



\* IN THE HIGH COURT OF DELHI AT NEW DELHI

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+ **CRL.REV.P. 630/2017**

**PROSECUTRIX (X)**

.....**Petitioner**  
Through: Mr. Anupam S. Sharma and Ms. Anisha P. Das, Adv.

Versus

**STATE & ANR**

.....**Respondents**  
Through: Ms. Meenakshi Dahiya, APP for the State with Ms. Ashish Mahani, Ms. Vanshika Singh and Mr. Bhanu Pratap Singh, Adv.

Mr. Akshay Chandra, Mr. Bharat Sharma, Mr. Durga Dass Vashit and Ms. Viapsana Bubna, Adv. for R-2 alongwith the respondent no.2  
SI- Jag Roshni, PS: Timarpur

+ **CRL.REV.P. 648/2017**

**STATE GNCT OF DELHI**

.....**Petitioner**  
Through: Ms. Meenakshi Dahiya, APP for the State with Ms. Ashish Mahani, Ms. Vanshika Singh and Mr. Bhanu Pratap Singh, Adv.

SI- Jag Roshni, PS: Timarpur

Versus

**SUMIT**

.....**Respondent**  
Through: Mr. Akshay Chandra, Mr. Bharat Sharma, Mr. Durga Dass Vashit and Ms. Viapsana Bubna, Adv. alongwith the respondent



**CORAM:**  
**HON'BLE MR. JUSTICE SAURABH BANERJEE**

**JUDGMENT**

1. By virtue of the present petitions, filed under *Section 397* of the Code of Criminal Procedure, 1973<sup>1</sup> read with *Section 482* of the Cr.P.C., the petitioner/ complainant/ prosecutrix<sup>2</sup> as also the State, seek setting aside of the impugned order dated 31.05.2017 passed by the learned ASJ/ SFTC-02 (Central), Tis Hazari Courts, Delhi<sup>3</sup>, whereby the accused/ respondent no.2/ respondent<sup>4</sup> was discharged of the offence under *Section 376* of the Indian Penal Code, 1860<sup>5</sup> arising out of FIR No.923/2015 dated 01.12.2015 registered at PS.: Timarpur, Delhi.
2. Since both petitions are arising from the very same impugned order dated 31.05.2017 and pertain to the same set of facts, they are being taken up together for disposal by this common judgment.
3. *Succinctly put*, the respondent works in Delhi Police as a constable and is a distant relative of the prosecutrix. It is noteworthy that the respondent was in a relationship with the prosecutrix for a period of *two years*. On 08.10.2015, due to the *alleged* emotional black mail, the prosecutrix came from Ghaziabad to Delhi to meet the respondent and thereafter went to his rented accommodation situated at Nehru Vihar, Delhi with him. There, the respondent professed his love for the prosecutrix and assured to marry her.

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<sup>1</sup> Hereinafter as “*Cr.P.C.*”

<sup>2</sup> Hereinafter as “*prosecutrix*”

<sup>3</sup> Hereinafter as “*learned Trial Court*”

<sup>4</sup> Hereinafter as “*respondent*”

<sup>5</sup> Hereinafter as “*IPC*”



Relying on promise of marriage, he established physical relations with the prosecutrix, however, the prosecutrix became distressed and confronted him by stating that he had acted wrongly, the respondent, *albeit*, reiterated that he would marry her. After this, the respondent dropped the prosecutrix at Ghaziabad at about 10:00 P.M. after assuring her once again of his intention to marry her.

4. Upon returning home, the prosecutrix narrated the entire incident to her family, and subsequently, her family members contacted the respondent regarding marriage, however, since he continued to give false assurances, ultimately on 02.11.2015, a Complaint was registered at PS.: Timarpur, Delhi resulting in registration of the present FIR on 01.12.2015.

5. Pursuant thereto, chargesheet was filed and thereafter an application seeking discharge by the respondent was allowed by the learned Trial Court *vide* impugned order dated 31.05.2017, aggrieved thereby, the prosecutrix as also the State filed the present petitions before this Court.

6. Learned counsel for the prosecutrix, whilst relying upon the judgment passed by the Hon'ble Supreme Court entitled ***State of Bihar vs. Ramesh Singh***<sup>6</sup>, submitted that the learned Trial Court erred by meticulously sifting the evidence/ material on record, which is beyond the powers conferred upon it by virtue of *Sections 227 and 228* of the Cr.P.C, and had also traversed beyond the ambit, as it was only *prima facie* to be seen by the learned Trial Court whether or not, on the face of the record, were there sufficient grounds for trial to proceed.

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<sup>6</sup> (1977) 4 SCC 39



7. Learned counsel for the prosecutrix, also submitted that the prosecutrix throughout has maintained that the respondent gave her false assurance of marriage, and after making intimate relations with her, he refused to marry her. Thus, as per the judgment of the Hon'ble Apex Court entitled *Yedla Srinivasan Rao vs. State of Andhra Pradesh*<sup>7</sup>, the present case calls for invocation of Section 90 of the IPC, as intimate relations were made on the pretext of marriage and it is trite law that any consent which is based on misrepresentation/ misconception of facts stands vitiated.

8. Learned APP for the State has supported the case of the prosecutrix and further submitted that there is *prima facie* sufficient material on record for the learned Trial Court to proceed with the trial especially considering the fact that the respondent, even after giving his assurance of marriage to the prosecutrix on 04.11.2015 at PS.: Timarpur, Delhi, again refused to marry the prosecutrix.

9. *Per contra*, learned counsel for the respondent submitted that the prosecutrix has not maintained consistency in her versions at different stages of the proceedings, thereby negating any allegation of force or coercion and the contradictions emerging from her statements recorded under Sections 161 and 164 of the Cr.P.C., as well as from the initial Complaint itself, raise serious doubts about the reliability and credibility of her testimony, indicating lack of certainty in her narrative.

10. Further, learned counsel for the respondent, referring *Union of India*

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<sup>7</sup> AIR Online 2006 SC 40



**vs. Prafulla Kumar Samal<sup>8</sup> and Amit Kapoor vs. Ramesh Kumar Chandra<sup>9</sup>** submitted that the ambit of revision vested with this Court would warrant interference only where the view adopted by the learned Trial Court is so inherently improbable that no prudent person could have arrived at such a conclusion, or where the essential ingredients of the alleged criminal offence are not *prima facie* made out. Also, as per settled law, where two plausible views are possible and upon an appraisal of the material on record, the Court finds that the evidence gives rise merely to suspicion and not to grave suspicion, the Court would be well within the bounds of law in ordering discharge.

11. This Court has heard the learned counsel for the parties and also perused the documents on record as well as the judgments cited by them at bar.

12. As borne out from the facts, the case herein is based on *false assurance of marriage* given by the respondent. As per the prosecutrix and the State, based on *false assurance of marriage*, the respondent has gone onto make intimate relations with the prosecutrix. The same has to be seen and analysed from the viewpoint of the documents on record, especially the timeline involved.

13. The FIR dated 01.12.2015, involved herein, reads as under:-

*“... ...Sumit S/o Sh. Ajab Singh, R/o Village Kontu, Distt. Bulandshehar aged about 28 years became my friend, he also comes in our relation. Sumit used to visit our house.*

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<sup>8</sup> (1979) 3 SCC 4

<sup>9</sup> (2012) 9 SCC 460



*Sumit is working in Delhi Police and presently he is posted in Traffic Police. We both fell in love and used to talk on phone. We used to meet on and off. On date 07.10.2015, Sumit made a phone call to me and asked me to come to Delhi and meet him. I had refused for the same, then he in anger stated that she has ruined his life and threatened her that if she does not come to Delhi to meet him, he will do something to himself and then cut the phone... ...Nobody was present at that room at that time. We talked to each other for sometime, thereafter Sumit started kissing me, when I objected to the same, he stated that there is no harm in kissing as we both are going to marry. After that he forcefully took off my clothes and made physical relation with me even after I protested. I had stated to him that he has done wrong with me and I started crying. I stated to him that I want to go to my house. He stated that as we are going to marry so there is no harm in making physical relations... ... ...Finding no other option, I stayed at his room. Then in night at about 10.00 P.M., Sumit left me at Murad Nagar, where my father came to take me. After that, my family members came to know about my relation with Sumit.”.*

14. Prior thereto, the initial Complaint dated 02.11.2015 given by the prosecutrix at PS.: Timarpur, Delhi read as under:-

*“... ...since owing to family relations he was a regular visitor since the last 2 years... ...When I reached home, on seeing me anxious, my family asked what happened to which I narrated the whole incident and told them that Sumit is ready to marry me... ...”.*

15. The above is a vital factor for consideration, more so, whence the prosecutrix is a matured and an educated woman, who being fully aware, nowhere denied what she was doing. She was, *admittedly*, in a relationship



with the respondent since the past *two years*, about which there is nothing untoward has been alleged by her. The prosecutrix was thus conscious of what was happening all throughout. Even the medical examination did not reveal any external injuries. Moreover, it is the prosecutrix's own case that on the date of the incident she proceeded to be dropped by the very same respondent to her native city being Ghaziabad. Not only that, even her own father picked her up on that day. This shows that her father was aware of what was going on between them. Thereafter, there was a lull for a sufficient period till the Complaint was made on 02.11.2015 and the FIR was subsequently registered only on 01.12.2015. It is also noteworthy that the alleged incident was/ is the sole instance and thus, it can be safely inferred that there was no periodical/ repeated instance(s) of the same kind before.

16. It also cannot be ignored that it was/ is the own case of the prosecutrix that she was in a relationship and love with the respondent. This, in fact, reflects that she was all throughout acting voluntarily and consensually. Therefore, there is no *grave suspicion* warranting framing of a charge under *Section 376* of the IPC against the respondent.

17. In view of the aforesaid, in the considered opinion of this Court, the learned Trial Court has correctly observed that the parties were well acquainted and that no material suggests any compulsion or inducement to establish a physical relationship on a false assurance of marriage, as also that her consent cannot be said to have been vitiated within the meaning of *Section 90* of the IPC. As such, the findings based thereon in the impugned order, need no interference by this Court.



18. Additionally, the application of mind at the stage of assessing a petition of discharge under *Sections 227 and 228 of Cr.P.C.* ought not be of such a character which tantamount to conducting a mini trial and if there are two views possible based on the evidence, which gives rise merely to “*suspicion*” and not to “*grave suspicion*” against the accused, the Court would be justified in ordering discharge, as held by the Apex Court in *Prafulla Kumar Samal (supra)*, which reads as under:-

“10. *Thus, on a consideration of the authorities mentioned above, the following principals emerge:-*

*xxx*

(3) *The test to determine a *prima facie* case would naturally depend upon the facts of each case and it is difficult to lay down a rule of universal application. By and large however if two views are equally possible and the Judge is satisfied that the evidence produced before him while giving rise to some suspicion but not grave suspicion against the accused, he will be fully within his right to discharge the accused.”*

*(Emphasis Supplied)*

19. Even otherwise, it is essential to bear in mind that this Court is adjudicating the present petitions while exercising revisional jurisdiction, wherein interference is only permissible when there is some glaringly perversity, illegality or there are inherent flaws in the impugned order, and that too of such a nature that no prudent person would have come to that conclusion, if that is not the case, as held by the Apex Court in *Ramesh Kumar Chandra (supra)* and *Ramesh Singh (supra)*, this Court under the powers vested with under *Section 397* read with *Section 401* of the IPC ought



not to interfere with the impugned order.

20. As such, taking a holistic view of the materials on record, the legal position, and since there is no illegality and/ or perversity in the impugned order dated 31.05.2017 passed by the learned Trial Court warranting interference from this Court, the same is upheld.

21. Accordingly, in view of the foregoing, the present petitions are hereby dismissed with no orders as to costs.

**SAURABH BANERJEE, J**

**FEBRUARY 17, 2026/Ab/AKS**