



2025:DHC:11371



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

% Judgment reserved on:28.11.2025  
Judgment delivered on:15.12.2025

+ **CRL.REV.P. 133/2023**

**STATE**

.....Petitioner

versus

**VIKASH KUMAR**

.....Respondent

**Advocates who appeared in this case:**

For the Petitioner : Through: Mr. Ritesh Kumar Bahri, APP  
for the State with Ms. Divya Yadav and Mr.  
Vinesh Kumar, Advs. with SI Jitender  
Kumar and SI Sunder Singh, PS Nangloi.

For the Respondent :

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

**JUDGMENT**

1. The present petition is filed under Sections 397/401 read with Section 482 of the Code of Criminal Procedure, 1973 ('CrPC') against order dated 14.09.2022 (hereafter '**impugned order**') passed by the learned Additional Sessions Judge ('**ASJ**') in SC No. 91/2021 arising out of FIR No. 22/2020 registered at Police Station Nangloi.



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2. By the impugned order, the learned ASJ discharged the respondent for the offence under Section 376 of the Indian Penal Code, 1860 ('IPC'). However, noting that *prima facie* sufficient evidence was there against the accused persons for the commission of offences under Sections 323/ 341/ 354A/ 354B/ 506/ 109/ 34 of the IPC, which are triable by the Magistrate, the learned ASJ directed that the file be put up before the learned Principal District and Sessions Judge with a request for transferring the same to the court having appropriate jurisdiction.

3. Briefly stated, the FIR in the present case was recorded pursuant to a complaint made by the prosecutrix. It is alleged that on 09.01.2020, the prosecutrix was visiting her brother at his house in Rajender Park Extn., Nangloi, Delhi. It is alleged that on the same day around 2:30pm, while the prosecutrix was having a conversation with her brother, the respondent's mother (who lives adjacent to the house of the prosecutrix's brother) along with the respondent came to the said house. It is alleged that the respondent and his mother hurled abuses at the prosecutrix and the respondent caught hold of the prosecutrix from behind and pressed her breasts. It is alleged that the mother of the respondent held the prosecutrix's hands while the respondent tore off her clothes from the front, upon being instigated by his mother. It is alleged that when the prosecutrix tried to save herself and run from the spot, her sister-in-law, Pooja arrived at the spot and stopped her. It is alleged that thereafter the respondent started beating the prosecutrix. It is alleged that the respondent, his mother



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and Pooja threatened to kill the prosecutrix and her family if she reported about the alleged incident to the police. It is further alleged that the respondent and his mother gave beatings to the prosecutrix and her sister and threatened to kill them.

4. The statement of the prosecutrix under Section 164 of the CrPC was recorded on the next day, that is 10.01.2020. The prosecutrix in her statement stated that she and her sister had gone to her brother's house for a certain settlement, where her brother had called his father-in-law. She stated that around 1:30-2pm, her sister-in-law Pooja arrived at her brother's house, started pulling her hair and hit her head on the floor. She stated that thereafter, the respondent and his mother arrived and started beating the prosecutrix along with Pooja. She stated that the respondent caught hold of her and Pooja tore off her suit. She stated that the respondent pressed her breasts and inserted his finger in her uterus. She stated that the respondent and his mother threatened her that they would kill her and her family and have also usurped her property.

5. The respondent has been charge sheeted in the present case for the offences under Sections 323/354/354A/354B/376/506/509/34 of the IPC.

6. The learned ASJ *vide* the impugned order discharged the respondent for the offence under Section 376 of the IPC. The learned ASJ noted that the prosecutrix made no mention of the respondent inserting his finger in her private part in her complaint or at the time of



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her medical examination. It was noted that the prosecutrix completely changed the entire sequence of events in her statement under Section 164 of the CrPC. It was noted that the possibility of the present FIR being *prima facie* an outburst of a pending civil dispute between the parties cannot be ruled out.

7. The learned Additional Public Prosecutor for the State submits that the learned ASJ erred in discharging the respondent of the offence under Section 376 of the IPC. He submits that at the stage of framing of charge, the Court is only tasked with evaluating the material and documents on record with a view to finding if the facts, when taken at face value, disclose the ingredients of the alleged offences. He submits that at the stage of framing of charge, the Court is not required to assess the materials placed on record in detail.

### **Analysis**

8. Since the State has assailed the impugned order whereby the respondents were 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.”*

9. 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)



10. 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.”*



11. 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.

12. In the present case the prosecutrix in her complaint alleged that while she was at her brother's house, having a conversation with him, the respondent and his mother came to her brother's house and started abusing her. She alleged that the respondent caught hold of her from behind and pressed her breasts. She alleged that the respondent tore off her suit from the front while his mother held her hands. She further alleged that the respondent along with his mother and the sister-in-law of the prosecutrix threatened her that they would kill her if she made any complaint to the police.

13. It is pertinent to note that the prosecutrix made no allegation of the respondent having inserted his finger in her uterus in her complaint.

14. The prosecutrix was medically examined on the same day she made her complaint, that is 09.01.2020. The MLC shows that the



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prosecutrix during her medical examination only informed the concerned doctor about the history of assault upon her. The injuries found in the MLC were simple in nature. The prosecutrix made no allegation of sexual assault upon her by the respondent in her MLC.

15. The prosecutrix in her statement under Section 164 of the CrPC changed the sequence of events of the alleged incident. She stated that she had gone to her brother's house for a certain settlement with her sister and while they were having a conversation, her sister-in-law, namely Pooja arrived at the spot, started pulling her hair and hit her head on the floor. She stated that thereafter, the respondent and his mother arrived at the spot and joined her sister-in-law in beating the prosecutrix. She stated that the respondent and her sister-in-law held her hands while the respondent's mother tore off her suit. She stated that the respondent caught hold of her from behind, pressed her breasts and inserted his finger in her uterus. She further stated that she was still in pain while recording her statement under Section 164 of the CrPC. The prosecutrix had also alleged that the respondent and his mother had usurped her property.

16. It is apparent that the prosecutrix has made allegations of sexual assault against the respondent for the first time in her statement under Section 164 of the CrPC. No mention of the same was made by the prosecutrix in her complaint or during her medical examination.

17. The sister of the prosecutrix also made allegations of the respondent having inserted his finger in the uterus of the prosecutrix



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for the first time in her statement under Section 164 of the CrPC, which is rendered doubtful due to the belated addition of fresh allegations *qua* rape.

18. It is pertinent to note that the statements of the prosecutrix and her sister under Section 161 of the CrPC were recorded on 10.01.2020 itself. The prosecutrix and her sister, in their statement under Section 161 of the CrPC also made no allegations of sexual assault upon the respondent. No appropriate explanation has been furnished as to why no allegations sexual assault was made by the prosecutrix or her sister, either in the complaint dated 09.01.2020 or in their MLC dated 09.01.2020, or in their statement under Section 161 of the CrPC. Further it has been rightly noted by the learned ASJ that the prosecutrix has changed the entire sequence of events in her statement under Section 164 of the CrPC as compared to her complaint. The learned ASJ also rightly noted that in view of the complaint given by the prosecutrix and her statements on record, it is evident that the prosecutrix had made bald and pre meditated allegations of sexual assault against the respondent in her statement under Section 164 of the CrPC. No additional evidence has been put on record to corroborate the allegations of sexual assault made by the prosecutrix against the respondent either. The internal examination of the prosecutrix has also not been conducted post her statement under Section 164 of the CrPC.

19. As noted by the learned ASJ, a civil dispute is pending between



the prosecutrix and the accused persons. The prosecutrix herself has made allegations against the accused persons for having usurped her property in her statement under Section 164 of the CrPC. The possibility of the present FIR being an outburst out of a pending civil dispute is heavily reflected from the statement of the prosecutrix, which further weakens the case of the prosecution, especially considering the absence of independent corroboration.

20. Pertinently, in the present case, the prosecutrix has not expanded upon the allegations or given further explanations in her statement under Section 164 of the CrPC. Rather, the prosecutrix has made entirely novel allegations in relation to rape for the first time before the Magistrate. While it is well-settled that minute discrepancies are not sufficient for exonerating the accused at the stage of framing of charge, as noted above, the present case is one where the prosecutrix failed to make *any* allegation in relation to rape in her statement under Section 161 of the CrPC or during her medical examination, and subsequently, changed the entire nature of allegations in her statement under Section 164 of the CrPC. Ordinarily, even if the allegations of rape are made for the first time by a prosecutrix in her statement under Section 164 of the CrPC, the effect of such delay is to be seen during trial as the same may not be fatal to the case of the prosecution. However, in the peculiar facts of the present case, the failure of the prosecutrix to make any such allegations on two instances despite ample opportunity coupled with the prior civil dispute between the parties severally cripple the



credibility of the case of the prosecution in regard to the offence of rape.

21. Although allegations of rape ought not to be brushed aside casually as a prosecutrix's unshaken testimony alone is also sufficient for securing conviction, but subjecting the respondent to undergo trial for the offence of rape on the strength of mere duplicitous embellishments, despite absence of any other supporting material to corroborate the allegations in this regard, would be an abuse of process of law.

22. Even if the case of prosecution is taken at the highest, the material on record at best can only cast some suspicion against the respondent *qua* allegations of rape. The same however is insufficient to frame charges against him as the prosecution has failed to establish a strong *prima facie* case against the respondent in this regard. As opined by the Hon'ble Apex Court in *Sajjan Kumar v. CBI (supra)*, if one possible view only ignites suspicion as against grave suspicion against the accused, the Court is empowered to discharge the accused.

23. In such circumstances, the learned ASJ cannot be faulted for discharging the respondent for the offence under Section 376 of the IPC as subjecting him to the rigours of a full-fledged trial for the said offence would cause unwarranted prejudice, when the foundational facts themselves do not disclose the commission of any offence.

24. There is no merit in the present petition, which is hereby



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dismissed. Pending application(s), if any, also stand disposed of.

25. It is made clear that the observations made in the present judgment are for the purpose of deciding the petition and should not affect the case of the prosecution *qua* the other offences against the accused persons.

**DECEMBER 15, 2025**  
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**AMIT MAHAJAN, J**