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

% ***Date of Decision: November 20, 2025***

\+ **CRL.REV.P. 509/2023 & CRL.M.A. 11966/2023**

STATE (NCT OF DELHI) .....Petitioner

Through: Mr. Raj Kumar, APP for the State.

versus

USMAN & ORS. .....Respondents

Through: Mr. Ahmad Parvez, Adv. for R-1 through V.C.

CORAM:
HON'BLE MR. JUSTICE AMIT MAHAJAN

AMIT MAHAJAN, J. *(Oral)*

1. The present petition is filed under Sections 397/401 read with Section 482 of the Code of Criminal Procedure, 1973 ('**CrPC**') against the order dated 04.01.2022 (hereafter '**impugned order**') passed by the learned Additional Sessions Judge ('**ASJ**'), North West District, Rohini Courts, New Delhi in SC No. 404/2019 whereby Respondent No.1 was discharged of the offence under Section 376 of the Indian Penal Code, 1860 ('**IPC**') and Respondent Nos. 2 & 3 were discharged of the offences under Sections 323/34 of the IPC.

2. Briefly stated, FIR in the present case was registered pursuant to a complaint given by the prosecutrix. It is alleged that Respondent No.1, who was the tenant of the prosecutrix, took the prosecutrix and her children to Ajmer Dargah. It is alleged that after visiting Ajmer Dargah, Respondent No.1 took the prosecutrix

and her children to a hotel room and gave them food. After eating the said food, the prosecutrix and her children allegedly started feeling drowsy. It is alleged that when the prosecutrix woke up the next morning she found that Respondent No.1 had committed sexual assault upon her in her unconscious condition.

3. Thereafter, the statement of the prosecutrix under Section 164 of the CRPC was recorded wherein she stated that Respondent No.1 did not commit any wrong act with her and that they were in a consensual relationship. She alleged that Respondent Nos. 2 & 3, who are the mother and brother of the prosecutrix respectively, had given beatings to her and forced her to give a false complaint against Respondent No.1.

4. Chargesheet in the present case was filed under Section 376 of the IPC against Respondent No.1 and under Section 323/34 of the IPC against Respondent No.2 and Respondent No.3.

5. The learned ASJ *vide* the impugned order discharged Respondent No.1 for the offence under Section 376 of the IPC and discharged Respondent Nos. 2 & 3 for the offence under Section 323/34 of the IPC. The learned ASJ noted that in light of the statement of the prosecutrix under Section 164 of the CrPC, her complaint levelling accusations of sexual assault against Respondent No.1 was not reliable and there was no grave suspicion against him. The learned ASJ noted that the prosecutrix had made material improvements in her statement under Section 164 of the CrPC by levelling allegations of beatings against Respondent Nos. 2 & 3 for the first time. The learned ASJ noted that there was no material on record to substantiate the allegations

made against Respondent Nos. 2 & 3.

6. Aggrieved thereby, the State has preferred the present petition, challenging the legality and propriety of the impugned discharge order.

7. At the very outset, this Court finds it apposite to deal with the application filed by the petitioner/State under Section 5 of the Limitation Act, 1963 read with Section 482 of the CrPC, seeking condonation of delay of 373 days in filing the present petition.

8. The learned Additional Public Prosecutor ('**APP**') for the Petitioner/State submits that the delay in filing the present revision petition was due to administrative delays and procedural formalities. It is stated that the certified copy of the impugned order was applied for on 04.01.2022 and obtained on 12.01.2022, whereafter the learned APP of the Trial Court prepared the special report of this matter and the same was sent to the Chief Prosecutor (North West) on 15.01.2022. It is stated that thereafter, the file was sent to Director of Prosecution who agreed with the Chief Prosecutor that the case was fit for appeal and forwarded the file to Principal Secretary, Law and Justice to seek approval to file the present petition.

9. It is stated that the Legal Assistant after examining the facts and the grounds mentioned in the file processed the same for approval of the Lieutenant Governor and forwarded the file to Principal Secretary on 25.01.2022. It is stated that thereafter, the Assistant Legal Advisor further forwarded the file to Director of Prosecution for filing of appeal in the present matter and the file was forwarded to the learned Standing Counsel. It is stated that the

case file was assigned to the learned APP on 07.02.2023 and thereafter, the accompanying petition was accordingly drafted and sent for signatures of the DCP concerned along with supporting affidavits and after receipt of the same, the petition was expeditiously filed.

10. Evidently, the explanation furnished by the Petitioner is routine and mechanical. The so called "*administrative delays*" merely outline the movement of the file from one office to another, without any plausible justification for the substantial intervals between each step. No individual responsibility has been fixed, nor has any material been produced to indicate that the matter was pursued with reasonable diligence at any stage.

11. The Hon'ble Apex Court has frowned upon following of such practices by the Government departments. In ***Postmaster General v. Living Media India Ltd.,*** **(2012) 3 SCC 563,** the Hon'ble Apex Court has categorically held that the Government cannot claim a separate period of limitation, and that delay cannot be condoned mechanically merely because a Government Department is the applicant. The Apex Court deprecated reliance on "*impersonal machinery*" or "*bureaucratic methodology*" as excuses in an era of modern communication and digital workflow.

12. Similarly, the Hon'ble Supreme Court, in the case of ***State of M.P. v. Bherulal,*** **(2020) 10 SCC 654,** while observing the irony that no action is taken against the officers who sit on files and do nothing under a presumption that the court would condone the delay in routine, held as under:

> *"6. We are also of the view that the aforesaid approach is being adopted in what we have categorised earlier as*

> *"certificate cases". The object appears to be to obtain a certificate of dismissal from the Supreme Court to put a quietus to the issue and thus, say that nothing could be done because the highest Court has dismissed the appeal. It is to complete this formality and save the skin of officers who may be at default that such a process is followed. We have on earlier occasions also strongly deprecated such a practice and process. There seems to be no improvement. The purpose of coming to this Court is not to obtain such certificates and if the Government suffers losses, it is time when the officer concerned responsible for the same bears the consequences. The irony is that in none of the cases any action is taken against the officers, who sit on the files and do nothing. It is presumed that this Court will condone the delay and even in making submissions, straightaway the counsel appear to address on merits without referring even to the aspect of limitation as happened in this case till we pointed out to the counsel that he must first address us on the question of limitation.*
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> *7. We are thus, constrained to send a signal and we propose to do in all matters today, where there are such inordinate delays that the Government or State authorities coming before us must pay for wastage of judicial time which has its own value. Such costs can be recovered from the officers responsible."*

13. In the present case, apart from the standard recital of inter-departmental processing, no cogent or satisfactory explanation is forthcoming for a delay of over fourteen months. The record discloses long, unexplained intervals between each step of movement of the file. Such lethargy and lack of promptitude cannot be equated with "*sufficient cause*" within the meaning of Section 5 of the Limitation Act, 1963.

14. The settled principle is that *"every day's delay must be explained"* and mere procedural formalities or internal approvals cannot suspend the operation of limitation. The Courts have repeatedly cautioned that condonation of delay is an exception, not a rule and cannot be granted as a matter of administrative

indulgence. The State, being a litigant with greater institutional resources, is expected to act with higher diligence.

15. This Court is conscious of the fact that the State is not a private litigant but represents and espouses the cause of the victim. Therefore, any delay on the part of the State, in the ordinary course, should not operate to the prejudice of the victim.

16. In view of the above, this Court also considers it apposite to examine the matter on merits.

17. The impugned order and the material placed on record has been carefully examined.

18. Before adverting to the merits of the case it is apposite to note that in ***State of Gujarat v. Dilipsinh Kishorsinh Rao*** **: (2023) 17 SCC 688,** 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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> *xxx xxx xxx*

> *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."*

19. It is no more *res integra*, 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.

20. Keeping the above principles in mind the present case may be discussed.

21. In the present case the prosecutrix initially made a complaint against Respondent No.1 alleging that she and her children had gone to Ajmer Dargah with him, whereafter they stayed in a hotel where Respondent No.1 fed her food which made her feel drowsy and then sexually assaulted her in her unconscious condition.

22. However, thereafter the prosecutrix in her statement under Section 164 of the CrPC categorically stated that that she had made false allegations against Respondent No.1 and that they were in a

consensual relationship. She stated that she had been tutored to give a false complaint against Respondent No.1 by Respondent Nos. 2 & 3 who gave her beatings to coerce her to do the same.

23. The Hon'ble Apex Court in the case of ***Vijaya Singh v. State of Uttarakhand* : 2024 SCC OnLine SC 3510** held as under:

> *"Considering the conceptual requirement of recording a statement before a Judicial Magistrate during the course of investigation and the utility thereof, as prescribed in Section 157 of Evidence Act, it could be observed that a statement under Section 164, although not a substantive piece of evidence, not only meets the test of relevancy but could also be used for the purposes of contradiction and corroboration. A statement recorded under Section 164 CrPC serves a special purpose in a criminal investigation as a greater amount of credibility is attached to it for being recorded by a Judicial Magistrate and not by the Investigating Officer. A statement under Section 164 CrPC is not subjected to the constraints attached with a statement under Section 161 CrPC and the vigour of Section 162 CrPC does not apply to a statement under Section 164 CrPC. Therefore, it must be considered on a better footing. However, relevancy, admissibility and reliability are distinct concepts in the realm of the law of evidence. Thus, the weight to be attached to such a statement (reliability thereof) is to be determined by the Court on a case-to-case basis and the same would depend to some extent upon whether the witness has remained true to the statement or has resiled from it, but it would not be a conclusive factor. For, even if a witness has retracted from a statement, such retraction could be a result of manipulation and the Court has to examine the circumstances in which the statement was recorded, the reasons stated by the witness for retracting from the statement etc. Ultimately, what counts is whether the Court believes a statement to be true, and the ultimate test of reliability happens during the trial upon a calculated balancing of conflicting versions in light of the other evidence on record."*

24. Undisputedly, the statement made by the prosecutrix under Section 164 of the CrPC is on a better footing than the initial complaint made to the police, and commands enhanced credibility in the criminal investigation. For the same reason, as observed by the Hon'ble Apex Court in the case of ***Vijaya Singh v. State of Uttarakhand*** *(supra)* while Section 164 of the CrPC is not *per se*

a substantive piece of evidence but the same does not only meet the test of relevancy but can also be used for the purpose of contradiction and corroboration.

25. This Court is conscious that mere discrepancies between the FIR and the statement of the prosecutrix recorded under Section 164 of CrPC cannot, by itself, constitute a ground for discharge. However, the present case does not reflect minor inconsistencies, rather, it reveals a complete and material shift in the stand of the prosecutrix.

26. In the opinion of this Court, the statement of the prosecutrix under Section 164 of the CrPC, where she stated that she had filed a false complaint against Respondent No.1 and under coercion, renders the initial complaint of the prosecutrix against Respondent No.1 unreliable. Thus, the learned ASJ righty held that there is no grave suspicion that Respondent No.1 committed sexual assault upon the prosecutrix.

27. Furthermore, the allegations levelled by the prosecutrix against Respondent Nos. 2 & 3 have been raised for the first time in her statement recorded under Section 164 of the CrPC. There is no material on record to substantiate the assertion that Respondent Nos. 2 & 3 gave beatings to the prosecutrix to coerce her into lodging a false complaint. The allegations made by the prosecutrix against Respondent Nos. 2 & 3 are vague and unsupported by any evidence. In the absence of any credible material, no grave suspicion arises to suggest that Respondent Nos. 2 and 3 inflicted beatings upon the prosecutrix.

28. In view of the above, I find no infirmity in the impugned

order discharging Respondent No.1 of the offence under Section 376 of the IPC and discharging Respondent Nos. 2 & 3 of the offence under Sections 323/34 of the IPC, and the same cannot be faulted with.

29. This Court fails to understand why the present petition was filed by the State especially so after a delay of 373 days.

30. Undisputedly, Courts are inundated with a large number of cases, and the filing of unnecessary cases further burdens the already heavy dockets of the Court thereby adding to the pendency and consequential delay in the disposal of cases to the detriment of genuine litigants. The prosecution thus, in the opinion of this Court, ought to be sensitive to the same before filing cases.

31. The present petition is accordingly dismissed with a cost of ₹20,000/- to be paid by the State to Delhi High Court Legal Services Committee within a period of six weeks from date.

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

AMIT MAHAJAN, J

NOVEMBER 20, 2025
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