

**IN THE HIGH COURT OF DELHI AT NEW DELHI**

% Judgment delivered on:13.01.2025

+ **CRL.REV.P. 11/2023**

**KANWALJEET DHAMMI**

.....Petitioner

versus

**STATE OF NCT OF DELHI**

..... Respondent

**Advocates who appeared in this case:**

For the Petitioner : Mr. Jayant K. Sud, Sr. Adv. with Mr. Shivam Jasra, Mr. Kartik Jasra, Ms. Vidhi Sharma, Mr. Sai Manik Sud, Ms. Shayal Anand, Mr. Prannit Stefano, Mr. Gaurav Meghwal & Mr. Akash Basoya, Advs.

For the Respondent : Mr. Ajay Vikram Singh, APP for the State. SI Anup Rana.  
Mr. Ajay Malhotra with Mr. Angad Singh Khanna, Advs. for R-2.

**CORAM  
HON'BLE MR JUSTICE AMIT MAHAJAN**

**JUDGMENT**

1. The present petition is filed under Section 397 read with Section 482 of the Code of Criminal Procedure, 1973 ('CrPC') challenging the order dated 30.09.2022, passed by the learned Trial Court, in SC No. 67/2021 arising out of FIR No. 724/2020, registered at Police Station Paschim Vihar West, whereby formal charge for the offences



punishable under Sections 376(2)(n)/506 of the Indian Penal Code, 1860 ('**IPC**') was framed against the petitioner.

2. At the outset, it is noted that the name of the prosecutrix has erroneously not been masked in the case record as well as order dated 06.01.2023, passed by a Coordinate Bench in the matter, wherein an oral request was made to implead Respondent No.2. It is trite law that in sensitive matters as the present one, the name and identity of the victim ought not to be mentioned. Therefore, this Court considers it apposite to direct the Registry to redact the name and identity of the prosecutrix in the entire case record, including the previous order.

3. The brief facts of the present case are as follows:

3.1. On 31.08.2020, FIR No. 724/2020 was registered at Police Station Paschim Vihar West for the offences under Sections 376/354/506/323 of the IPC. The petitioner is the younger brother of Respondent No.2's father. Respondent No.2 along with her mother and three brothers had shifted to the residence of the petitioner in the year 1988, after the death of her father. Respondent No.2 at that time was only 10 years of age. It is alleged that sometimes when there were no other members in the house, the petitioner used to forcefully catch Respondent No.2 on some pretext and take her to the bathroom on the terrace. It is alleged that the petitioner used to rape Respondent No.2 in the bathroom and when she protested, he threatened to kill Respondent No.2's mother and brothers. Even though Respondent No.2 complained to her mother about the same, however, she allegedly took no action as she had no source of income and was dependant on the petitioner. It is further alleged that on one day, when



Respondent No.2 was sleeping in her room, the petitioner took her to his room and raped her there. It is alleged that the petitioner kept raping Respondent No.2 by taking advantage of her circumstances. The petitioner allegedly also administered some drugs to Respondent No.2 and her health allegedly started deteriorating due to the same. Respondent No.2's mother allegedly scolded the petitioner whereafter he had given beatings to Respondent No.2 and her mother. It is alleged that Respondent No.2's mother made a complaint to the police, however, the matter was buried after the petitioner apologised. It is further alleged that the petitioner again started raping Respondent No.2 whereafter Respondent No.2 and her family shifted to a separate house. The petitioner allegedly started threatening Respondent No.2 that he will defame her by showing her video to people. The petitioner allegedly also threatened to implicate Respondent No.2's brothers in a false theft case.

3.2. In her statement under Section 164 of the CrPC, Respondent No.2 reiterated the allegations. She stated that the incidents relate back to the year 1988 when she and her family had shifted to the house in Paschim Vihar. She stated that the petitioner used to rape her in the bathroom on the roof. She also stated that he used to give her a medicine and rape her during the day, and he used to threaten her that he will throw out her mother and brothers from the house if she told anyone about the incidents. She alleged that she had told her mother about the same in the year 1988 itself who in turn told her grandparents, however, they pressurised Respondent No.2 and her mother to not report the incidents to the police. In the year 1990,



Respondent No.2 and her family started living separately from the petitioner, however, the petitioner used to rape her repeatedly whenever her mother used to go to Punjab for collecting the pension. She also alleged that the petitioner was threatening her to take back the case and to tell everything to her husband.

3.3. Chargesheet was filed against the petitioner for the offences under Sections 376(2)(f)/323/354/506 of the IPC. During investigation, no information could be found about the earlier complaint as the record had been destroyed. The petitioner was interrogated who informed that property disputes were going on between him and his brother's family. It was found that FIR No. 52/2009 had been registered at the instance of the petitioner's son against the brother of the complainant for offences under Sections 420/468/471/448/34 of the IPC. It was noted that the petitioner was not arrested as no evidence had come on file against him.

3.4. The petitioner preferred an application seeking further investigation in relation to photographs of Respondent No.2 and the petitioner in family functions, video recording of Respondent No.2 in the petitioner's house, statement of the petitioner's relatives, etc., which was dismissed by the learned Trial Court by order dated 04.12.2021. The petitioner challenged the said order before this Court in CRL.M.C. 1236/2022. By order dated 25.03.2022, this Court directed that all documents/ records be placed before the learned Trial Court and considered as per law at the time of arguments on charge.

3.5. By order on charge dated 17.09.2022, after going through the complaint as well as the statement of Respondent No.2 under Section



164 of the CrPC, the learned Trial Court found that a *prima facie* case is made out against the petitioner for the offences under Sections 376(2)(n)/ 506 of the IPC. It was observed that on perusal of the documents adduced by the petitioner, it is not made out that the prosecution case is absurd. It was noted that the photographs merely present the probability of the relation between the parties and the affidavits of the relatives are of no assistance till the deponents aren't present in the witness box.

3.6. By the impugned order, formal charges were framed against the petitioner.

4. The learned senior counsel for the petitioner submitted that the allegations relate back to incidents that allegedly took place more than 30 years back and they are not substantiated by any evidence. He submitted that the complaint has been made with the sole intention of arm twisting the petitioner into withdrawing the FIR registered against the brother of Respondent No.2.

5. He submitted that the petitioner had been receiving threats from Respondent No.2 and her family members that he will be falsely implicated if he did not take back the case against her brother and he had made two complaints on 16.08.2020 and 28.08.2020 in relation to the same.

6. He submitted that the petitioner and Respondent No.2 had never lived together during the time of the alleged offence and there were 20 family members living in the house of 200 sq. yards. He submitted that as per the owner of the house where the incidents allegedly took



place, the roof and bathroom were never in possession of the petitioner and his family members.

7. He submitted that the photographs show that the parties were attending functions and shared a cordial relationship.

8. He submitted that even though, Respondent No.2 got married in the year 1999, however, there is an unexplained inordinate delay in filing of the complaint and the same is fatal to the case of the prosecution. He further submits that it has been acknowledged in the chargesheet that no evidence was found against the petitioner and the entire case is based on the statement of the prosecutrix under Section 164 of the CrPC.

9. *Per contra*, the learned Additional Public Prosecutor for the State submitted that the learned Trial Court has adequately appreciated the material on record. He submitted that the contents of the FIR and the statement of the victim recorded under section 164 of the CrPC make out a *prima facie* case against the petitioner.

10. The learned counsel for Respondent No.2 vehemently opposes the present petition and submitted that the allegations in the present case are heinous in nature as Respondent No.2 was repeatedly raped by the petitioner when she was merely 10 years old.

11. He submitted that the arguments taken by the petitioner are in the nature of defence and they cannot be examined by the Court at this stage.

12. He submitted that it is settled law that the mere statement of the prosecutrix under Section 164 of the CrPC is sufficient to make out a case against the accused and it is to be only seen that the same



provides a ground for proceeding against the accused. He submitted that the allegations made against the petitioner are clear and specific and the petitioner is liable to face trial.

13. He submitted that Respondent No.2 has made specific allegations against the petitioner and she cannot be precluded from proving the allegations in trial.

### **ANALYSIS**

14. At the outset, it is relevant to note that the scope of interference by High Courts while exercising revisional jurisdiction in a challenge to order framing charge is well settled. The power ought to be exercised sparingly, in the interest of justice, so as to not impede the trial unnecessarily. It is not open to the Court to misconstrue the revisional proceedings as an appeal and reappreciate the evidence unless any glaring perversity is brought to its notice.

15. Since the petitioner has assailed the impugned order whereby the respondent has been charged for the offences under Section 376(2)(n)/506 of the IPC, it will be apposite to succinctly discuss the statutory law with respect to framing of charge and discharge as provided under Sections 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, 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.”*

16. It is trite law that the learned Trial Court while framing charges is not required to conduct a mini-trial and has to merely weigh the material on record to ascertain whether the ingredients constituting the alleged offence are prima facie made out against the accused persons. The Hon’ble Apex Court, in the case of **Sajjan Kumar v. CBI : (2010) 9 SCC 368**, has culled out the following principles in regards to the scope of Sections 227 and 228 of the CrPC:

*“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)*

17. In a recent decision in *State of Gujarat v. Dilipsinh Kishorsinh Rao* : 2023 SCC OnLine SC 1294, the Hon’ble Apex Court 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.”*

(emphasis supplied)

18. In view of the above, it is clear that this Court, at this stage, is not required to reevaluate the evidence or hold a mini trial as the same would tantamount to this Court assuming appellate jurisdiction. Thus, all that has to be seen is whether the learned Trial Court has adequately appreciated the material on record and whether, given the material placed before it, there is grave suspicion against the accused which is not properly explained.

19. It is the case of the prosecution that the petitioner, who is the younger brother of Respondent No.2's father, had taken advantage of the financial position of Respondent No.2's family and raped her



multiple times in the year 1988 when Respondent No.2 was merely 10 years old.

20. The case of the prosecution in the present case is essentially based on the statement of Respondent No.2.

21. A bare perusal of the order on charge dated 17.09.2022 shows that the learned Trial Court has merely observed that a *prima facie* case is made out from the complaint relying upon the statement made by the prosecutrix under Section 164 of the CrPC.

22. Undisputably, mere testimony of the prosecutrix can be sufficient for the purpose of conviction for the offence under Section 376 of the IPC and the same requires no corroboration. However, even at the stage of framing charges as well, when the primary material on record is only the statement of the prosecutrix, the Court after considering the attending circumstances and other material has to consider whether the same inspires such confidence so as to give rise to grave suspicion against the accused person of having committed the crime.

23. The primary thrust of the petitioner is on the argument that there is a mammoth unexplained delay in registration of the FIR and that the same was registered as a counter blast to an FIR registered at the instance of the petitioner's son against Respondent No.2's brother.

24. The petitioner has also invoked the inherent jurisdiction of this Court in the present case. It is argued that the proceedings are manifestly frivolous and they have been instituted to wreak vengeance against the petitioner. The petitioner has sought to put forth some



photographs showing amicable relations between the families as well as affidavits of certain family members.

25. Reliance has been placed on the case of *Suresh Garodia v. State of Assam* : 2024 SCC OnLine SC 38, where the Hon'ble Apex Court quashed the FIR in a case involving similar circumstances on account of the prosecutrix instituted action after 34 years of the alleged incident. The relevant portion of the aforesaid judgment is reproduced hereunder:

*“12. This Court, in the case of State of Haryana v. Bhajan Lal [1992 Supp (1) SCC 335], has observed thus:*

*‘102. In the backdrop of the interpretation of the various relevant provisions of the Code under Chapter XIV and of the principles of law enunciated by this Court in a series of decisions relating to the exercise of the extraordinary power under Article 226 or the inherent powers under Section 482 of the Code which we have extracted and reproduced above, we give the following categories of cases by way of illustration wherein such power could be exercised either to prevent abuse of the process of any court or otherwise to secure the ends of justice, though it may not be possible to lay down any precise, clearly defined and sufficiently channelised and inflexible guidelines or rigid formulae and to give an exhaustive list of myriad kinds of cases wherein such power should be exercised.*

*(1) Where the allegations made in the first information report or the complaint, even if they are taken at their face value and accepted in their entirety do not prima facie constitute any offence or make out a case against the accused.*

*(2) Where the allegations in the first information report and other materials, if any, accompanying the FIR do not disclose a cognizable offence, justifying an investigation by police officers under Section 156(1) of the Code except under an order of a Magistrate within the purview of Section 155(2) of the Code.*

*(3) Where the uncontroverted allegations made in the FIR or complaint and the evidence collected in support of the same do not disclose the commission of any offence and make out a case against the accused.*



*(4) Where, the allegations in the FIR do not constitute a cognizable offence but constitute only a non-cognizable offence, no investigation is permitted by a police officer without an order of a Magistrate as contemplated under Section 155(2) of the Code.*

***(5) Where the allegations made in the FIR or complaint are so absurd and inherently improbable on the basis of which no prudent person can ever reach a just conclusion that there is sufficient ground for proceeding against the accused.***

*(6) Where there is an express legal bar engrafted in any of the provisions of the Code or the concerned Act (under which a criminal proceeding is instituted) to the institution and continuance of the proceedings and/or where there is a specific provision in the Code or the concerned Act, providing efficacious redress for the grievance of the aggrieved party.*

***(7) Where a criminal proceeding is manifestly attended with mala fide and/or where the proceeding is maliciously instituted with an ulterior motive for wreaking vengeance on the accused and with a view to spite him due to private and personal grudge. 103. We also give a note of caution to the effect that the power of quashing a criminal proceeding should be exercised very sparingly and with circumspection and that too in the rarest of rare cases; that the court will not be justified in embarking upon an enquiry as to the reliability or genuineness or otherwise of the allegations made in the FIR or the complaint and that the extraordinary or inherent powers do not confer an arbitrary jurisdiction on the court to act according to its whim or caprice.'***

*13. In the said case, the Court has given a caution that the power of quashing a criminal proceeding should be exercised very sparingly and with circumspection and that too in the rarest of rare cases. The Court would normally not embark upon an enquiry as to the reliability or genuineness or otherwise of the allegations made in the FIR or the complaint.*

*14. However, we find that the present case would fall under category Nos. 5 and 7 of the categories of cases culled out by this Court in the said case.*

***15. We find that lodging a case after 34 years and that too on the basis of a bald statement that the prosecutrix was a minor at the time of commission of offence, could itself be a ground to quash***



***the proceedings. No explanation whatsoever is given in the FIR as to why the prosecutrix was keeping silent for a long period of 34 years. The material on record shows that the relationship was consensual, inasmuch as the son who is born out of the said relationship has been treated by the appellant as his son and all the facilities, including cash money, have been provided to him.”***

(emphasis supplied)

26. From a bare perusal of the FIR as well as the complainant's statement under Section 164 of the CrPC, it is clear that the prosecutrix has not provided any explanation as to why she did not file an FIR for more than 34 years. Furthermore, it is stated in the chargesheet itself that no evidence was found against the petitioner in relation to the allegations levelled in the present case. Thus, no proof was found by the Investigating Agency to substantiate the allegations either.

27. While there is mention that the mother of Respondent No.2 initially did not take action due to financial dependence on the petitioner and pressure from Respondent No.2's grandparents, however, even if the said factors are considered to be true, it is still not explained as to why Respondent No.2 did not initiate any action thereafter. It is stated in the FIR itself that Respondent No.2 along with her family had started living separately from the petitioner.

28. It can also not be ignored that there is an ongoing dispute between the families of the petitioner and Respondent No.2 in relation to property and the parties have been litigating since the year 2009 when the son of the petitioner registered a case against the brother of Respondent No.2, even after she had grown into an adult and gotten married in the year 1999. The same clearly shows that there is some previous enmity between the parties.



29. All the aforesaid factors lead this Court to believe that the allegations as made in the FIR are concocted and merely an afterthought to wreak vengeance against the petitioner.

30. While this Court is cognizant that it ought to exercise caution before stifling proceedings before the parties have had an opportunity to lead evidence, however, in the present case, the only material on record to ignite any suspicion is the statement of the prosecutrix, which does not inspire much confidence due to the attenuating circumstances, especially considering the magnitude of delay.

31. The petitioner has also sought to bring on record certain photographs to show amicable relations between the families of the parties. It is contested that the learned Trial Court has rightly held that the same merely reflect the probability of how the relations were between the parties when the photographs were taken.

32. Without getting into the said issue, even without advertent to the material put forth by the petitioner, in the opinion of this Court, considering the totality of circumstances, grave suspicion is not raised against the petitioner.

33. It is argued on behalf of Respondent No.2 that her brother has also been falsely implicated in a rape case by his neighbour due to pressure from the petitioner. Insofar as the case against Respondent No.2's brother is concerned, it is not the remit of this petition to endeavour into the merits of the said matter and the same will be adjudicated as per law.

34. This Court is of the opinion that the statement of the petitioner does not inspire confidence and the material on record does not



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establish a *prima facie* case against the petitioner so as to warrant subjecting the petitioner to a trial.

35. In view of the aforesaid discussion, the impugned order is set aside and the petitioner is discharged in SC No. 67/2021 arising out of FIR No. 724/2020, registered at Police Station Paschim Vihar West.

36. The present petition is allowed in the aforesaid terms.

**JANUARY 13, 2025**

**AMIT MAHAJAN, J**