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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**% *Judgment delivered on: 17.01.2025*+ **CRL.REV.P. 52/2024 & CRL.M.A. 1366/2024**

THE STATE (GNCT OF DELHI)Petitioner

Through: Mr. Manoj Pant, APP for the
State.

versus

SAHIL CHOPRA & ORS.Respondents

Through: Mr. Kirti Uppal, Senior
Advocate with Mr. Pawan
Sankhla, Mr. Padam Sankhla,
Mr. Lalit Sankhla and Mr.
Aditya Raj, Advocates.**CORAM:****HON'BLE MS. JUSTICE SWARANA KANTA SHARMA****JUDGMENT****SWARANA KANTA SHARMA, J**

1. The present petition has been preferred by the State, under Section 397 read with Section 401 of the Code of Criminal Procedure, 1973 (hereafter '*Cr.P.C.*'), seeking setting aside of the order on charge dated 20.09.2023 (hereafter '*impugned order*') passed by the learned Additional Sessions Judge, Patiala House Court, Delhi (hereafter '*learned Sessions Court*') in Sessions Case No. 306/2020, arising out of FIR No. 362/2020, dated 18.08.2020, registered under Sections 376D/506/109 of the Indian Penal Code, 1860 (hereafter '*IPC*') at Police Station Kishan Garh, Delhi.



2. Briefly stated, the facts of the case, as evident from the records and the impugned order, are that the victim in the present case is a national of Uzbekistan and was residing at a rented accommodation with her friends. Allegedly, on 13.08.2020, she was alone in her house when the accused no. 1 and 2, namely Sahil Chopra and Baljeet Singh, had committed rape upon her. Thereafter, they had threatened her not to take any action against them. It is stated that the accused Shokkhnova Trigarhera @ Shahnoz @ Shahnaj had instigated the other accused persons to commit rape. After completion of investigation, charge-sheet was filed against the said accused persons for offences under Sections 376D/506/109 of IPC.

3. However, by way of impugned order dated 20.09.2023, the learned Sessions Court discharged all three accused persons in the present case. The conclusion of the learned Sessions Court, as recorded in the impugned order, is set out below:

“Two complete different versions of the prosecutrix in her statements, delay in the FIR, contrary version in the MLC etc. Raised serious doubts over the case of the prosecution. The prosecution miserably failed to reconcile the entirely different statement of the prosecutrix in the FIR and the statement u/s 164 Cr.P.C. Moreover, the complete denial of any physical or sexual abuse by the prosecutrix in the statement u/s 164 Cr.P.C add misery to the prosecution case. Therefore, in view of the foregoing reasons, no case of grave suspicion is made out and there is no sufficient ground for proceeding against all the accused persons. The accused persons namely Sahil Chopra, Baljeet Singh and Shokkhnova Trigarhera are accordingly, discharged in terms of Section 227 Cr.P.C.”

4. The State, by way of present revision petition, challenges the aforesaid order. The learned APP for the State contends that despite



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there being incriminating evidence on record, the learned Sessions Court has discharged all the accused persons. He states that the impugned order has been passed on the basis of imagination, presumption, conjectures and surmises. He also argues that the victim had levelled specific allegations in her complaint against the accused persons.

5. During the course of arguments, the learned APP for the State conceded that the victim had not supported her own claim in her statements recorded under Sections 161 and 164 of Cr.P.C. He however contended that since the FIR was registered at her instance only, the statements recorded thereafter under Section 164 of Cr.P.C., cannot be considered at this stage of framing of charge.

6. On the other hand, the learned Senior Counsel appearing for the respondents/accused persons vehemently argued that there is no infirmity with the impugned order and the learned Sessions Court has correctly appreciated the facts of the case, evidence on record, as well as the statements of the victim herself, and thereafter, discharged the accused persons. Therefore, it is prayed that in view of the settled law on charge and discharge, the present petition ought to be dismissed.

7. This Court has arguments advanced on behalf of both the parties and has also gone through the case file and the impugned order.

8. In this Court's opinion, there is no doubt that any improvement made in the statements recorded under Sections 161 and 164 of Cr.PC cannot be a sole ground for discharge of an accused [Ref:



Hazrat Deen v. State of Uttar Pradesh: 2022 SCC OnLine SC 1781].

However, where the victim, immediately after lodging the FIR, in her statement recorded under Section 161 of Cr.PC recorded by the Police, as well as in her statement recorded by the learned Magistrate under Section 164 of Cr.PC, does not utter a single word against an accused regarding the incident in question, and the charge-sheet is filed, clearly setting out the fact that the statement recorded under Section 164 of Cr.PC does not reflect any incriminating evidence against the accused, a Court cannot reach a conclusion at the stage of framing of charge that commission of an offence is made out, even *prima facie*.

9. This Bench, in the case of ***State v. Sudershan Kumar: 2023 SCC OnLine Del 1647***, had discussed in detail the principles, while relying on the judgments of the Hon'ble Supreme Court, for consideration at the time of framing of charge or discharge of an accused. In the said decision, this Bench had also discussed the meaning and purport of the word '*prima facie view*'. The relevant findings of the said decision are set out hereunder:

“ii. Prima Facie View

14. The very foundation of formation of opinion regarding framing of charge is as to whether “there is sufficient material on record to prima facie make out a case of commission of an offence”. Therefore, a duty has been cast on the Trial Court judges to apply their mind carefully to the material before them to form such opinion.

15. The edifice of an order on charge is appreciation of prima facie view of the matter. Therefore, it becomes important to address the pertinent question as to what constitutes a “prima facie” view qua the stage of framing charges.



16. Prima facie refers to something that can be determined at first glance, at first impression, on the surface, or inasmuch as it can be inferred from the initial disclosure. Black's Law Dictionary, 5th Ed. suggests that the prima facie case would mean that the evidence brought on record would reasonably allow the conclusion that the plaintiff seeks. Therefore, “prima facie” would mean the suggestion that comes from having the first glance of anything.

17. According to the Oxford Dictionary of Modern Greek, the literal meaning of prima facie is “on/at first viewing”. It will necessarily mean that looking at something at its face value and not going into any intricate or detailed analysis, therefore, the word prima facie when used in terms of prima facie view as far as consideration of charge is concerned would mean there being enough material of substance which will give rise to strong suspicion against the accused and holding of a view in favour of prosecution...”

10. Once a charge-sheet is filed before a Court, the Court concerned has to take into consideration the entire material which is placed before it, in the form of all the statements, not only of the victim, but of other witnesses also, and the documentary and electronically evidence, if any, to reach a conclusion as to whether even at that stage, a *prima facie* view of the matter, when taken, would result into a conclusion that the offence in question could have been committed. At this stage, it is not essential to reach a conclusion that the offence had been committed beyond reasonable doubt, and the Courts are not vested with the authority to delve into the probative value of evidence, nor they are permitted to engage in a mini-trial. The Court’s role remains circumscribed, confined to the determination of whether there exists a *prima facie* case and suspicion against the accused that justifies the framing of charges.



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11. In the present case, when the charge-sheet was filed, the statement recorded under Section 164 of Cr.PC itself did not disclose commission of any offence, as the victim herself denied the commission of the alleged offence. The statement recorded under Section 164 of Cr.PC. categorically reflects that though the victim had signed the complaint given to the police, she however did not know the contents of the same. She categorically mentions that no sexual abuse had taken place with her, though, she stated that there was some theft which was taken place in her flat, as she was sleeping in another room. She also stated that she was not threatened by anyone. Concededly, the victim herein did not understand English or Hindi and her statement was recorded with the help of an authorized Translator by the learned Magistrate, whereas the complaint in the present case had been lodged without the help of a Translator, by one advocate on the instructions of a friend of the victim, but the victim stated in her statement under Section 164 of the Cr.PC that she did not know the contents of the FIR. The learned Sessions Court, in the impugned order, also observed that no CCTV footage was seized by the investigating officer in this case, and the allegations of gang rape as stated in the FIR were changed to theft in the statement recorded under Section 164 of Cr.P.C.

12. Thus, the present case is not the one where there is any improvement or contradiction in the statement of the victim, on the basis of which, the respondents herein have been discharged, but is a case where the victim did not understand the language in which the



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FIR was registered, who disclosed, before filing of the charge-sheet and immediately after the alleged incident i.e. when her statement under Section 164 of Cr.PC was recorded, that no incident of rape, sexual abuse or threats had taken place. The charge-sheet, therefore, itself did not disclose any incriminating evidence to suggest strong suspicion against the respondents herein, regarding commission of offence under Sections 376D/506/109 of the IPC.

13. In view thereof, this Court is of the view that the learned Sessions Court did not commit any error in discharging the respondents herein.

14. Accordingly, the present petition is dismissed alongwith pending application.

15. The judgment be uploaded on the website forthwith.

SWARANA KANTA SHARMA, J

JANUARY 17, 2025/A