



* IN THE HIGH COURT OF DELHI AT NEW DELHI

Reserved on: 25.09.2026

Pronounced on: 13.10.2026

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+ CRL.REV.P. 1152/2023

PROSECUTRIX

.....Petitioners

Through: Ms. Gunjan Sinha Jain (DHCLSC),
Adv.
Petitioner in person (*through VC*).

versus

STATE OF NCT OF DELHI & ANR.

.....Respondents

Through: Mr. Raj Kumar, APP with Mr.
Naveen
Kumar Vashisht, Adv.
Ms. Niklesh Kumari Moseen, Adv.
for R2.
SI Sawan Kumar, PS Gokulpuri.
SI Seema Bathan, PS - EOW.

CORAM:

HON'BLE MS. JUSTICE MADHU JAIN

JUDGMENT

MADHU JAIN, J.

1. The present revision petition has been filed under Sections 397 and 401 of the Code of Criminal Procedure, 1973 (hereinafter, "Cr.P.C."), assailing the order dated 09.06.2023 passed by the learned Additional Sessions Judge, Karkardooma Courts, Delhi, in SC No. 2608/2018 titled *State v. Moseen*, arising out of *FIR No. 716/2017* registered at



Police Station Gokulpuri under Sections 354C/376 of the Indian Penal Code, 1860 (hereinafter, “IPC”), whereby respondent No. 2 was discharged at the stage of consideration of charge.

BRIEF FACTS:

2. The brief facts giving rise to the present petition are that FIR No. 716/2017 was registered on 26.12.2017 at Police Station Gokulpuri under Sections 354C/376 of the Indian Penal Code, 1860 (hereinafter, “IPC”), on the complaint of the petitioner/prosecutrix. As per the allegations, the petitioner was residing with her husband and children at Old Mustafabad, Delhi, while respondent No. 2 was residing in the neighbourhood.
3. It was alleged that, sometime in November 2016, respondent No. 2 entered the petitioner's house and secretly recorded a video of her while she was bathing. The petitioner alleged that respondent No. 2 thereafter threatened to circulate the said video on the internet and, taking advantage of her apprehension of social humiliation, repeatedly subjected her to sexual relations against her will. It was further alleged that respondent No. 2 used to visit her house in the absence of her husband and continued to threaten and pressurise her.
4. The petitioner further alleged that respondent No. 2 compelled her to institute divorce proceedings against her husband on 06.12.2016. According to the petitioner, on the intervening night of 04.02.2017 and 05.02.2017, respondent No. 2 also pressurised her to take cash and jewellery belonging to her sister-in-law. In connection with the alleged removal of cash, jewellery and other articles, separate e-FIR Nos. 79/2017



and 110/2017 came to be registered at Police Station Gokulpuri.

5. During investigation, the statement of the petitioner was recorded under Section 161 of the Code of Criminal Procedure, 1973 (hereinafter, “Cr.P.C.”). Thereafter, on 27.12.2017, her statement was recorded under Section 164 Cr.P.C. before the learned Metropolitan Magistrate, wherein she reiterated the allegations concerning the recording of the video and the threats allegedly extended by respondent No. 2. She further stated that the latch of the bathroom door and the glass fitted above it were broken, and that respondent No. 2 had taken advantage of the said circumstances to record the video.

6. During the course of investigation, the statement of the petitioner's sister-in-law, Javeria @ Nayala, was also recorded under Section 161 Cr.P.C., wherein she stated that the petitioner had disclosed to her the alleged acts of respondent No. 2, including the recording of the video.

7. Upon completion of investigation, the police filed a charge-sheet on 04.06.2018. The investigation revealed that respondent No. 2 had been using two mobile phones, namely, an Apple iPhone and a Micromax phone. While the Micromax phone was recovered, respondent No. 2 stated that the Apple iPhone had been lost at Jahangirabad, Bulandshahr, Uttar Pradesh. The said device could not be recovered during investigation.

8. Subsequently, a report dated 13.09.2018 was obtained under the Right to Information Act, 2005, concerning the efforts made to recover the Apple iPhone. The report indicated that respondent No. 2 had been questioned regarding the device and had stated that he did not possess its IMEI number.



9. On 17.12.2020, a supplementary charge-sheet was filed along with the report of the Forensic Science Laboratory concerning the mobile phones examined during investigation. As per the report, the two mobile phones marked as Exhibits MP1 and MP2 could not be powered on and, consequently, data could not be retrieved from them. The material placed on record also included certain messages exchanged between the petitioner and respondent No. 2.

10. Vide the impugned order dated 09.06.2023, the learned Trial Court declined to frame charges against respondent No. 2 and discharged him. While passing the said order, the learned Trial Court considered, inter alia, the non-recovery of the alleged video, the circumstances in which the recording was stated to have been made, and the conduct of the petitioner. Aggrieved by the said order, the petitioner has preferred the present revision petition.

SUBMISSIONS ON BEHALF OF THE PETITIONER

11. Learned counsel for the petitioner submits that the learned Trial Court exceeded the limited jurisdiction vested in it at the stage of consideration of charge by undertaking a detailed appreciation of the material collected during investigation. It is contended that the allegations made by the petitioner, particularly in her statement recorded under Section 164 Cr.P.C., were sufficient to raise a grave suspicion against respondent No. 2 and warranted consideration of framing of charges.

12. It is further submitted that the learned Trial Court proceeded on assumptions regarding the conduct of the petitioner and the alleged



improbability of the incidents narrated by her. The conclusion that the allegations were unbelievable, merely because the alleged video could not be recovered, is stated to be contrary to the settled principles governing discharge.

13. Learned counsel also draws attention to the material concerning the Apple iPhone allegedly used by respondent No. 2. It is submitted that the said device was never produced during investigation and that the circumstances surrounding its non-recovery could not have been treated as sufficient to disbelieve the prosecution case at the threshold.

14. It is further contended that the observations made by the learned Trial Court concerning the character and conduct of the petitioner were unwarranted and had no bearing upon the question whether the material disclosed a prima facie case. Reliance has been placed upon the decisions of the Supreme Court in *Sajjan Kumar v. CBI*, (2010) 9 SCC 368, *State of Rajasthan v. Ashok Kumar Kashyap*, (2021) 11 SCC 191, and *CBI v. Aryan Singh*, (2023) 18 SCC 399.

SUBMISSIONS ON BEHALF OF THE RESPONDENTS

15. *Per contra*, learned APP for the State submits that the learned Trial Court passed the impugned order after considering the material collected during investigation, including the statements of the prosecutrix and the forensic examination report. It is submitted that the alleged obscene video could not be recovered during investigation and that the mobile phones examined by the Forensic Science Laboratory did not yield any relevant data.



16. It is further submitted that the learned Trial Court also considered the circumstances surrounding the allegations made by the prosecutrix and found insufficient material to proceed against respondent No. 2. Learned APP submits that the question whether the impugned order warrants interference may be considered in light of the material available on record and the settled principles governing discharge under Section 227 Cr.P.C.

17. Learned counsel for respondent No. 2 supports the impugned order and submits that the learned Trial Court rightly discharged respondent No. 2 after considering the inconsistencies and improbabilities in the prosecution case. It is contended that the allegations concerning the recording of the video remained unsubstantiated and that no sufficient ground existed for framing charges against respondent No. 2. Accordingly, dismissal of the present revision petition is prayed for.

ANALYSIS AND FINDINGS

18. This Court has considered the submissions advanced and perused the material placed on record. The question which arises for consideration is whether the learned Trial Court, while discharging respondent No. 2, applied the principles governing the exercise of jurisdiction under Sections 227 and 228 Cr.P.C.

19. The law concerning discharge and framing of charge is well settled. At this stage, the Court is required to consider whether the material placed before it discloses sufficient ground for proceeding against the accused. Although the Court is empowered to sift and weigh the material for the limited purpose of determining whether a prima facie case exists,



it is not expected to undertake a meticulous examination of the evidence or determine whether the prosecution would ultimately succeed in securing a conviction.

20. In *Sajjan Kumar v. CBI, (2010) 9 SCC 368*, the Supreme Court laid down the principles governing consideration of charge and discharge. It was held that where the material placed before the Court discloses grave suspicion against the accused, which has not been properly explained, framing of charge would be justified. The Court also clarified that the probative value of the material cannot be examined as though a trial were being conducted.

21. Similarly, in *CBI v. Aryan Singh, (2023) 18 SCC 399*, the Supreme Court reiterated that the Court, at the stage of framing of charge, is not required to conduct a mini-trial by appreciating the evidence in detail. The question is whether the material, taken at its face value, discloses sufficient ground to proceed.

22. In the present case, the learned Trial Court, while considering the question of charge, placed considerable emphasis upon the non-recovery of the alleged obscene video. In the impugned order, the learned Trial Court observed that there could be no presumption regarding the existence of the video merely because the prosecutrix alleged that such a recording had been made. Thereafter, learned Trial Court proceeded to examine the circumstances in which the alleged recording could have been made, including the presence of other family members in the house and the condition of the bathroom door and the glass fitted above it. On that basis, the learned Trial Court concluded that the account given by the prosecutrix



was unbelievable.

23. In the considered opinion of this Court, the approach adopted by the learned Trial Court travels beyond the scope of the enquiry permissible at the stage of framing of charge. The absence of the alleged video was undoubtedly a circumstance which could be considered along with the remaining material. However, the learned Trial Court was required to examine whether the allegations, read with the material collected during investigation, raised a grave suspicion against respondent No. 2. It could not have conclusively rejected the version of the prosecutrix by proceeding upon assumptions as to how the alleged recording ought to have been made or how she would ordinarily have reacted in the circumstances narrated by her.

24. The investigation also disclosed that respondent No. 2 had stated that the Apple iPhone in his possession had been lost and could not be produced. The non-recovery of the said device does not, by itself, establish that respondent No. 2 had recorded or concealed any video. Equally, its non-recovery cannot, without examination of the remaining material, be treated as conclusive proof that no such recording ever existed.

25. The learned Trial Court further relied upon the conduct of the petitioner, including the institution of divorce proceedings, her alleged intention to leave her matrimonial home and the registration of theft cases, to conclude that her relationship with respondent No. 2 was consensual. In the impugned order, the learned Trial Court also made observations concerning the alleged immorality of the petitioner.

26. Such observations were neither necessary nor appropriate for



deciding the question of charge. The allegation of the petitioner was that respondent No. 2 had threatened to circulate an intimate recording and thereby compelled her to submit to his demands. Whether the alleged threats were made, whether they influenced her conduct and whether the sexual acts alleged were without consent are matters requiring consideration of the evidence. The conduct attributed to the petitioner could not, without such examination, conclusively establish consent.

27. In this regard, Section 53A of the Indian Evidence Act, 1872, also recognises that, in prosecutions involving the specified sexual offences, evidence concerning the character or previous sexual experience of the victim is not relevant to the issue of consent or the quality thereof. The observations concerning the petitioner's alleged immorality, therefore, cannot form a legitimate basis for rejecting the prosecution case at the stage of charge.

28. This Court may also refer to the decision in ***State v. Mohd. Javed Nasir, 2022 SCC OnLine Del 3974***, decided on 23.11.2022, wherein a Coordinate Bench of this Court set aside an order discharging the accused of an offence under Section 376 IPC. The Court observed that discrepancies in the statements of the prosecutrix could not be subjected to detailed appreciation at the stage of framing of charge and that the Court was required to assess whether the material disclosed a prima facie case.

29. Applying the aforesaid principles to the present case, this Court finds that the learned Trial Court did not confine its consideration to the question whether the material disclosed sufficient ground for proceeding against respondent No. 2. Instead, it assessed the credibility of the



prosecutrix, drew conclusions concerning the nature of her relationship with respondent No. 2 and rejected her allegations on the basis of perceived improbabilities.

30. The learned Trial Court was certainly entitled to examine the broad probabilities of the case and the material collected during investigation. However, such examination was required to remain within the limits prescribed under Sections 227 and 228 Cr.P.C. The reasoning adopted in the impugned order effectively resolves disputed questions of fact and credibility which could not appropriately have been determined in that manner at the stage of consideration of charge.

31. In these circumstances, this Court is of the view that the impugned order suffers from an error in the application of the principles governing discharge. The matter, therefore, warrants interference in exercise of revisional jurisdiction.

CONCLUSION

32. In view of the foregoing discussion, the impugned order dated 09.06.2023 passed by the learned Additional Sessions Judge, Karkardooma Courts, Delhi, in SC No. 2608/2018 titled *State v. Moseen*, arising out of FIR No. 716/2017, P.S. Gokulpuri, is hereby set aside.

33. The matter is remanded to the learned Trial Court for fresh consideration of the question of framing of charge against respondent No. 2, in accordance with law and in the light of the principles discussed hereinabove.

34. Accordingly, the present revision petition stands allowed in the aforesaid terms. Pending application(s), if any, also stand disposed of.



35. It is clarified that the observations made by this Court are confined to examining the legality of the impugned order and shall not be construed as an expression of opinion on the guilt or innocence of respondent No. 2. The learned Trial Court shall consider the material independently, without being influenced by any observation made herein on the merits of the allegations.

36. A copy of this judgment be sent to the learned Trial Court for information and necessary compliance.

**MADHU JAIN
(JUDGE)**

OCTOBER 13, 2026/P