

2022 LiveLaw (Del) 220

**IN THE HIGH COURT OF DELHI AT NEW DELHI
CORAM: HON'BLE MR. JUSTICE RAJNISH BHATNAGAR**

CRL.REV.P. 13/2022; 10.03.2022

SETTU *versus* STATE NCT OF DELHI

Code of Criminal Procedure, 1973; Section 227 and 228 - At the stage of framing of a charge, the probative value of materials on record cannot be gone into and that such material brought on record by the prosecution has to be accepted as true at that stage. It is not obligatory for the judge at the stage of framing of charges to consider in detail and weigh in a sensitive balance as to whether the facts, if proved, would be incompatible with the innocence of the accused or not. (Para 9)

Code of Criminal Procedure, 1973; Section 227 and 228 - The standard of test and judgment which is to be finally applied before recording a finding regarding the guilt or otherwise of the accused is not exactly to be applied at this stage of deciding the matter under Section 227 or under Section 228 of the Code. But at the initial stage, if there is a strong suspicion which leads the court to think that there is ground for presuming that the accused has committed an offence, then it is not open to the court to say that there is no sufficient ground for proceeding against the accused," the Court said. (Para 10)

Petitioner through: Mr. S.Hariharan, Adv; Respondent through: Ms. Rajni Gupta, APP for the State.

J U D G M E N T

CRL.M.A. 276/2022

Exemption allowed, subject to just exceptions.

The application stands disposed of.

CRL.REV.P. 13/2022

1. This revision petition has been filed by the petitioner with the following prayer:

“(a) set aside the order dated 10.1.2020 passed by the District and Session Judge, East Karkardooma Courts, Delhi framing charge against the petitioner under Section 328/354-B/385 of the Indian Penal Code in S.C.No. 3875 of 2019;

(b) To call the records pertaining to the SC No. 3875/2019 arising out of FIR No. 292 of 2019 24.09.2019 Registered at Police Station Mayur Vihar 328/354-B/385 of the Indian Penal Code pending before District and Sessions Judge, East Karkardooma Courts, Delhi.”

2. Issue notice. Learned APP appears on advance notice, and accepts notice.

3. Briefly the case of the prosecution is that on 24.09.2019, at H.No. 92, 29 Block Indira Camp, Trilokpuri, Delhi, within the jurisdiction of PS Mayur Vihar, accused made complainant (name withheld) to take a toffee and supari (nut) laced with some intoxicating/stupefying substance at the Hotel, with intent to facilitate an offence of outraging her modesty. Thereafter, he also disrobed her and also put her in fear of getting her video viral and demanded money to extort Rs.2 Lacs from her.

4. Moreover, in the MLC also, the complainant gave history of a call from some unknown

person, who told her that he will provide her with maid's work. Then he called her out and gave her some toffee and supari to eat. After that she was taken to some unknown hotel and she lost her consciousness. When she gained her consciousness, she found herself naked, i.e., only with bra and panty on her body. When she shouted for help, he (the accused) blackmailed her that he had made a video of her and would viral it. He then continued blackmailing her that he wanted money or other girl for the same purpose.

5. I have heard the learned counsel for the petitioner and learned APP for the State. I have also perused the record.

6. It is submitted by the counsel for the petitioner that petitioner has been falsely implicated in this case, and there is no material connecting the petitioner with the crime. It is further submitted by the counsel for the petitioner that the trial court has failed to appreciate the Call Detail Record (CDR) collected by the prosecution agency which points towards the prior acquaintance between the petitioner and the complainant and that attempt has been made by the complainant to hide the past relationship between the parties. It is further submitted by the counsel for the petitioner that the trial court has failed to appreciate that neither the medical report nor the forensic report points towards the crime having been committed by the petitioner.

7. On the other hand, it is submitted by the learned APP that the complainant has made specific allegations against the petitioner in her statement on the basis of which FIR dated 24.9.2019 was registered. It is further submitted by learned APP that the statement of the victim/prosecutrix under Section 164 Cr.P.C was also recorded and in that statement she has corroborated her previous statement given to the police. It is further submitted by learned APP that at the stage of framing of charge only prima facie case is to be seen, and there cannot be a detailed analysis of the evidence unless and until something overwhelming is produced by the petitioner/accused to completely demolish the case of the prosecution which is not so in the present case. It is further submitted by learned APP that as per the petitioner himself the petitioner and the complainant were known to each other and whether the relationship was consensual or forced can only be looked into during the course of the trial, and at this stage the statement made by the victim cannot be said to be unreliable.

8. It is well settled law that at the stage of framing of charge, the court has power to shift and weigh the evidence for the limited purpose of finding out whether or not a prima-facie case against accused has been made out. When the material placed before the court discloses great suspicion against the accused which has not been properly explained, the court will be justified in framing charge. No roving inquiry into the pros and cons of the matter and evidence is not to be weighed as if a trial was being conducted. If on the basis of materials on record a court could come to the conclusion that commission of the offence is a probable consequence, a case of framing of charge exists.

9. To put it differently, if the courts were to think that the accused might have committed the offence it can frame a charge, though for conviction the conclusion is required to be that accused has committed the offence. At the stage of framing of a charge, probative value of the materials on records cannot be gone into, the material brought on record by the prosecution has to be accepted as true at that stage. The truth, veracity and effect of

the evidence which the prosecutor proposes to adduce are not to be meticulously judged, nor any weight is to be attached to the probable defence of the accused. It is not obligatory for the judge at that stage of the trial to consider in any detail and weigh in a sensitive balance whether the facts, if proved, would be incompatible with the innocence of the accused or not.

10. The standard of test and judgment which is to be finally applied before recording a finding regarding the guilt or otherwise of the accused is not exactly to be applied at this stage of deciding the matter under Section 227 or under Section 228 of the Code. But at the initial stage, if there is a strong suspicion which leads the court to think that there is ground for presuming that the accused has committed an offence, then it is not open to the court to say that there is no sufficient ground for proceeding against the accused. While deciding the question of framing of charge in a criminal case, the court is not to apply exactly the standard and test which it finally applies for determining the guilt or otherwise.

11. What is required to be seen is whether there is strong suspicion which may lead to the court to think that there is ground for presuming that the accused has committed an offence. The above proposition is supported with law laid down by the Hon'ble Apex Court and Hon'ble High Court reported as ***“Union of India vs Prafulla Kumar”, AIR 1979 Supreme Court 366, “State of Maharashtra and others vs Som Nath Thapa and other” JT 1996 (4) SC 615, “State of Bihar vs Ramesh Singh”, AIR 1997 SC 2018: (1997 CRI LJ 1606), “Umar Amdula Sakoora Sorathia vs. Intelligence Officer Narcotic Control Bureau” JT 1999 (5) SC 394, “Kalu Mal Gupta vs. State” 2000 I AD Delhi 107.***

12. Learned trial court while passing the order for framing of charge has observed that from the totality of facts and circumstances prima facie case for the offence under Section 328/354B/385 IPC is made out against the petitioner/accused.

13. I have perused the FIR dated 24.9.2019 and the statement of the victim recorded under Section 164 Cr.P.C. The allegations made by the victim/complainant against the petitioner are specific, and she has assigned the role to the petitioner and veracity of her statement could only be tested during the course of her cross-examination. It has also come in the CDR record that the petitioner and the complainant were known to each other prior to the incident and now whether the physical relations were consensual or forced is a matter of evidence which could only be tested when the victim would appear in the witness box and her statement can be analysed in depth. At this stage, and at the stage of framing of charge only prima facie view is to be taken.

14. In view of the discussions hereinabove I find no infirmity in the impugned order dated 10.1.2020, the same is therefore upheld.

15. The petition stands dismissed accordingly.

16. Nothing stated hereinabove shall tantamount to the expression of any opinion on the merits of the case.