



2025:DHC:11251



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IN THE HIGH COURT OF DELHI AT NEW DELHI

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Date of Decision: December 10, 2025

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CRL.REV.P. 1211/2023 & CRL.M.A. 30781/2023**X VICTIM**

.....Petitioner

Through: Ms. Nikita Sharma & Mr.
Akshay Mishra, Advs.

versus

THE STATE OF DELHI THROUGH S.H.O & ANR.

.....Respondents

Through: Mr. Ritesh Kumar Bahri,
APP for the State along
with Mr. Lalit Luthra,
Adv.
SI Sangeet Malik, PS
Bindapur.
Mr. Anurag Chauhan, Mr.
Tajinder Singh & Ms.
Kanishka Negi, Advs. for
R-2.**CORAM:****HON'BLE MR. JUSTICE AMIT MAHAJAN****AMIT MAHAJAN, J. (Oral)**

1. The present Criminal Revision Petition has been filed under Sections 397 and 401 of the Code of Criminal Procedure, 1973, ('CrPC') assailing the order on charge dated 04.05.2023 (hereinafter '**impugned order**') passed by the learned Additional Sessions Judge (SFTC) in case No. SC-234/2023, whereby the Respondent No. 2/Accused was discharged for the offence under Section 376 of the Indian Penal Code, 1860 ('IPC') and the charge was directed to be framed only under Section 509 of the IPC.



2. Succinctly stated, the prosecution case originates from a written complaint dated 07.09.2022, submitted by the prosecutrix at Police Station Bindapur, wherein she alleged that she was residing in a rented accommodation and the Accused/Respondent No. 2- Shailesh Goyal used to collect rent from her. However, the accused started communicating in an inappropriate and obscene manner and also sought to establish physical relations with her. She further alleged that on one occasion, the accused, entered her residence and attempted to misbehave with her. Consequently, on the basis of this complaint, the FIR No. 872/2022 dated 21.12.2022, came to be registered under Section 509 of the IPC.

3. During investigation, the complainant was taken to the spot, a site plan was prepared, and her statement was also recorded. On 28.12.2022, the statement of the prosecutrix, under Section 164 of the CrPC was recorded, wherein, for the first time, she alleged that *“After a few days he came to my house, the door was open. Sailesh came quietly and I was in the kitchen. He caught me from behind and pressed my breasts. He also did fingering. When I started screaming, he ran away.”*

4. The investigating agency thereafter added Section 376 of the IPC and filed a chargesheet for offences under Sections 376/509 of the IPC against the accused.

5. The learned Trial Court, *vide* the impugned order, after considering the record, concluded that the allegation of rape was a belated and bald allegation without any particulars,



unsupported by the FIR or any contemporaneous material, and accordingly discharged the accused for the offence under Section 376 of the IPC while holding that a *prima facie* case existed only under Section 509 of the IPC.

6. Aggrieved, the revisionist/complainant has challenged the impugned order by way of the present petition.

7. The learned Counsel for the Petitioner submits that the learned Trial Court has erred by failing to consider the specific allegations of rape made by the prosecutrix in her Section 164 CrPC statement and therefore, the charge under Section 376 of the IPC ought to have been framed.

8. *Per contra*, the learned Counsels for the Respondents submits that the impugned order is well-reasoned and has been passed after due consideration of the material placed on record. The present petition is bereft of any merit and is liable to be dismissed.

9. Submissions heard and the material placed on record perused.

10. Since the prosecutrix has assailed the impugned order whereby the Respondent was discharged of the offence under Section 376 of the IPC, it will be apposite to succinctly discuss the statutory law with respect to framing of charge and discharge as provided under Section 227 and 228 of the CrPC. The same is set out below:

“227. Discharge If, upon consideration of the record of the case and the documents submitted therewith, and after hearing the submissions of the accused and the prosecution in this behalf, the Judge considers that there is not sufficient ground for proceeding against the accused, he shall discharge the accused and record his reasons for so doing.



228. Framing of Charge

(1) If, after such consideration and hearing as aforesaid, the Judge is of opinion that there is ground for presuming that the accused has committed an offence which—

(a) is not exclusively triable by the Court of Session, he may, frame a charge against the accused and, by order, transfer the case for trial to the Chief Judicial Magistrate, 1 [or any other Judicial Magistrate of the first class and direct the accused to appear before the Chief Judicial Magistrate, or, as the case may be, the Judicial Magistrate of the first class, on such date as he deems fit, and thereupon such Magistrate] shall try the offence in accordance with the procedure for the trial of warrant-cases instituted on a police report;

(b) is exclusively triable by the Court, he shall frame in writing a charge against the accused.

(2) Where the Judge frames any charge under clause (b) of subsection (1), the charge shall be read and explained to the accused and the accused shall be asked whether he pleads guilty of the offence charged or claims to be tried.”

11. The Hon’ble Apex Court, in the case of ***Sajjan Kumar v. CBI : (2010) 9 SCC 368***, has culled out the following principles in respect of the scope of Sections 227 and 228 of the CrPC while observing that a *prima facie* case would depend on the facts and circumstances of each case. The relevant paragraphs read as under:

“21. On consideration of the authorities about the scope of Sections 227 and 228 of the Code, the following principles emerge:

(i) The Judge while considering the question of framing the charges under Section 227 CrPC 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. The test to determine prima facie case would depend upon the facts of each case.

(ii) 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.

(iii) The court 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, any basic infirmities, etc. However, at this stage, there cannot be a roving enquiry into the pros and cons of the matter and weigh the evidence as if he was conducting a trial.

(iv) If on the basis of the material on record, the court could form an opinion that the accused might have committed offence, it can frame the charge, though for conviction the conclusion is required to be proved beyond reasonable doubt that the accused has committed the offence.

(v) At the time of framing of the charges, the probative value of the material on record cannot be gone into but before framing a charge the court must apply its judicial mind on the material placed on record and must be satisfied that the commission of offence by the accused was possible.

(vi) At the stage of Sections 227 and 228, the court is required to evaluate the material and documents on record with a view to find out if the facts emerging therefrom taken at their face value disclose the existence of all the ingredients constituting the alleged offence. For this limited purpose, sift the evidence as it cannot be expected even at that initial stage to accept all that the prosecution states as gospel truth even if it is opposed to common sense or the broad probabilities of the case.

(vii) If two views are possible and one of them gives rise to suspicion only, as distinguished from grave suspicion, the trial Judge will be empowered to discharge the accused and at this stage, he is not to see whether the trial will end in conviction or acquittal.”

(emphasis supplied)

12. The Hon’ble Apex Court in the case of *State of Gujarat v. Dilipsinh Kishorsinh Rao* : 2023 SCC OnLine SC 1294, has discussed the parameters that would be appropriate to keep in mind at the stage of framing of charge/discharge, as under:

“7. It is trite law that application of judicial mind being necessary to determine whether a case has been made out by the prosecution for proceeding with trial and it would not be necessary to dwell into the pros and cons of the matter by examining the defence of the accused when an application for discharge is filed. At that stage, the trial judge has to merely examine the evidence placed by the prosecution in



order to determine whether or not the grounds are sufficient to proceed against the accused on basis of charge sheet material. The nature of the evidence recorded or collected by the investigating agency or the documents produced in which prima facie it reveals that there are suspicious circumstances against the accused, so as to frame a charge would suffice and such material would be taken into account for the purposes of framing the charge. If there is no sufficient ground for proceeding against the accused necessarily, the accused would be discharged, but if the court is of the opinion, after such consideration of the material there are grounds for presuming that accused has committed the offence which is triable, then necessarily charge has to be framed.

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12. The primary consideration at the stage of framing of charge is the test of existence of a prima-facie case, and at this stage, the probative value of materials on record need not be gone into. This Court by referring to its earlier decisions in the State of Maharashtra v. Som Nath Thapa, (1996) 4 SCC 659 and the State of MP v. Mohan Lal Soni, (2000) 6 SCC 338 has held the nature of evaluation to be made by the court at the stage of framing of the charge is to test the existence of prima-facie case. It is also held at the stage of framing of charge, the court has to form a presumptive opinion to the existence of factual ingredients constituting the offence alleged and it is not expected to go deep into probative value of the material on record and to check whether the material on record would certainly lead to conviction at the conclusion of trial.”

13. It is pertinent to note that the Court, at the stage of framing of charge, is to evaluate the material only for the purpose of finding out if the facts constitute the alleged offence, given the ingredients of the offence. Thus, while framing of charges, the Court ought to look at the limited aspect of whether, given the material placed before it, there is grave suspicion against the accused which is not properly explained. Though, for the purpose of conviction, the same must be proved beyond reasonable doubt.

14. In the present case, it is undisputed that the original and



foundational complaint, which forms the very basis of the FIR, contains no allegation whatsoever of rape, penetration, or any act constituting an offence under Section 376 IPC. The allegations therein relate solely to inappropriate conduct, verbal harassment and an instance of attempted misbehaviour, which the police correctly registered under Section 509 of the IPC.

15. It is also noteworthy that while the initial complaint dated 07.09.2022 does not advert to any specific date of the alleged incident, the MLC records the prosecutrix as having mentioned the occurrence to be “*around 25 May*”. The variation, by itself, may not be conclusive, however, the absence of any such indication in the contemporaneous complaint, coupled with the substantial time gap between the purported incident and the medical disclosure, does bear upon the assessment of whether sufficient particulars exist at this stage to support the framing of a charge for an offence under Section 376 IPC.

16. Even the allegation of “*fingering*” and “*attempt to rape*” emerges for the first time in the prosecutrix’s statement under Section 164 CrPC recorded on 23.12.2022. Significantly, even at this stage, the assertions remain wholly devoid of essential particulars as no date, time, month, or surrounding context of the alleged act has been specified. As a result, it is not possible to ascertain whether the allegation of rape relates to the same occurrence, whether it precedes the filing of the FIR, or whether it is alleged to be a subsequent, distinct incident. The absence of such foundational particulars, therefore, directly impacts the



ability of the Court to draw a *prima facie* inference sufficient to frame a charge under Section 376 IPC.

17. At different stages, the complainant has vaguely mentioned the date of the incident to be “*after a few days*” or “*around 25 May*” which are mutually inconsistent and not supported by any other contemporaneous complaint, medical document or evidence.

18. Additionally, the counselling report as well as the MLC record indicate that the prosecutrix expressly refused internal gynaecological examination. While it is settled that absence of medical evidence is not, in itself, fatal to a prosecution for sexual assault, the prosecutrix’s refusal of internal examination, particularly when the allegation was introduced for the first time months after the FIR, further limits the availability of any corroborative medical findings that could have lent *prima facie* support to the allegation of digital penetration.

19. Such a serious allegation, introduced for the first time in a delayed statement and unsupported by the FIR, the medical record, or any witness or forensic material, cannot form the sole basis for framing a charge for an offence as grave as *rape*. The law mandates that even at the stage of charge, the Court must satisfy itself that the accusation possesses basic substantive coherence and is not a mere embellishment or an afterthought.

20. Hence, the learned Trial Court has rightly observed that the belated allegation appears to be a bald assertion without substratum, and this Court finds no perversity in such a



conclusion. The medical examination report does not disclose any finding indicative of penetrative assault, and the chargesheet itself does not reveal any corroborative material. In this backdrop, the Trial Court was justified in refusing to frame a charge under Section 376 IPC.

21. The settled principles of criminal jurisprudence also require the Court to guard against prosecuting an accused on vague, uncorroborated and belated allegations, particularly where the FIR and contemporaneous material do not support the new version.

22. Though a conviction can be sustained solely on the basis of the testimony of the victim if it inspires confidence, yet, at the stage of framing of charges, when the entire material on record completely belies the prosecution case and fails to raise even a grave suspicion against the accused, the benefit there of must ensue to the accused.

23. In view of the above, subjecting the Respondent No. 2 to the rigours of a full-fledged trial in such circumstances would be an abuse of the process of law and cause unwarranted prejudice, when the foundational facts themselves do not disclose the commission of an offence under Section 376 of the IPC.

24. There is no merit in the present petition, which is hereby dismissed. Pending application(s), if any, also stand disposed of.

AMIT MAHAJAN, J

DECEMBER 10, 2025

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