

(2025) 07 DEL CK 0923

In the Delhi High Court

Case No : Criminal Revision Petition No.143 Of 2018

State Govt Of Nct Of Delhi

APPELLANT

Vs

Mukesh & Anr

RESPONDENT

Date of Decision : 18-07-2025

Acts Referred:

Code of Criminal Procedure, 1973 — Section 164
Indian Penal Code, 1860 — Section 34, 323, 342, 376, 376(2), 377
Protection of Children from Sexual Offences Act, 2012 — Section 6

Citation : (2025) 07 DEL CK 0923

Hon'ble Judges : Girish Kathpalia, J

Bench : Single Bench

Advocate : Amit Ahlawat,

Final Decision : Allowed

Judgement

Girish Kathpalia, J

1. The State has assailed order dated 10.10.2017 of the learned trial court limited to the extent of discharging the accused persons (respondents herein) of offence under Section 323/342 IPC in case FIR No. 430/2016 of PS New Ashok Nagar. I have heard learned APP for State and learned counsel for respondents, who took me through the digitized record of the trial court.

2. Briefly stated, the prosecution case as unfolded from the FIR registered on the statement of prosecutrix is as follows. The prosecutrix studied till 5th standard and had been working as a receptionist in a company owned by the present respondent no. 1. In the said company, respondent no.2 also was working. Respondent no. 2 is wife of respondent no.1. Respondent no. 1 entrapped the prosecutrix with his sweet talk and convinced her that he would get married with her after getting his marriage with respondent no. 2 dissolved by way of decree of divorce. On the pretext of getting married, respondent no. 1 developed physical relations with prosecutrix repeatedly. On 27.07.2016 when the prosecutrix went to the house of respondents in order to discuss her marriage

with respondent no. 1, both respondents started beating her up and confined her in their home. After threatening to get her booked in some false case, respondents called the PCR, which took all of them to the police station. At the police station on the basis of above narration by the prosecutrix, the FIR was registered for offence under Section 376/377 IPC. After investigation, the local police filed chargesheet against the respondents for offences under Section 376/377/323/342/34 IPC and 6 POCSO Act.

3. After committal of the chargesheet, the learned trial court heard both sides on the issue of charge. By way of the order impugned in the present case, learned trial court held that charge for offence under Section 376(2)/377 IPC and Section 6 of the POCSO Act was made out against respondent no.1 and accordingly, charge was framed against him. But, as regards respondent no. 2, the trial court held that no offence at all was made out, so she was discharged. Hence, the present revision petition, assailing the discharge of the respondents qua offences under Section 342 and 323 IPC.

4. During arguments, learned prosecutor takes me through the aforesaid and contends that the impugned order to the extent of discharge of both the respondents for offence under Section 323/342/34 IPC is not sustainable. Learned prosecutor contends that at the stage of consideration of charge, only prima facie view has to be formed, which in the present case clearly makes out offences under Section 323/342/34 IPC against both the respondents.

5. On the other hand, learned counsel for respondents argues that in the MLC of the prosecutrix, there is no allegation of beatings or confinement, therefore, it is not possible to believe that the prosecutrix was confined or beaten up and consequently the impugned order is correct. Learned counsel for respondents also submits that since the MLC does not disclose any injury suffered by the prosecutrix, no offence under Section 323 IPC is made out and therefore, the impugned order is correct.

6. To begin with, the FIR which was registered on the statement of the prosecutrix explicitly states that when she went to house of the respondents, they confined her in the house and also beat her up. Learned trial court took a view that since MLC of the prosecutrix does not mention any injury, charge for offence under Section 323 IPC cannot be framed. Further, the learned trial court also observed that in her statement under Section 164 CrPC, the prosecutrix had alleged having received leg blows in abdomen and head struck against wall but no injuries reflected in MLC and that shows no case for charge under Section 323 IPC. As regards charge for offence under Section 342 IPC, the learned trial court took a view that since there is no averment in the FIR that the respondents had tied up hands of the prosecutrix, there was no confinement.

7. On both counts, mentioned above, I am unable to agree with the view of the learned trial court.

8. It is not in dispute that at the stage of framing charge, the court cannot

minutely analyse the material placed on record by prosecution; only prima facie case is to be kept in mind and in case of grave suspicion, charge must be framed.

9. Merely because MLC of prosecutrix does not reflect injuries, the explicit statement of the prosecutrix that she was beaten up cannot be discarded. Whether or not leg blows in abdomen and striking of head against the wall would lead to noticeable injuries, not found in the MLC would be explainable in many ways, which can be done only during trial and not at the stage of charge by minute examination.

10. Similarly as regards the alleged confinement of the prosecutrix, there is an explicit statement of the prosecutrix in the FIR: "mujhe apne ghar band rakha" (I was confined by him in his house). For wrongful confinement, it is not necessary that the victim must be immobilized by tying his hands. Confinement within a room, as alleged in the present case, also would suffice in order to make out a prima facie case for framing charge for offence under Section 342 IPC.

11. Pertaining to the allegations of wrongful confinement as well as voluntary hurt by way of beatings, the statement of prosecutrix in the FIR is clear and specific that the same was done by both the respondents with a common intention. In the statement, the expression "common intention" need not be explicitly stated and the same has to be inferred from the statement.

12. In view of the above discussion, I am unable to uphold the impugned order to the extent of discharge of both respondents for offence under Section 323/342/34 IPC.

13. Therefore, the present petition is allowed, setting aside discharge of the respondents for offence under Section 323/342/34 IPC and matter is remanded back to the learned trial court to decide afresh on these aspects.

14. Both respondents shall appear before the learned trial court on 27.09.2025 when the matter is stated to be already listed.

15. Copy of this order be sent to the learned trial court.