



2025:DHC:1694



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

% *Date of Decision: 04.03.2025*

+ **CRL.REV.P. 601/2022 & CRL.M.A. 18561/2022**

NPetitioner

Through: Mr Zeeshan Diwan, DHCLSC
and Mr. Harsha, Advocates.

versus

STATE & ANR.Respondents

Through: Mr Naresh Chahar APP for
State with SI Pankaj Kumar PS
Jyoti Nagar
Mr. R.N. Dubey and Mr.
Tarun Garg, Adv. for R-2.
Mr. Deepak Prakash,
Advocate/ Amicus Curiae.

(21)

+ **CRL.REV.P. 873/2023 & CRL.M.A. 22590/2023**

THE STATE (GNCT OF DELHI)Petitioner

Through: Mr Naresh Chahar APP for
State with SI Pankaj Kumar PS
Jyoti Nagar.

versus

PREMPALRespondent

Through: Mr. R.N. Dubey and Mr.
Tarun Garg, Advocates
Mr. Deepak Prakash,
Advocate/Amicus Curiae.



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CORAM:
HON'BLE MS. JUSTICE SWARANA KANTA SHARMA

JUDGMENT

SWARANA KANTA SHARMA, J. (ORAL)

1. By way of these petitions, the prosecutrix 'N' as well as the State seek setting aside of the order 30.11.2021 [hereafter '*the impugned order*'] passed by the learned Additional Sessions Judge, (Special Fast Track Court), East, North East & Shahdara District, Karkardooma Courts, Delhi [hereafter '*Sessions Court*'].

2. By way of the impugned order, the learned Sessions Court has discharged the accused/respondent for the commission of offence under Section 376 of the Indian Penal Code, 1860 [hereafter '*IPC*'] and charged him for commission of offence under Sections 354/354B/451/323 of IPC.

3. Brief facts of the case are that the prosecutrix 'N' had lodged a complaint against the accused Prempal, alleging that she had known the accused, who is a member of the U.P. Police, for the past 5-6 years. During this period, the accused had allegedly established physical relations with the prosecutrix on the pretext of providing her with a house and securing a government job for her son. The prosecutrix further alleged that the accused had exploited his position of authority, and threatened to kill her if she disclosed the matter to anyone. It is alleged that the accused had repeatedly assured the prosecutrix that he would transfer his house located in Jyoti Nagar to her name and promised to maintain a lifelong relationship with her.



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However, when the prosecutrix had asked the accused to fulfill his promise, he had allegedly become aggressive, and threatened to kill her. The prosecutrix further alleged that on 09.10.2016, the accused had orchestrated a theft at her residence, wherein jewellery worth approximately ₹7-8 lakh (gold and silver), cash amounting to ₹3 lakh, and certain important documents were stolen. Despite her lodging an FIR regarding the said theft, no action had been taken. The prosecutrix alleged that on 16.04.2017, while she was alone at home, the accused had entered her house, attempted to establish physical relations with her, and upon her resistance, he had verbally abused her, assaulted her, tore her clothes, and outraged her modesty. The accused had then allegedly attempted to force her out of her residence. The prosecutrix claimed that upon raising an alarm, the accused had fled the scene, following which she had informed the police and later lodged a complaint at Jyoti Nagar Police Station. The FIR in this case registered pursuant to an order passed under Section 156(3) of the Code of Criminal Procedure, 1973 [hereafter 'Cr.P.C.']. The statement of the victim herein was recorded under Section 164 of Cr.P.C. wherein she alleged that on 16.04.2017, the accused had entered her house and had raped her (*izzat loot li*).

4. After completion of investigation, chargesheet was filed by the police for offences punishable under Sections 376/506/323/354 of IPC. By way of the impugned order dated 30.11.2021, the learned Sessions Court was pleased to discharge the accused for offence under Section 376 of IPC. Further, the learned Sessions Court held



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that offence only under Sections 354/354B/451/323 of IPC was *prima facie* made out against the accused, for which the case was transferred to the concerned Magistrate.

5. The learned counsel appearing for the prosecutrix 'N' as well as the learned APP appearing for the State submit that the learned Sessions Court has committed an error while discharging the accused for the offence punishable under Section 376 of IPC, though there were specific allegations of committing rape upon the prosecutrix against the accused. It is argued that the allegations levelled in the statement recorded under Section 164 of Cr.PC. cannot be brushed aside by categorizing the same as 'improvement', and any discrepancy between the version of the prosecutrix in the FIR and the statement under Section 164 of Cr.PC. is a matter of trial. Therefore, it is prayed that the impugned order dated 30.11.2021 be set aside to this extent.

6. During the course of arguments, Mr. R.N. Dubey, learned counsel had appeared and argued the case in the morning. However, in the afternoon, the accused appeared in person before this Court, and submitted that he did not wish to get his case argued by Mr. R.N. Dubey.

7. However, Mr. R.N. Dubey, learned counsel, states that at no point of time, he was communicated by the accused that he did not want him to appear on his behalf and therefore, since he has filed his *vakalatnama*, he is duty bound to appear. Accordingly, he had appeared and argued the case in the morning.



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8. At this stage, Mr. Deepak Prakash, learned counsel has made a statement that he was appointed as amicus-curiae *vide* order dated 27.09.2024 on behalf of the accused. Considering the aforesaid, Mr. R.N. Dubey, Advocate is discharged.

9. The learned amicus-curiae appearing for the accused argues that the accused has been falsely implicated in this case. He also states that the prosecutrix and the accused had a long relationship of six years and only after he started eviction proceedings and could not get a job for the prosecutrix's son, the present FIR was registered against him. It is also contended that the impugned order passed by the learned Trial Court is a detailed one, and need not be interfered with by this Court. Therefore, he prays that the present petitions be dismissed.

10. The Court has **heard** arguments addressed by the learned counsel appearing for the parties, and has pursued the material placed on record.

11. At the outset, the relevant portion of the findings of the learned Sessions Court for discharging the accused for offence under Section 376 of IPC, as recorded in the impugned order, are set out below:

“13. As far as her allegation that on the day when she filed complaint, accused suddenly entered into her house and at that time, she was alone and accused tried to make physical relations with her and when she tried to stop him, he abused her and beaten her is taken as gospeltruth, in my view, no offence of rape or even attempt to rape is made out on the said allegation and at the best only offence of sexual assaulting her with the intention to outrage her modesty punishable under Section 354 IPC is made out. Though with respect to said incident, prosecutrix in her statement under Section 164 Cr.PC,



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she has improved upon said incident and stated that the accused entered into her house and raped her (izzat loot li) thereafter, her son came after which accused ran away which she has not stated in her complaint. Hence. the prosecutrix has made improvement in her statement under Section 164 Cr.PC and same appears to be an afterthought. Hence, I cannot rely upon the same to frame charge for offence of rape. In this regard, I rely upon the Judgment passed by the Hon'ble High Court of Delhi in the matter of State Vs. Dr. Gajral Singh, Cril. Revision Petition No. 09/17 dated 16.01.2017 upheld the order of Ld. ASJ discharging the accused while relying upon statement u/s 164 Cr.P.C...”

12. Having examined the impugned order, this Court is of the opinion that the premise on which the present accused has been discharged for the offence under Section 376 of IPC is that the prosecutrix herein had made some improvement in her statement recorded under Section 164 of Cr.PC., in comparison to the initial FIR. However, it apparent from a perusal of the records that the prosecutrix had, in fact, mentioned the incident of 16.04.2017 in her initial complaint (FIR) also, and it is not a case where an altogether a new story has been introduced for the first time by the prosecutrix in her statement under Section 164 of Cr.P.C. At best, it is a case of minor improvement made by the prosecutrix in her statements – as contended by the accused and held by the learned Sessions Court.

13. In this regard, it shall also be apposite to take note of the judgment of the Hon'ble Supreme Court in *Hazrat Deen v. State of Uttar Pradesh*: 2022 SCC OnLine SC 1781 wherein it was held that at the stage of framing of charge, the contradictions in the statement given to the police and the statement recorded under Section 164 of



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the Cr.PC cannot be appreciated and any discrepancy between the two cannot be a ground for discharge of accused. The observations of the Hon'ble Supreme Court are as under:

"...Discrepancies between the FIR and any subsequent statement under Section 164 of the CrPC may be a defence. However, the discrepancies cannot be a ground for discharge without initiation of trial."

14. Clearly, the statement of the prosecutrix recorded under Section 164 of Cr.PC alleges specific allegations of rape committed upon her by the present accused. The same has also been taken note of by the learned Sessions Court.

15. While framing charges against an accused, the Court has to only evaluate as to whether there is *prima facie* evidence or material on record, which leads to a strong suspicion against the accused for commission of offence. At this stage, the Courts are not vested with the authority to delve into the probative value of evidence, nor are they permitted to engage in a mini-trial. The Court's role remains circumscribed, i.e. confined to the determination of whether there exists a *prima facie* case and suspicion against the accused that justifies the framing of charges and initiation of trial. In this regard, the Hon'ble Supreme Court in ***Bhawna Bai v. Ghanshyam***: (2020) 2 SCC 217, has observed as under:

"13. ...At the time of framing the charges, only prima facie case is to be seen; whether case is beyond reasonable doubt, is not to be seen at this stage. At the stage of framing the charge, the court has to see if there is sufficient ground for proceeding against the accused. While evaluating the materials, strict standard of proof is not required; only prima facie case against



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the accused is to be seen."

16. Moreover, the contentions raised before this Court on behalf of the accused are essentially the defence of the accused herein, which can be raised at the appropriate stage of trial. However, the same cannot be appreciated at this stage.

17. Therefore, considering the overall facts and circumstances of the case, and the fact that the prosecutrix had levelled specific allegations – of committing rape upon her – against the accused, this Court is inclined to allow these petitions.

18. The impugned order – to the extent it discharges the accused for commission of offence under Section 376 of IPC – is set aside. The matter is remanded to the learned Sessions Court for framing charge against the accused and proceeding in accordance with law.

19. The petitions stand disposed of. Pending applications also stand disposed of.

20. The judgment be uploaded on the website forthwith.

MARCH 4, 2025/A

SWARANA KANTA SHARMA, J

Click here to check corrigendum, if any