
(2010) 09 DEL CK 0239
In the Delhi High Court
Case No : Criminal R.P. 657 of 2008

State	Vs	APPELLANT
Neeraj Sharma		RESPONDENT

Date of Decision : 15-09-2010

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 161, 164, 173
Penal Code, 1860 (IPC) — Section 482, 506

Citation : (2010) 09 DEL CK 0239

Hon'ble Judges : Sanjiv Khanna, J

Bench : Single Bench

Advocate : Arvind Gupta, app, for the Appellant; Shanmuga Patro, for the Respondent

Judgement

Sanjiv Khanna, J.—By the impugned Order dated 19th August, 2008, the respondent-Neeraj Sharma has been discharged, inter alia, recording that he had rendered only professional services to the main accused-Kapil Dev Sharma and therefore no prima facie case is made out against him.

2. My attention is drawn to the statement recorded u/s 164, Code of Criminal Procedure, 1973 (Code, for short) and the chargesheet. In the statement recorded u/s 164 of the Code by the learned Magistrate, the prosecutrix has specifically named the respondent and several acts have been attributed to the respondent personally including payment of money, taking the prosecutrix to the doctor, etc. I am not going into the specific factual aspects, lest this causes any prejudice to the respondent. Similarly, the chargesheet refers to the statement of the prosecutrix recorded u/s 161 of the Code wherein the name of the respondent is mentioned and again specific acts attributable to him in personal capacity have been stated. Whether these allegations are motivated or correct cannot be decided at this stage. In this connection it will be appropriate to refer to the Order dated 30th November, 2006 passed by the learned Sessions Judge as in the chargesheet the respondent had not been named as an accused. It is

pursuant to the said Order that supplementary chargesheet was filed. Order dated 30th November, 2006 reads:

30.11.2006

Present: Addl. PP for the State. Accused is present in JC. He is represented by Sh. S.S. Tomar, Adv. I have gone through the record. It came to my notice that xxxx went missing from her house on 24.7.2006 and a report was lodged by her father on 28.7.2006. xxxx was recovered on 2.9.2006. After medical examination, she was taken to Ravinder Singh, MM, Karkardooma Courts, Delhi, who recorded her statement u/s 164 Cr.PC. In the said statement, she leveled allegations against accused Kapil Dev Sharma of abduction, sexual assault and her confinement at different places. She also levels allegations against Neeraj Sharma, Adv. detailing therein that Neeraj Sharma, Adv. Took her to a doctor for ossification test. He paid fee of the doctor from his own pocket. Thereafter, Neeraj Shrarma, Adv. sent xxxx along with the accused to Mathura, since courts were closed on 15/16.8.2006. A sum of Rs. 1500/- was paid by Sh. Neeraj Sharma, Adv. to Kapil for that purpose. xxxx and Kapil alighted the train one station before Delhi and went to the house of Neeraj Sharma, Adv. There she was criminally intimidated by the accused not to disclose facts of her sexual defilement before any one. Neeraj Sharma, Adv, also terrorized her not to go along with her parents. These facts speak volumes about the conduct of Neeraj Sharma, Adv. When report u/s 173 Cr.PC was perused, it came to light that no action was initiated against Neeraj Sharma, Adv, since he took those steps in his professional capacity. I am afraid that such professional steps can be taken by an advocate, without coming in conflict with law. Consequently, ASI Jawahar Singh, who conducted the investigation and Inspector Kishan Lal, SHO PS New Usmanpur were summoned for their explanation in the matter.

Inspector Kishan Lal concedes that there are lapses on his part. He presents that a charge sheet would be filed against Neeraj Sharma, Adv. within a period of fortnight, in view of the facts collected during the course of investigation.

Let, Kishan Lal Inspector to take steps under intimation to this court. Sh. S.S. Tomer, Adv. Seeks sometime to advance arguments on charge. Adjourned for steps by Kishan Lal Inspector and for arguments on charge for 15.12.2006.

Sd/-

ASJ/30.11.2006

3. In view of the aforesaid, it cannot be said that no case for framing of charge u/s 506 IPC against the respondent is made out. Whether or not the allegations are right or wrong can be adjudicated and decided only at the trial when evidence is recorded. At this stage, it is premature to disregard the statement of the prosecutrix. The statements of the witnesses including that of the prosecutrix, at this stage, have to be treated as true and then it has to be examined whether it is a fit case in which there should be a trial.

4. In view of the above, the Petition is allowed and the impugned Order dated 19th August, 2008 discharging the respondent is set aside. Charge is accordingly directed to be framed u/s 506 IPC. It is clarified that this Court has not examined whether any other provision of the Indian Penal Code is attracted.

5. The respondent was granted interim protection in a petition u/s 482 IPC which was later on withdrawn and then by the trial court. Respondent-Neeraj Sharma will not be taken into custody for a period of 30 days and will be at liberty to move an application for bail before the learned Sessions Judge.

Petitioner will appear before the learned Sessions Judge on 28th September, 2010.

Petition is disposed of.