

(2023) 02 DEL CK 0062

In the Delhi High Court

Case No : Criminal Revision Petition No. 315 Of 2019

State

APPELLANT

Vs

Sachin Singh & Ors

RESPONDENT

Date of Decision : 08-02-2023

Acts Referred:

Indian Penal Code, 1860 — Section 34, 354, 375, 376, 406, 498A, 511

Code Of Criminal Procedure, 1973 — Section 156(3), 161, 164, 200, 227, 397, 401(5)

Citation : (2023) 02 DEL CK 0062

Hon'ble Judges : Amit Sharma, J

Bench : Single Bench

Advocate : Aman Usman, Rajender Yadav

Final Decision : Dismissed

Judgement

Amit Sharma, J

1. The present petition under Section 397 read with Section 401(5) of the Criminal Procedure Code, 1973 ('CrPC') has been preferred by the State against the order dated 15.09.2018, passed by Shri Shailender Malik, learned Additional Sessions Judge (FTC), North West District, Rohini Courts, Delhi, whereby the respondent nos. 2 and 4 have been discharged under Section 376/511 of the Indian Penal Code, 1980 ("IPC").

2. Briefly stated, the facts of the present case are as under:

i. The father-in-law/respondent no. 2 and the brother-in-law/respondent no. 4 attempted to rape the complainant/victim on two different occasions. It is alleged that on 14.04.2013, at around 2:00 PM, the brother-in-law/respondent no. 4 caught hold of the complainant/victim and attempted to rape her. Similarly, allegedly on 24.07.2013, the father-in-law/respondent no. 2, barged into complainant's room in the night and made an attempt to rape her. On complaining about the alleged incidents to her husband/respondent no. 1 and mother-in-law/respondent no. 3, they allegedly threatened her of dire

consequences, further stating that since the respondent no. 2 is a police officer, no help will be provided to her.

ii. Thereafter, a complaint was made by the complainant/victim to the Commissioner of Police, DCP and SHO Kanjhawala, which was forwarded to CAW Cell. Subsequently, a complaint was also filed by her under Section 200 and 156(3) of the CrPC in the Court of learned Chief Metropolitan Magistrate. Pursuant thereto a FIR bearing no. 362/2014 was registered at PS Kanjhawala on 13.05.2013 for offences under Section 498A/406 IPC.

iii. The statement of the complainant/victim was recorded under Section 161 and 164 of the CrPC, wherein she reiterated the above stated facts. On completion of the investigation, a chargesheet was filed in the Court of learned Metropolitan Magistrate, Rohini Court, Delhi, against the Respondents for the offences under Sections 498A/406/34 IPC and additionally for the offence under Sections 354 against Respondent no. 2 and 4.

iv. The learned Metropolitan Magistrate, vide order dated 21.07.2018, committed the case to the Court of Sessions, stating that since the complainant/victim has made specific allegations of attempt of rape, thus, offence under Sections 376/511 is made out against respondent no. 2 and 4, i.e., the brother-in-law and father-in law of the complainant/victim respectively. The operative part of the order passed by learned Metropolitan Magistrate reads as under:

"...A perusal of the record including the FIR as well as statement of the complainant recorded U/s 164 CrPC, 1973 on 17.09.2015. It is revealed that there are specific allegations against the accused Parvesh (brother-in-law of the complainant/devar) that on 14.03.2013 at about 02:00 pm, accused Parvesh caught hold of the complainant and attempted to commit rape upon her. Further, there are specific allegations against accused Kitab Singh (father-in-law of the complainant) that on 24.07.2013 at about 9 pm, accused Kitab Singh entered into the room of the complainant and attempted to commit rape upon her. These allegations prima facie attracts the commission of the offence punishable U/s 376 r/w Section 511 IPC, 1860, which is exclusively triable by the Hon'ble Court of Sessions. Hence, the present case is committed to the Hon'ble Supreme Court..."

v. On the case being committed to the Court of Sessions, the learned Additional Sessions Judge discharged Respondent no. 2 and 4 under Sections 376/511, however, framed charges against the respondents under Section 498A/406/354/34 IPC. While discharging, the learned Additional Sessions Judge observed as under:

"...in the present case, prosecutrix has simply stated that her brother in law had caught hold of her in order to commit attempt to rape upon her. Such bald allegations to my mind do not make out a offence u/s 376 read with Section 511 IPC. For simple reasons, that there is no allegation of doing a specific act towards the commission of offence of rape but for the timely of intervention in such act. Mere vague allegations that accused tried to commit rape upon her does not ipso

facto attract penal provision of offence u/Section 376 read with Section 511 IPC. Similarly, vague allegations that father in law came inside the room of complainant and caught hold of her and tried to commit rape upon her, would also not be sufficient for attracting charge u/s 376 read with Section 511 IPC. Therefore, for the reasons as discussed above, I conclude offence 376 read with Section 511 IPC does not get attracted. However, accused are certainly liable to be charged for the offences u/s 498-A/406/ 354/34 IPC, which are triable before Ld. MM."

vi. Aggrieved by the said order of discharge, the present petition has been preferred.

3. The learned APP for the State submits that at the stage of framing of charges, the learned Court is not required to weigh evidence but only consider the prima facie allegations made by the victim/complainant. In the present case, specific allegations have been made by the victim/complainant against respondent no. 2 and 4, with regard to attempt of rape on two different instances.

4. Per contra, the learned counsel for the respondents submits that neither any specific allegations have been made by the complainant/victim against the respondent no. 2 and 4, nor are there any evidence on record to prima facie establish their guilt under Sections 376/511 of IPC. It is further submitted that since no act towards the commission of the offence, as defined under Section 375 of IPC has taken place, therefore, they have been rightly discharged by the learned Sessions Court. In this regard, the learned counsel relied upon the judgment of *Tarkeshwar Sahu v. State of Bihar (now Jharkhand)*, IV (2006) CCR 115 (SC), whereby the Hon'ble Supreme Court of India observed as under:

"In the backdrop of settled legal position, when we examine the instant case, the conclusion becomes irresistible that the conviction of the appellant under Sections 376/511 IPC is wholly unsustainable. What to talk about the penetration, there has not been any attempt of penetration to the slightest degree. The appellant had neither undressed himself nor even asked the prosecutrix to undress so there was no question of penetration. In the absence of any attempt to penetrate, the conviction under Section 376/511 IPC is wholly illegal and unsustainable."

5. It is further submitted by the learned counsel that the present petition should be dismissed on the ground of misjoinder of parties since respondent no. 1, 3 and 5 have been wrongly arrayed as parties in the present petition.

6. Heard the learned counsels and perused the records.

7. It is well settled that the scope of exercise of powers under Section 397 CrPC is narrow. The revisional Court is only required to satisfy itself of the correctness and legality of the findings in the impugned order. The Court must exercise jurisdiction under Section 397 CrPC only when the decision against which the revision is directed is perverse in law and has not been passed based on the

evidence on record.

8. This Court has gone through the statement of the complainant/victim, and is of the view that the learned Sessions Court has rightly observed that to attract framing of charge for the offence under Section 376 read with Section 511 of IPC, it is essential that the attempt should have been at an advanced stage. The relevant portion of the order reads as follows:

"...therefore for the offence of attempt to rape the accused must have so advanced in his actions that it would have resulted into rape had some extraneous factors not intervened. It means there must be specific allegation and evidence on record to prima facie establish that accused has done an act towards commission of offence of rape as defined in section 375 IPC, but for intervention in that act..."

9. In view thereof, this Court does not find any illegality or infirmity in the impugned order. The learned ASJ, based on the material on record, has rightly discharged the respondent herein for offences punishable under Sections 376/511 of IPC. The Hon'ble Supreme Court, in *Dilawar Balu Khurane v. State of Maharashtra*, (2002) 2 SCC 135 has observed that while framing charges, the Judge has the power to ascertain whether the materials on record disclose 'grave suspicion' against the accused, which has not been explained. It has been held as under:

"12. Now the next question is whether a prima facie case has been made out against the appellant. In exercising powers under Section 227 of the Code of Criminal Procedure, the settled position of law is that the Judge while considering the question of framing the charges under the said section has the undoubted power to sift and weigh the evidence for the limited purpose of finding out whether or not a prima facie case against the accused has been made out; where the materials placed before the court disclose grave suspicion against the accused which has not been properly explained the court will be fully justified in framing a charge and proceeding with the trial; by and large if two views are equally possible and the Judge is satisfied that the evidence produced before him while giving rise to some suspicion but not grave suspicion against the accused, he will be fully justified to discharge the accused, and in exercising jurisdiction under Section 227 of the Code of Criminal Procedure, the Judge cannot act merely as a post office or a mouthpiece of the prosecution, but has to consider the broad probabilities of the case, the total effect of the evidence and the documents produced before the court but should not make a roving enquiry into the pros and cons of the matter and weigh the evidence as if he was conducting a trial (see *Union of India v. Prafulla Kumar Samal* [(1979) 3 SCC 4 : 1979 SCC (Cri) 609])."

10. In view of the facts and circumstances of the case, this Court finds no reason to interfere with the impugned order. The present revision petition is dismissed and disposed of accordingly.

11. Pending applications, if any, also stand disposed of.