

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

% Judgment reserved on : 10th May, 2019
Judgment delivered on: 01st July, 2019

+ CRL.REV.P. 308/2017 & CrI.M.A.6862/2017 (for condonation
of delay)

X Petitioner
versus

STATE & ANR Respondents

+ CRL.REV.P. 382/2017 & CrI.M.A.8606/2017 (for condonation
of delay)

STATE Petitioner
versus

DR NARENDER MOHAN Respondent

Advocates who appeared in this case:

For the Petitioners : Mr. S.K. Sethi with Ms. Dolly Sharma, Advocates
(In CrI. Rev. P. 308/2017)

Mr. Hirein Sharma, APP for the State. (In CrI. Rev.
P. 382/2017)

For the Respondents : Mr. Hirein Sharma, APP for the State. SI H.
Kumari, District Investigation South (In CrI. Rev. P.
308/2017)

Mr. Dhanaiyai Kaushal with Mr. Tushar Kantiwal,
Advocates for respondent No.2 (In CrI. Rev. P.
308/2017 & CrI. Rev. P. 382/2017)

**CORAM:-
HON'BLE MR JUSTICE SANJEEV SACHDEVA**

JUDGMENT

SANJEEV SACHDEVA, J.

Crl.M.A.6862/2017 in CRL.REV.P. 308/2017 (for condonation of delay)

Crl.M.A.8606/2017 in CRL.REV.P. 382/2017 (for condonation of delay)

For the reasons stated in the applications, the applications are allowed. The delay in filing the petitions is condoned.

CRL.REV.P. 308/2017

CRL.REV.P. 382/2017

1. These revision petitions – one filed by the State and the other filed by the prosecutrix, impugn order on charge dated 30.07.2016, whereby the trial court while framing charges against the co-accused has discharged respondent no. 2 qua the offences under Sections 376-D and Section 506 of the Indian Penal Code.

2. Subject FIR No. 334/2014, Police Station Hauz Khas was registered under Sections 376-D/506 of the IPC. The prosecutrix had alleged that she was uneducated and presently unemployed and used to visit Sai Baba Mandir at Lodhi Colony.

3. It is alleged that about 4½ years ago she met one Raj Narain and she requested him to search for an employment for her. He about 2½ years ago, on the pretext of getting her an employment, took her to D-Block, Hauz Khas and against her wishes made physical relations with her. Thereafter it is alleged that he took her to one Dr. Ralia and stated that he would help her in getting a job and about 2 years ago

Dr. Ralia took advantage of her and against her wishes made physical relations with her.

4. Thereafter it is alleged that Dr. Ralia and Raj Narain told her that they had made a video and she should do as they told her. Thereafter it is alleged that they introduced her to one Vikas and Narang and about two years ago even they made physical relations with her in a flat at D-Block Hauz Khas. Thereafter it is alleged that they continued to make physical relations with her.

5. It is alleged that on 29.03.2014 (the day of complaint) at about 12.30 to 1.00 PM, Raj Narain met her at Khan Pur and informed her that Dr. Ralia had arranged an employment for her and he took her on a scooty to Lodhi Road Sai Baba Mandir where they met Dr. Ralia. Thereafter, Dr. Ralia took her in his car to D-Block Hauz Khas where even Raj Narain came and both of them made physical relations with her taking turns. Thereafter Dr. Ralia dropped her in his car at Sarojini Nagar. She made then a call to the police control room and made a complaint on which subject FIR was registered.

6. Statement of the prosecutrix was also recorded under Section 164 Cr. P.C. In her statement recorded on 30.03.2014, the prosecutrix in addition to what she had earlier alleged, stated that Dr. Ralia had sent her to his friend in Kalkaji who also made physical relations with her against her wish.

7. In her statement under Section 161 Cr. P.C. dated 23.04.2014

she had stated that Dr. Ralia had sent her to his friend – Dr. Man Mohan at Kalkaji who made physical relations with her. In her supplementary statement dated 22.02.2014 she once again reiterated that Ralia had sent her to his friends – Narang and Dr. Man Mohan in Kalkaji and they made physical relations with her.

8. It is alleged by the petitioner that the said friend of Dr. Ralia in Kalkaji who was named as Man Mohan is Dr. Narender Mohan – respondent No. 2 herein.

9. The trial court in the impugned order after the perusal of the record found that there was no mention of the name of respondent no. 2 in the first version of the prosecutrix, which was given on 29.03.2014. It is only in her subsequent statement under Section 164 Cr. P.C. that she stated that Ralia sent her to his friend at Kalkaji. However, once again no name of that individual was given.

10. In her subsequent statement she had alleged that the said individual was Man Mohan. Ralia during his interrogation had stated that his friend in Kalkaji is named Dr. Narender Mohan - respondent no. 2 herein.

11. Dr. Narender Mohan duly joined investigation and stated that the prosecutrix had come to him for collecting money for charity/NGO and he had issued cheques in the name of the NGO of the prosecutrix.

12. As per the charge sheet, prosecutrix has not made any statement

that Dr. Narender Mohan is the same individual about whom she has stated that she was sent to kalkaji. No identification of respondent No. 2 has been done either in the police station or through Test Identification Parade.

13. There is no medical or forensic evidence against respondent no. 2. No date, month or year of the incident has been mentioned. Trial court found that there was no material to charge Dr. Narender Mohan of the said offence under Section 376-D and Section 506 of the IPC.

14. Perusal of the record as also the statement of the prosecutrix show that her allegations are completely vague in nature and are spread over a period of 4½ years. No specific details, time and date of incident is mentioned. Vague allegations are levelled by her against several individuals. It may be pertinent to mention that respondent no. 2 is aged about 79 years, Dr. Ralia is aged about 76 years and Mr. Narang is aged about 80 years.

15. No doubt, mere statement of the prosecutrix is sufficient for framing of a charge, however, prior to the statement being acted upon, the court has to be satisfied that the same is reliable.

16. In the present case, the allegations levelled by the prosecutrix are completely vague. She has alleged that the offence started over 2½ ago and she was repeatedly sent to different individuals who made physical relations with her against her wishes. She has alleged that a video was taken. However, during investigation, on forensic

examination of the mobile phone seized from the co-accused no such video or incriminating material was recovered. Her allegations do not inspire confidence.

17. In so far as respondent no. 2 is concerned, he is neither named in the FIR nor in the supplementary statement. Her allegations against the respondent no. 2 are also completely vague. There is no date, place or time mentioned as to when the alleged offence had happened. She has merely in one breath stated that co-accused had sent her to his friend at Kalkaji who made physical relations with her against her wishes. The allegations are completely vague and unreliable. There is unexplained delay in lodging of the complaint. Her conduct during the said period of 2 ½ years makes her version completely unreliable.

18. Perusal of the record does not even raise grave suspicion in so far as the respondent no. 2 is concerned for framing of charge.

19. Supreme Court in *State Vs. Arun Kumar & Anr. 2014 SCC Online SC 1018* has held that even at the stage of charge, if two views are possible and one of the views gives rise to suspicion only as distinct, from grave suspicion, the Court would be empowered to discharge accused at that stage.

20. There is no medical or forensic evidence available against respondent no. 2, no TIP has been conducted and there is no identification of respondent no. 2 nor is he named in any statement made by the prosecutrix. There is nothing to show that respondent –

Narender Mohan is the individual who is named as Man Mohan by the prosecutrix in her supplementary statement. Even otherwise the allegations against respondent no. 2 are completely vague and unsubstantiated. The version given by the prosecutrix is ex-facie unreliable and does not give rise to suspicion leave alone grave suspicion against respondent no. 2.

21. In view of the above, I find no infirmity in the view taken by the trial court that there is no prima facie case made out against respondent no. 2. In my view, the trial court has 'on correct appreciation of the material on record' discharged respondent no. 2.

22. Accordingly, I find no merits in the petitions. The petitions are accordingly dismissed.

23. It is clarified that the observations contained herein are specific only to respondent no. 2 and would have no bearing on the case against the other co-accused.

24. Order *Dasti* under signatures of the Court Master.

SANJEEV SACHDEVA, J

JULY 01, 2019

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