit Singh (2014) 9 SCC 632, Phool Singh v. State of M.P. (2022) 2 SCC 74 and the decision of High Court of Sikkim in the matter of Indra Kumar Pradhan v. State of Sikkim 12 and the decision of High Court of Kerala in the matter of K Noushad v. State of Kerala 2017 SCC OnLine Sikk 81. He lastly places reliance on the provisions of Section 29 and 30 of the POCSO Act to submit that there is a presumption of commission of abetment or attempt to commit an offence if a person is prosecuted under Sections 3/5/7/9 of the POCSO Act. He, therefore, prays that, at this stage, no interference is called for.

16. I have heard learned counsel appearing for the parties and perused the record.

17. A careful reading of the FIR would demonstrate that it is not only on two dates i.e. on 05.06.2012 and on 15.12.2014, the victim alleged sexual assault, there are various instances shown in the FIR, when the victim was subjected to sexual assault. Even in FIR itself the victim stated that the petitioner has been sexually assaulting her since 05.06.2012. It is not that only on 05.06.2012 a particular incident had occurred. She, however, has only explained details of the incident said to have occurred on 05.06.2012. While narrating the said incident, she again stated that the petitioner repeated the act on various other occasions. Before she started narrating the incident of 15.12.2014, there are other instances also, which she has narrated in her FIR. In any case, the petitioner may have strong defence for trial, on the basis of the documents relied upon by

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him, but those documents at this stage cannot completely absolve him from the charges framed against him. Since the submissions made by the petitioner required deeper scrutiny and, therefore, without making any comments on the truthfulness of the submissions, it is observed that the same is required to be considered during the course of trial and at this stage, this court does not find any justification to interfere into the order passed by the Trial court on charge and the order of framing of charges.

18. So far as the judgement relied upon by the petitioner in the case of Bhajan Lal (supra) is concerned, keeping in mind the seriousness of the allegations, the same would not be applicable in the instant case. A careful perusal of the kind of cases mentioned in para no.102 in the case of Bhajan Lal (supra) would clearly demonstrate that the case of the petitioner does not fall in any of the categories mentioned therein. Taking into consideration the seriousness of the allegations, it cannot be said that the case would fall within category No.7 of the said decision. As far as another judgement in the case of Ahmad Ali Quraishi (supra) is concerned, the same relates to a private complaint lodged by the complainant and it is also distinguishable on facts. In the said case, in paragraph No.18, thereof, the Hon'ble Supreme Court has taken note of the fact that on the same allegations, the complainant had filed the application under Section 156(3) of Cr.P.C which was rejected by the Session Judge, holding that no sufficient grounds were made out to register a complaint against appellant therein. The same is not in the case here. So far as the decision in the case of Rajiv Thapar (supra) is concerned, in the said case complaint was lodged by the father of the deceased (Monika Thapar, who was the wife of the accused alleged therein) that complainant suspected that his daughter had been poisoned. The Hon'ble Supreme Court has taken note of the fact that Central Forensic Science Laboratory, New Delhi analysed samples from the stomach, intestine, liver, spleen, kidney, and blood and concluded that the same did not contain any common poison. The father of the deceased made various complaints to the police, however, no case was made out and, therefore, FIR was not registered. Hence, he filed a criminal complaint before the Metropolitan Magistrate, Delhi on 06.07.1993 alleging the unnatural death of Dr. Monica Thapar by poison. After examination of the complaint, the Metropolitan Magistrate, Delhi on 24.08.1995 summoned the accused. The accused filed Section 482 Cr.P.C. Writ Petition before this Court, which was also dismissed. Eventually, the Additional Sessions Judge, Delhi found that no prima facie case was made out against the accused and he was discharged. The complainant filed a criminal revision before this Court. This Court set aside the order passed by the Additional Sessions Judge, hence, the accused therein approached the Hon'ble Supreme Court. It is, under those circumstances, that the Hon'ble Supreme Court has held that firstly, it is to be seen that the material is of sterling and impeccable quality. Secondly, the material relied upon by the accused would rule out the assertions contained in the charges. Thirdly, whether the material relied upon by the accused has not been refuted by the prosecution and lastly whether proceedings with the trial

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would result in an abuse of the process of the court, and if answers to all the aforesaid questions are in the affirmative, then judicial conscience of the High Court should proceed to quash such proceedings and exercise of the power vested under Section 482 of Cr.P.C. In the context of the facts of the present case, I find that a decision such in the case of Rajiv Thapar (supra) would be of no help to the petitioner. So far as the decision in the case of M L Meena (supra) of this Court is concerned, the same does not lay down any principle of law. As far as the last decision in the case State v. Dr. Gajraj Singh (supra) is concerned, the same does not support the case of the petitioner as in the said case revision of the State was dismissed affirming the order passed by the trial court.

19. It is a settled legal position that the Court while passing an order on charges is not expected to weigh the evidence as if trial is being conducted. The test is whether there is sufficient ground for proceeding, and not whether there is sufficient ground for conviction. The Hon'ble Supreme Court in the matter of Sh. Satish Mehra v. Delhi Administration & Anr. 1996 9 SCC 766 had held that if the accused succeeds in producing any reliable material, at the stage of taking cognizance or framing of charges which might fatally effect even the very sustainability of the case, it is unjust to suggest that no such material should be looked into by the Court at that stage. The said view has been held to be incorrect, in a Three Judge decision of the Hon'ble Supreme Court in the matter of Debendra Nath Padhi (supra). It is also to be taken into consideration that in the case of Darshan Singh (supra), it has been held by the Hon'ble Supreme Court that the plea of alibi is required to be proved only after the prosecution has proved its case against the accused. In the instant case the allegations against the petitioner are very grave. Any MoU or no objection submitted by the wife of the petitioner, would not be of any help to absolve the petitioner from the charges made against him.

20. On the basis of the aforesaid discussion, there is no substance in the instant revision petition. Accordingly, the same is dismissed along with pending application.

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