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

% *Date of Decision: 25.02.2025*

+ **CRL.REV.P. 1351/2024**

BABBAN GIRI & ORS.Petitioners

Through: Mr. Abhishek Sandillya,
Advocate.

versus

STATE OF NCT DELHIRespondent

Through: Mr. Manoj Pant, APP for State
along with S.I. Paramjeet, P.S.
Ranhola.

CORAM:

HON'BLE MS. JUSTICE SWARANA KANTA SHARMA

JUDGMENT

SWARANA KANTA SHARMA, J. (ORAL)

1. The petitioners, who are accused in FIR No. 892/2020, registered at Police Station Ranhola, Delhi, are before this Court by way of the present revision petition, assailing the order on charge dated 30.09.2024 [hereafter '*the impugned order*'] passed by the learned Additional Sessions Judge (SC-RC), West, Tis Hazari Courts, Delhi [hereafter '*the Trial Court*'] *vide* which charges have been framed against them

2. The brief facts of the case are that the present FIR was registered on the complaint of complainant Ms. SD regarding an



incident dated 05.10.2020, which had taken place at about 4:30 PM at her house. As per the complainant, she heard a loud voice outside her main gate and when she had opened it, she had found her neighbors i.e. accused persons herein, standing outside the door of her main gate. It is alleged that when she had asked them as to why they had resorted to such behaviour, the accused Babban Giri had used unparliamentary language and said that they would teach her a lesson today. Thereafter, the accused Babban Giri had inappropriately touched the chest of the complainant and then, he, his daughter and his wife had grabbed the hands of the complainant and dragged her towards their house. The complainant alleged that while she had tried to free herself, the accused persons had physically assaulted her. However, she had managed to escape and come back inside her house and had immediately locked the door. The complainant was medically examined at DDU Hospital, Hari Nagar, Delhi. On her complaint, the present FIR was registered initially for offences under Sections 323/354/506/34 of the Indian Penal Code, 1860 [hereafter '*IPC*'].

3. The statement of complainant was recorded under Section 164 of the Code of Criminal Procedure, 1973 [hereafter '*Cr.P.C.*'], wherein she reiterated her allegations, and further alleged that at the time of incident, the accused persons had abused her, and accused Babban Giri had also repeatedly inserted his finger in the complainant's private parts, and that her clothes had been torn during the said incident.



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4. After completion of investigation, chargesheet was filed in this case for offences punishable under Sections 323/354/376D/ 506/34 of the IPC. By way of the impugned order, the learned Trial Court was pleased to frame charge against the petitioners herein, for the following offences:

- I. Charge under Sections 323/354/354B/376D/509/506(II)/34 of IPC – against Babban Giri (petitioner no. 1)
- II. Charge under Sections 323/341/376D/506(II)/34 of IPC – against Manju Devi and Roshni Giri (petitioner nos. 2 and 3)

5. The learned counsel appearing for the petitioners assails the impugned order on several grounds. First, he argues that the learned Trial Court has erred in not considering the medical evidence which specifically records that no fresh injuries were found on the body of the complainant, which raises doubts about the veracity of the allegations. Second, he argues that the clothes worn by the complainant at the time of the alleged incident were handed over to the Investigating Officer (I.O.) after a lapse of four years. Third, he contends that there are discrepancies and improvements made by the complainant in her complaint given to the police initially and her statement before the learned Magistrate. Fourth, the learned counsel for the petitioners draws the attention of the Court to the fact that the seizure memo was prepared three days after the alleged incident. Fifth, he argues that the recordings of the CCTV camera have been ignored while passing the impugned order, which purportedly shows



that the petitioners were at their own residence before and after the time of the alleged incident. On these grounds, the learned counsel for the petitioners argues that learned Trial Court has failed to consider the settled law on charge, and also the fact that a Court, while framing charges, can take into account the evidence produced by an accused. Therefore, he prays that the impugned order be set aside and the petitioners be discharged.

6. On the other hand, the learned APP appearing for the State argues that there are specific allegations levelled by the victim in her statement recorded under Section 164 of Cr.P.C and in the FIR, against the petitioners herein. He draws the attention of this Court to the fact that specific allegations have been reproduced in the impugned order also. It is also contended that at the stage of framing of charge, only a *prima facie* view of the matter is to be taken. He argues that there is no infirmity in the order passed by the learned Trial Court, and therefore, he prays that the present petition be dismissed.

7. This Court has **heard** arguments addressed on behalf of both the parties and has perused the material available on record.

8. It is well-settled that at the stage of framing of charge, the Courts are required to give due consideration to the material placed on record along with the investigation and the facts determined therefrom. 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 the accused is to be seen."

9. In ***Manendra Prasad Tiwari v. Amit Kumar Tiwari and Anr.***: 2022 SCC OnLine SC 1057, the Hon'ble Supreme Court explained the well-settled law on exercise of powers under Section 397 and 482 of Cr.P.C., while adjudicating a challenge to an order on charge. The relevant observations are set out below:

"21. The law is well settled that although it is open to a High Court entertaining a petition under Section 482 of the CrPC or a revision application under Section 397 of the CrPC to quash the charges framed by the trial court, yet the same cannot be done by weighing the correctness or sufficiency of the evidence. In a case praying for quashing of the charge, the principle to be adopted by the High Court should be that if the entire evidence produced by the prosecution is to be believed, would it constitute an offence or not. The truthfulness, the sufficiency and acceptability of the material produced at the time of framing of a charge can be done only at the stage of trial. To put it more succinctly, at the stage of charge the Court is to examine the materials only with a view to be satisfied that prima facie case of commission of offence alleged has been made out against the accused person. It is also well settled that



when the petition is filed by the accused under Section 482 CrPC or a revision Petition under Section 397 read with Section 401 of the CrPC seeking for the quashing of charge framed against him, the Court should not interfere with the order unless there are strong reasons to hold that in the interest of justice and to avoid abuse of the process of the Court a charge framed against the accused needs to be quashed. Such an order can be passed only in exceptional cases and on rare occasions. It is to be kept in mind that once the trial court has framed a charge against an accused the trial must proceed without unnecessary interference by a superior court and the entire evidence from the prosecution side should be placed on record. Any attempt by an accused for quashing of a charge before the entire prosecution evidence has come on record should not be entertained sans exceptional cases.

22. The scope of interference and exercise of jurisdiction under Section 397 of CrPC has been time and again explained by this Court. Further, the scope of interference under Section 397 CrPC at a stage, when charge had been framed, is also well settled. At the stage of framing of a charge, the court is concerned not with the proof of the allegation rather it has to focus on the material and form an opinion whether there is strong suspicion that the accused has committed an offence, which if put to trial, could prove his guilt. The framing of charge is not a stage, at which stage the final test of guilt is to be applied. Thus, to hold that at the stage of framing the charge, the court should form an opinion that the accused is certainly guilty of committing an offence, is to hold something which is neither permissible nor is in consonance with the scheme of Code of Criminal Procedure

23. Section 397 CrPC vests the court with the power to call for and examine the records of an inferior court for the purposes of satisfying itself as to the legality and regularity of any proceedings or order made in a case. The object of this provision is to set right a patent defect or an error of jurisdiction or law or the perversity which has crept in the proceeding.”

10. In the light of the aforesaid, this Court is of the view that the complainant in this case has levelled specific allegations against the



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petitioners herein. She has described in her statements, recorded initially before the police and later before the learned Magistrate, as to how the petitioners had abused her, touched her inappropriately, grabbed and dragged her out of her house, inserted a finger in her private parts, and physically assaulted her. Clearly, such allegations, if proven true during the course of trial, would amount to commission of offences such as outraging the modesty, rape and causing hurt.

11. Insofar as the argument regarding discrepancies in the allegations in the FIR and complainant's statement recorded under Section 164 of Cr.P.C. is concerned, this Court is of the view that discrepancies between the FIR and a statement recorded under Section 164 of Cr.P.C. cannot become the basis of discharge of an accused. This has specifically been held in the case of ***Hazrat Deen v. State of Uttar Pradesh: 2022 SCC OnLine SC 1781***, by way of following observations:

“ 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.”

12. As regards the argument of there being no injuries on the person of the complainant and there being some CCTV footage supporting the case of accused persons, it is settled law that at the stage of charge, the defence of the accused cannot be considered. The said contentions can only be appreciated during the course of trial, only after evidence is recorded, and the witnesses are examined and



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cross-examined.

13. This Court is of the view that the impugned order is a detailed and well-reasoned order, wherein the learned Trial Court has noted the allegations levelled by the complainant, the rival contentions, and taken into consideration the material placed on record by the investigating agency by way of charge-sheets, and appreciated the same as per law on framing of charge and discharge, and reached a conclusion that there is sufficient material on record to frame charge against the accused persons. The learned Trial Court has also mentioned in the order that the allegations leveled by the complainant are supported by four eye witnesses.

14. As held in case of *Manendra Prasad Tiwari v. Amit Kumar Tiwari and Anr. (supra)*, the truthfulness, the sufficiency and acceptability of the material produced at the time of framing of a charge can be done only at the stage of trial; and once the trial court has framed a charge against an accused, the trial must proceed without unnecessary interference by a superior court.

15. Therefore, in view of the reasons recorded hereinabove, this Court finds no ground to set aside or interfere with the impugned order.

16. The petition is accordingly dismissed, being devoid of merit.

17. Nothing expressed hereinabove shall tantamount to an expression of opinion on the merits of the case.



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18. The judgment be uploaded on the website forthwith.

SWARANA KANTA SHARMA, J
FEBRUARY 25, 2025/vc