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

% *Judgment delivered on: 13.05.2025*

\+ **CRL.REV.P. 990/2024, CRL.M.A. 22619/2024**

SUNNY KANT .....Petitioner

Through: Mohd. Mustafa, Mr. Ratnesh Tiwari, Ms. Arpita Biswas and Md. Maroof, Advocates

versus

THE STATE NCT OF DELHI .....Respondent

Through: Mr. Rajkumar, APP for the State with SI Rakesh Kumar, P.S. Vijay Vihar.

CORAM:
HON'BLE DR. JUSTICE SWARANA KANTA SHARMA

JUDGMENT

DR. SWARANA KANTA SHARMA, J

1. By way of this revision petition, the petitioner seeks setting aside of the order dated 16.02.2023 [hereafter '*impugned order*'] passed by learned Additional Sessions Judge (FTSC)(RC), Rohini Courts, Delhi [hereafter '*Sessions Court*'] in case arising out of FIR bearing no. 165/2023, registered at Police Station Vijay Vihar, Delhi.

FACTUAL BACKGROUND

2. The petition has been preferred in the following factual context: a complaint was lodged by the complainant i.e., wife of the petitioner, wherein it was stated that marriage between them was

solemnized on 19.02.2022 as per Hindu rites and ceremonies, and her family had allegedly spent approximately ₹25 lakhs on the marriage. As alleged, on the very first night, the complainant discovered that her husband i.e. the petitioner was unable to consummate the marriage, even after taking medication. Even during their stay in Manali for their honeymoon, the situation remained unchanged. When she had informed the same to her in-laws, they had refused to do anything and in fact, she was informed by her sister-in-law that the family was already aware of her husband's alleged impotency prior to the marriage. When the petitioner had again confronted her in-laws, she was allegedly physically assaulted by them. She had then gone back to her parental home on 24.07.2022. It is alleged that on 19.03.2023, when she was alone at her home, her father-in-law had visited her home, molested her, attempted to rape her, and fled after issuing threats to her. Subsequently, a relative who had arranged their marriage had contacted her father-in-law to suggest to the complainant to return to the matrimonial home. Upon being questioned by her mother, the complainant had disclosed the attempted sexual assault and expressed fear due to the threats received. The complainant alleged that the marriage was a conspiracy by her husband and father-in-law to establish illicit relations and extort money from her family. On these allegations, the FIR was initially registered for commission of offence under Sections 354/354B of the Indian Penal Code, 1860 [hereafter '*IPC*'].

3. During the course of investigation, the statement of the

complainant under Section 164 of the Code of Criminal Procedure, 1973 [hereafter '*Cr.P.C.*'] was recorded, wherein the complainant reiterated the above allegations and further alleged that one day at her matrimonial home, when she was in the kitchen, her brother-in-law Ravi Kant had come there and held her tightly from the chest and waist and kissed her on her neck. She further alleged that on 19.03.2023, her father-in-law Rajpal Singh had, in fact, forcefully established physical relations with her. The complainant also stated that initially, when she had gone for honeymoon to Manali, oral sexual intercourse had taken place between her and her husband (petitioner herein). After completion of investigation, the police had filed chargesheet for offence under Sections 354/354B/376/377/323 of IPC, against the accused persons Ravi Kant, Sunny Kant, Rajpal Singh, Bharti, and Khamoush Devi.

4. After hearing arguments on charge, the learned Sessions Court was pleased to discharge all the accused persons, except the petitioner Sunny Kant. Thus, *vide* impugned order 16.02.2023, the learned Sessions Court found the petitioner liable to face trial for offence under Section 377 of IPC, for the following reason:

> "As against the accused husband Sunny Kant, there are clear allegation that he did oral sex with the prosecutrix against her consent. Accordingly in the considered opinion of this court, charge u/s 377 IPC is made out against him".

SUBMISSIONS BEFORE THE COURT

5. The learned counsel appearing for the petitioner assails the aforesaid order and argues that the same is legally unsustainable,

misconceived, and contrary to the settled principles of law as well as the facts on record. It is argued that the statement recorded under Section 164 of Cr.P.C. does not disclose the commission of any offence under Section 377 of IPC against the petitioner. It is contended that the complainant has nowhere stated, even indirectly, that the alleged act of oral sex was performed without her consent. The learned Sessions Court, however, has erroneously proceeded on the presumption that the act was committed against her will, which is a gross misreading of the material on record. It is further submitted that the statement of the complainant suffers from serious contradictions, since on one hand, she alleges that the petitioner was not capable of performing sexual intercourse even after taking medicine; on the other hand, she levels such serious allegations which are inconsistent with this claim. It is further contended that in the present case, there is neither any *prima facie* case against the petitioner nor any grave suspicion arises against him. In addition to these contentions, the learned counsel for the petitioner also argues that as held by several High Courts, the charge for offence under Section 377 of IPC cannot sustain against the husband on the allegation levelled by the wife, in view of Exception 2 to Section 375 of IPC. Therefore, it is prayed that the present petition be allowed and the impugned order be set aside.

6. The learned APP for the State, on the other hand, argues that the learned Sessions Court has rightly framed charge for offence under Section 377 of IPC against the petitioner, on the basis of

allegations levelled against him by the complainant. It is submitted that the question of consent or absence thereof is a matter of trial and cannot be conclusively determined at the stage of framing of charge. Therefore, it is prayed that the present petition be dismissed.

7. This Court has **heard** arguments advanced by the learned counsel for both parties and has carefully perused the record of the case.

ANALYSIS & FINDINGS

8. The impugned order has been assailed by the petitioner primarily on two grounds. *First*, it is the case of petitioner that the rigours of Section 377 of IPC in the context of a marital relationship are not attracted, in view of the established legal position that such acts between a husband and wife are outside the purview of the offence by virtue of Exception 2 to Section 375 of IPC. *Secondly*, it is contended that the material on record, including the statement of the complainant recorded under Section 164 of Cr.P.C., does not disclose any allegation that oral sex between the complainant and the petitioner took place without her consent.

9. The *first issue* raised by the petitioner is whether, in a subsisting marital relationship, an act of oral sex between husband and wife would attract the provisions of Section 377 of IPC. It is the petitioner's case that in a legally recognized marriage, there exists an implied presumption of consent for consensual sexual acts, and that the mere nature of the act cannot by itself constitute an offence under Section 377 of IPC.

10. To adjudicate the issue in question, it shall be first relevant to take note of Section 377 of IPC, which reads as under:

> "**377. Unnatural offences**.— Whoever voluntarily has carnal intercourse against the order of nature with any man, woman or animal, shall be punished with imprisonment for life, or with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine.
>
> Explanation.—Penetration is sufficient to constitute the carnal intercourse necessary to the offence described in this section."

11. Section 377 of IPC, as it reads in the statute, criminalizes 'carnal intercourse against the order of nature with any man, woman or animal'. Historically, this provision was invoked to penalize non-vaginal sexual acts, including anal and oral sex, irrespective of consent, and regardless of whether the act was between same-sex or opposite-sex partners. The emphasis of this section was not on the consent of the parties but rather on the nature of the sexual act being 'unnatural' as per the statutory language. It was also gender-neutral in its application, penalizing both the perpetrator and the consenting adult partner.

12. Next, Section 375 of IPC, as it stood prior to it being amended by Criminal Law (Amendment) Act, 2013, read as under:

> "**375. Rape**.
>
> **A man is said to commit "rape" who, except in the case hereinafter excepted, has sexual intercourse with a woman** under circumstances falling under any of the six following descriptions:—
>
> *First*.- Against her will.
>
> *Secondly*.- Without her consent.
>
> *Thirdly*.- With her consent, when her consent has been obtained

> by putting her or any person in whom she is interested in fear of death or of hurt.
>
> *Fourthly*.- With her consent, when the man knows that he is not her husband, and that her consent is given because she believes that he is another man to whom she is or believes herself to be lawfully married.
>
> *Fifthly*.- With her consent, when, at the time of giving such consent, by reason of unsoundness of mind or intoxication or the administration by him personally or through another of any stupefying or unwholesome substances, she is unable to understand the nature and consequences of that to which she gives consent.
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> *Sixthly*.- With or without her consent, when she is under sixteen years of age.
>
> *Explanation*.- Penetration is sufficient to constitute the sexual intercourse necessary to the offence of rape.
>
> *Exception*.- **Sexual intercourse by a man with his own wife, the wife not being under fifteen years of age, is not rape**."
>
> (Emphasis added)

13. Clearly, Section 375 of IPC, prior to its amendment in 2013, was narrowly worded and dealt exclusively with the act of forced sexual intercouse (i.e., penile-vaginal intercourse), committed by a man against a woman, under certain specified circumstances. It did not encompass other forms of non-consensual sexual acts such as oral or anal penetration, which were to be included under Section 377 of IPC. However, the Exception to Section 375 of IPC granted immunity to a husband from being prosecuted for rape committed against his wife, provided she was not under fifteen years of age.

14. By way of the Criminal Law (Amendment) Act, 2013, the definition of rape under Section 375 of IPC was amended, and the same now reads as under:

"**375. Rape.**

A man is said to commit "rape" if he—

(a) penetrates his penis, to any extent, into the vagina, mouth, urethra or anus of a woman or makes her to do so with him or any other person; or

(b) inserts, to any extent, any object or a part of the body, not being the penis, into the vagina, the urethra or anus of a woman or makes her to do so with him or any other person; or

(c) manipulates any part of the body of a woman so as to cause penetration into the vagina, urethra, anus or any part of body of such woman or makes her to do so with him or any other person; or

(d) applies his mouth to the vagina, anus, urethra of a woman or makes her to do so with him or any other person, under the circumstances falling under any of the following seven descriptions—

First.—Against her will.

Secondly.—Without her consent.

Thirdly.—With her consent, when her consent has been obtained by putting her or any person in whom she is interested, in fear of death or of hurt.

Fourthly.—With her consent, when the man knows that he is not her husband and that her consent is given because she believes that he is another man to whom she is or believes herself to be lawfully married.

Fifthly.—With her consent when, at the time of giving such consent, by reason of unsoundness of mind or intoxication or the administration by him personally or through another of any stupefying or unwholesome substance, she is unable to understand the nature and consequences of that to which she gives consent.

Sixthly.—With or without her consent, when she is under eighteen years of age.

Seventhly.—When she is unable to communicate consent.

Explanation 1.—For the purposes of this section, "vagina" shall also include labia majora.

Explanation 2.—Consent means an unequivocal voluntary agreement when the woman by words, gestures or any form of verbal or non-verbal communication, communicates

willingness to participate in the specific sexual act:

Provided that a woman who does not physically resist to the act of penetration shall not by the reason only of that fact, be regarded as consenting to the sexual activity.

Exception 1.—A medical procedure or intervention shall not constitute rape.

Exception 2.- **Sexual intercourse or sexual acts by a man with his own wife, the wife not being under fifteen years of age, is not rape**."

15. Thus, the definition of rape under Section 375 of IPC was substantially broadened to include several non-consensual sexual acts, such as follows:

- Penile penetration into the vagina, mouth, urethra, or anus of a woman, or causing her to do so with any person;
- Insertion of any object or any part of the body (not being the penis) into the vagina, urethra, or anus of a woman, or causing her to do so with any person;
- Manipulation of any part of the woman's body so as to cause penetration into the vagina, urethra, anus, or any part of her body;
- Oral application of the mouth to the vagina, anus, or urethra of a woman or causing her to do so with any person.

16. Each of the above sexual acts if done without the woman's consent and under any of the enumerated seven circumstances (such as against her will, by coercion, deception, or when she is incapable of giving consent, etc.), now fall squarely within the ambit of rape.

17. Therefore, the acts such as anal intercourse or oral sex – earlier

falling exclusively under the ambit of Section 377 of IPC – are now included within the ambit of Section 375(a) of IPC.

18. It is also material to note that Exception 2 was also inserted in the amended Section 375 of IPC, in respect to acts committed by a husband, and it was clarified that "sexual intercourse or sexual acts" by a man with his own wife, the wife not being under fifteen years of age, would not amount to rape. Notably, the word 'sexual acts' was a new addition here, and the same refers to the different kinds of sexual acts now included in the meaning of rape, which includes anal intercourse or oral intercourse.

19. In this background, it shall now be apposite to take note of the decision of the Hon'ble Supreme Court in case of ***Navtej Singh Johar and Ors. v. Union of India Thr. Secretary Ministry of Law and Justice:*** *(2018) 10 SCC 1*. Firstly, the concluding part of the decision is set out below:

> "**645. CONCLUSION**
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> 645.1. **In view of the aforesaid findings, it is declared that insofar as Section 377 criminalises consensual sexual acts of adults (i.e. persons above the age of 18 years who are competent to consent) in private, is violative of Articles 14, 15, 19 and 21 of the Constitution.** It is, however, clarified that such consent must be free consent, which is completely voluntary in nature, and devoid of any duress or coercion.
>
> 645.2. The declaration of the aforesaid reading down of Section 377 shall not, however, lead to the re-opening of any concluded prosecutions, but can certainly be relied upon in all pending matters whether they are at the trial, appellate, or revisional stages.
>
> 645.3. The provisions of Section 377 will continue to govern non-consensual sexual acts against adults, all acts of carnal intercourse against minors, and acts of bestiality.

> 645.4. The judgment in *Suresh Kumar Koushal* v. *Naz Foundation* (*Suresh Kumar Koushal* v. *Naz Foundation*, (2014) 1 SCC 1 : (2013) 4 SCC (Cri) 1) is hereby overruled for the reasons stated in paras 642 and 643."
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> (Emphasis added)

20. The Hon'ble Supreme Court in the aforesaid decision held that Section 377 of IPC is unconstitutional to the extent it punishes (i) consensual, (ii) sexual acts, (iii) between adults in private.

21. Certain other observations of the Hon'ble Supreme Court are noteworthy, to understand as to why Section 377 of IPC was read down, especially insofar as the effect of amended Section 375 of IPC, post-2013, on Section 377 is concerned. These observations are set out below:

> "366. After 2013, when Section 375 was amended so as to include anal and certain other kinds of sexual intercourse between a man and a woman, which would not be criminalised as rape if it was between consenting adults, it is clear that if Section 377 continues to penalise such sexual intercourse, an anomalous position would result. A man indulging in such sexual intercourse would not be liable to be prosecuted for rape but would be liable to be prosecuted under Section 377. Further, a woman who could, at no point of time, have been prosecuted for rape would, despite her consent, be prosecuted for indulging in anal or such other sexual intercourse with a man in private under Section 377. This would render Section 377, as applied to such consenting adults, as manifestly arbitrary as it would be wholly excessive and disproportionate to prosecute such persons under Section 377 when the legislature has amended one portion of the law in 2013, making it clear that consensual sex, as described in the amended provision, between two consenting adults, one a man and one a woman, would not be liable for prosecution. If, by having regard to what has been said above, Section 377 has to be read down as not applying to anal and such other sex by a male-female couple, then the section will continue to apply only to homosexual sex. If this be the case, the section will offend

Article 14 as it will discriminate between heterosexual and homosexual adults which is a distinction which has no rational relation to the object sought to be achieved by the section — namely, the criminalisation of all carnal sex between homosexual and/or heterosexual adults as being against the order of nature. An argument was made by the petitioners that Section 377, being vague and unintelligible, should be struck down on this ground as it is not clear as to what is meant by "against the order of nature". Since Section 377 applies down the line to carnal sex between human beings and animals as well, which is not the subject-matter of challenge here, it is unnecessary to go into this ground as the petitioners have succeeded on other grounds raised by them. Viewed either way, the section falls foul of Article 14.

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423. At this point, we look at some of the legislative changes that have taken place in India's criminal law since the enactment of the Penal Code. The Criminal Law (Amendment) Act, 2013 imported certain understandings of the concept of sexual intercourse into its expansive definition of "rape" in Section 375 of the Penal Code, which now goes beyond penile-vaginal penetrative intercourse. It has been argued that if "sexual intercourse" now includes many acts which were covered under Section 377, those acts are clearly not "against the order of nature" anymore. They are, in fact, part of the changed meaning of sexual intercourse itself. This means that much of Section 377 has not only been rendered redundant but that the very word "unnatural" cannot have the meaning that was attributed to it before the 2013 Amendment. Section 375 defines the expression "rape" in an expansive sense, to include any one of several acts committed by a man in relation to a woman. The offence of rape is established if those acts are committed against her will or without the free consent of the woman. Section 375 is a clear indicator that in a heterosexual context, certain physical acts between a man and woman are excluded from the operation of penal law if they are consenting adults. Many of these acts which would have been within the purview of Section 377, stand excluded from criminal liability when they take place in the course of consensual heterosexual contact. Parliament has ruled against them being regarded against the "order of nature", in the context of Section 375. Yet those acts continue to be subject to criminal liability, if two adult men or women were to engage in consensual sexual contact. This is a violation of Article 14."

22. Thus, the Hon'ble Supreme Court observed that after the amendment of Section 375 of IPC in the year 2013, the definition of rape was expanded to include anal, oral, and other kinds of sexual acts, but these acts were not treated as rape if they were done, between a man and a woman, with consent. Now, if Section 377 of IPC still punished these same acts, even when done with consent, merely because they were not penile-vaginal sex, then it created contradictions and an anomalous position – such as if a man and a woman consent to anal sex, the man can't be prosecuted for rape under Section 375 (because it allows consensual non-vaginal acts), but he could still be punished under Section 377. Similarly, a woman could even be punished under Section 377 of IPC for the same act, which was never the intention of the rape law. The Hon'ble Supreme Court was of the view that this contradiction made Section 377 of IPC arbitrary, unfair, and discriminatory.

23. Therefore, the Court held that Section 377 of IPC should not apply to consensual sexual acts between adults, whether heterosexual or homosexual, as doing so would violate their right to equality under Article 14.

24. At this juncture, it is to be noted that Exception 2 to Section 375 of IPC provides that sexual intercourse by a man with his own wife, if she is not under fifteen years of age, is not rape. This creates a legal presumption that a wife's consent to sexual intercourse is implied by virtue of marriage. In effect, as on date, the law does not

recognise the concept of marital rape.

25. Thus, in the considered opinion of this Court, there is no basis to assume that a husband would not be protected from prosecution under Section 377 of IPC, in view of Exception 2 to Section 375 of IPC since the law (amended Section 375 of IPC) now presumes implied consent for sexual intercourse as well as sexual acts (including anal or oral intercourse within a marital relationship). Therefore, in the context of a marital relationship, Section 377 of IPC cannot be applied to criminalise non-penile-vaginal intercourse between a husband and wife. Such an interpretation would be in line with the reasoning and observations of the Hon'ble Supreme Court in ***Navtej Singh Johar*** *(supra).*

26. The Madhya Pradesh High Court, in ***Umang Singhar v. State of Madhya Pradesh:*** *2023 SCC OnLine MP 3221*, decided the same issue and held that in view of amended definition of Section 375 of IPC, offence under Section 377 of IPC between husband and wife has no place and, as such it is not made out. The relevant observations are as under:

> "12. Indeed, the primary argument of the learned counsel for the petitioner was that when Section 375 IPC defines 'rape' and also by way of amendment in 2013, Exception-2 has been provided which bespeaks that sexual intercourse or sexual acts by a man with his own wife is not a rape and therefore if any unnatural sex as defined under section 377 is committed by the husband with his wife, then it can also not be treated to be an offence……
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> 13. To fathom the depth of submissions made by the learned counsel for the petitioner, it is imperative to go-through the definition of 'rape', in that, for committing rape, as per Section 375(a), an offender is a 'man' who uses the part of the body -

(a) Penis, as per Section 375(b) body-parts other than penis and 375(c) any other object. Simultaneously, the said definition describes - at the receiving end the body parts are (a) Vagina, (b) Urethra, (c) Anus, (d) Mouth and (e) other body parts. Considering the offence of Section 377 i.e. unnatural, although it is not well-equipped and offender is not defined therein but body parts are well defined, which are also included in Section 375 i.e. carnal intercourse against the order of nature. At this juncture, it is indispensable to see what is unnatural. The Supreme Court in a petition challenging the constitutionality of Section 377 IPC criminalizes 'carnal intercourse against the order of nature' which among other things has been interpreted to include oral and anal sex. Obviously, I find that Section 377 of IPC is not well-equipped. Unnatural offence has also not been defined anywhere. The five-judge bench of the Supreme Court in re *Navtej Singh Johar (supra)* testing the constitutionality of said provision although held that some parts of Section 377 are unconstitutional and finally held if unnatural offence is done with consent then offence of Section 377 IPC is not made out. The view of the Supreme Court if considered in the light of amended definition of Section 375 and the relationship for which exception provided for not taking consent i.e. between husband & wife and not making offence of Section 376, the definition of rape as provided under Section 375 includes penetration of penis in the parts of the body i.e. vagina, urethra or anus of a woman, even though, the consent is not required then as to how between husband and wife any unnatural offence is made out. Apparently, there is repugnancy in these two situations in the light of definition of Section 375 and unnatural offence of Section 377. It is a settled principle of law that if the provisions of latter enactment are so inconsistent or repugnant to the provisions of an earlier one that the two cannot stand together the earlier is abrogated by the latter……

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16. At this point, if the amended definition of Section 375 is seen, it is clear that two things are common in the offence of Section 375 and Section 377 firstly the relationship between whom offence is committed i.e. husband and wife and secondly consent between the offender and victim. As per the amended definition, if offender and victim are husband and wife then consent is immaterial and no offence under Section 375 is made out and as such there is no punishment under Section 376 of IPC. For offence of 377, as has been laid down by the Supreme Court in re *Navtej Singh Johar (supra)*, if consent is

> there offence of Section 377 is not made out. At the same time, as per the definition of Section 375, the offender is classified as a 'man'. here in the present case is a 'husband' and victim is a 'woman' and here she is a 'wife' and parts of the body which are used for carnal intercourse are also common. The offence between husband and wife is not made out under Section 375 as per the repeal made by way of amendment and there is repugnancy in the situation when everything is repealed under Section 375 then how offence under Section 377 would be attracted if it is committed between husband and wife."

27. In this regard, the petitioner has placed reliance on the decision of the High Court of Uttarakhand in ***Dr. Kirti Bhushan Mishra v. State of Uttarakhand and Anr:*** *2024 SCC OnLine Utt 2023* wherein it has been held as under:

> '...From the perusal of above observation made in the case of Navtej Singh Johar (Supra), it is clear that it was considered, in that case by the Hon'ble Supreme Court that what is not an offence under Section 375 IPC cannot be an offence under Section 377 IPC (two consenting adults for acts in private, as specified under Section 375 IPC). Exception 2 to Section 375 IPC cannot be taken out from it while reading Section 377 IPC in relation to husband and wife. If an act between husband and wife is not punishable due to operation of Exception 2 to Section 375 IPC, the same act may not be an offence under Section 377 IPC'.

28. The Division Bench of this Court, in ***The State (GNCT of Delhi) v. Khan Mohd. @ Guddu:*** *CRL.L.P. 201/2021*, also dismissed a criminal leave petition filed by the State, challenging the acquittal of the accused under Sections 377/328 of IPC, where the accused was husband of the complainant. In the said case, the learned APP for the State had himself drawn the Court's attention to the discussion on Section 377 of IPC in the decision of the Hon'ble Supreme Court in

Navtej Singh Johar *(supra)*, and submitted that the charge under Section 377 of IPC may be covered by Exception 2 to Section 375 of IPC.

29. Accordingly, this Court is of the view that charge for offence under Section 377 of IPC could not have been framed against the petitioner, who is the husband of the complainant.

30. Be that as it may, even if this Court was not to decide the question of whether an offence under Section 377 of IPC can be made out against a husband or not, one position is clear – that a 'consensual' oral or anal intercourse between any two adults, in private, is not a criminal offence punishable under Section 377 of IPC, as held by Hon'ble Supreme Court in ***Navtej Singh Johar*** *(supra).*

31. It is pertinent to note that the complainant and the petitioner herein are legally wedded to each other, and the allegations arise from a matrimonial dispute. Importantly, the complainant has not specifically alleged that the act of oral sex was performed against her will or without her consent. Rather, her statement recorded under Section 164 of Cr.P.C. only mentions that "*Hum Manali gaye, vahan oral sex hua, unhone apna private part mere muhh mei dala*". This statement, in isolation, does not reveal any allegation of coercion, threat, or absence of free will. In fact, immediately preceding this statement, the complainant had stated that *"nothing had happened on their first night after the marriage, even though her husband had taken some medication."* This sequence of statements gives rise to an

inherent contradiction – on the one hand, the complainant alleges lack of sexual capability in the petitioner and both of them trying to engage in sexual relations; and on the other hand, she levels allegations suggesting the performance of oral sex. However, what is conspicuously absent – is any allegation that the act complained of was non-consensual or performed under duress.

32. At this stage, it is necessary to reiterate the settled law that governs framing of charges. At the stage of framing charge, the Court is not required to conduct a meticulous examination of the evidence or to evaluate its probative value. However, there must exist a *prima facie* case, and a strong suspicion that the accused has committed an offence. A charge cannot be framed merely on the basis of vague allegations or when the material on record does not disclose the essential ingredients of the alleged offence.

33. Applying this principle to the facts of the present case, it is evident that there is not even a basic allegation by the complainant that the act of oral sex was performed without her consent. There is neither any assertion of resistance nor any mention of physical force, threat, intimidation, or any element that would negate consent. In the absence of such an averment, the essential ingredient of lack of consent – central to constituting an offence under Section 377 of IPC post-***Navtej Singh Johar*** between any two adults – is clearly missing. Thus, there is not only a lack of *prima facie* case, but even the threshold of strong suspicion is not met.

34. It is also concerning that the learned Sessions Court, while

passing the impugned order, appears to have proceeded on an erroneous presumption by observing that the petitioner *"did oral sex with the prosecutrix against her consent"*, when such a claim is nowhere reflected in the complainant's statement recorded under Section 164 of Cr.P.C., or in the initial FIR, which, in fact, had no mention of any oral sex. This observation by the learned Sessions Court is a clear misreading of the material on record, and appears to have been made without any basis.

35. In light of the above, and considering the material placed on record, this Court is of the considered opinion that no *prima facie* case is made out against the petitioner for the offence under Section 377 of IPC. The impugned order directing the framing of charge is, therefore, unsustainable in law and is liable to be set aside.

36. Accordingly, the impugned order dated 16.02.2024, to the extent it directs framing of charge under Section 377 of IPC against the petitioner, is quashed and set aside.

37. The revision petition is accordingly allowed and disposed of. Pending application also stands disposed of.

38. The judgment be uploaded on the website forthwith.

DR. SWARANA KANTA SHARMA, J

MAY 13, 2025/ns