



IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE A. BADHARUDEEN

MONDAY, THE 6TH DAY OF JANUARY 2025 / 16TH POUSHA, 1946

CRL.REV.PET NO. 1120 OF 2024

AGAINST THE ORDER DATED 03.10.2024 IN CRL.M.P.NO.248/2024 IN S.C. NO.440

OF 2021 OF FAST TRACK SPECIAL COURT, MATTANNUR

REVISION PETITIONER/PETITIONER/ACCUSED:

STEPHIN RAJ,
AGED 34 YEARS
S/O REJI (LATE), MUTHALATHOTTATHIL HOUSE, EDAVELI, ARALAM
AMSOM, KANNUR, PIN - 670674

BY ADVS.
DHEERAJ KRISHNAN PEROT
VINEETHA A.A.
FIDHA NAVAS
LAKSHMY E.

RESPONDENT/RESPONDENT/COMPLAINANT:

STATE OF KERALA
REPRESENTED BY PUBLIC PROSECUTOR, HIGH COURT OF KERALA,
ERNAKULAM, PIN - 682031

PP - T.S JIBU

THIS CRIMINAL REVISION PETITION HAVING COME UP FOR ADMISSION ON
27.11.2024, THE COURT ON 06.01.2025 DELIVERED THE FOLLOWING:

**“C.R”****ORDER****Dated this the 6th day of January, 2025**

This Criminal Revision Petition has been filed under Sections 438 and 442 of the Bharatiya Nagarik Suraksha Sanhita, 2023, challenging the order dated 03.10.2024 in Crl.M.P. No.248/2024 in S.C. No.440/2021 on the files of the Special Judge Fast Track Special Court, Mattannur. The revision petitioner herein is the accused in the above case.

2. Heard the learned counsel for the revision petitioner as well as the learned Public Prosecutor, in detail. Perused the impugned order and relevant materials available.

3. The prosecution allegation is that, the accused, who is a distant relative of the defacto complainant, with whom she had been very close since the year 2018, in the month of December 2018, while her mother was admitted to the hospital, frequently visited her home while she was



alone and promised to marry her. Consequent to thereof, the accused had sexual intercourse with her. Thereafter, the accused told her to keep the incident secret, repeating promise of marriage. Later, he persuaded her to snap her explicit photographs and forwarded them to him. Believing the promise to marry her, the defacto complainant obliged his request. He further threatened her that if she disclose the relationship with any other person he would commit suicide. Until June 2019, many times the accused subjected defacto complainant to rape. After some time, the defacto complainant learned that the marriage of the accused had been fixed with another lady. Thereafter, her efforts to contact the accused went in vain. Realizing the fraud and unilateral withdrawal by the accused from the marriage, the defacto complainant attempted to commit suicide. After counseling in a hospital, complaint was lodged and this crime was registered. It is on this premise, the prosecution alleges commission of offences punishable under Sections 376(2) (n) and (f) of Indian Penal Code. The petitioner moved an



application under Section 227 of Cr.P.C. before the Special Court and sought the relief of discharge.

4. The learned counsel for the revision petitioner pressed for interference in the impugned order on the submission that the prosecution materials do not make a *prima facie* case to see commission of offence punishable under Section 376(2)(n) and (f) of IPC by the accused/revision petitioner and the sexual intercourse between the accused and the defacto complainant was consensual in nature. The learned counsel for the revision petitioner argued further that the Special Court failed to consider one document produced by the revision petitioner in the form of a complaint alleged to be lodged by the defacto complainant before the Yuvajana Commission admitting the relationship as consensual, while addressing the plea of discharge. Therefore, the petitioner is liable to be discharged.

5. The learned Public Prosecutor opposed grant of the relief sought for and submitted that the impugned order is perfectly justified. Therefore, the order impugned does not require any interference.



6. The learned Special Judge anxiously considered the contentions raised by the petitioner and the prime contention raised before the Special Court was that, sexual intercourse between the defacto complainant and accused was on the basis of mutual consent and therefore the allegation of rape would not sustain. The learned Special Judge meticulously analyzed the prosecution records and thereafter dismissed the discharge application as observed in paragraph Nos. 14 and 15 of the impugned order. The same are as under:

*"14. In **Sheoroj Singh Ahlawat V State of UP 2013 (11 SCC 476)** it is held that "at the time of framing of charge the court is required to evaluate the materials and documents on record to decide whether there is a ground for presuming that the accused had committed offence. There is no need to evaluate the sufficiency of evidence to convict the accused. Materials brought on record by prosecution can be believed to be true. But there probative value cannot be decided at that stage. The accused is entitled to urge his contentions while entertaining the discharge application only on the material submitted by the prosecution. But he is not entitled to produce any material at that stage and the court is not required to consider any such material."*



15. As noted earlier, in order to sustain a discharge, the allegations against the accused are to be baseless. Consent is a matter to be gathered from the evidence of the parties. It is too early to believe the case of the petitioner/accused that the sexual intercourse was purely consensual and therefore rape will not sustain. Where the victim did not mention any act of sexual assault or intent in her 164 Cr.P.C, statement even in POCSO Act discharge can be said to be proper. But, in the given case, in all the primary documents the defacto complaint has clearly stated that the accused committed rape on her after making a fake promise to marry. In the circumstances, the case cannot be considered to be an unfounded case without any evidence. Learned defense counsel submitted that the marriage between the defacto complainant and the accused is prohibited by law as they are relatives. That is also a matter to be mooted during the trial. So, after hearing both sides and after perusing the materials before the court, I do not find any reason to hold that there is no ground for presuming that the accused had committed the offence. Such negative finding alone is sufficient to conclude that the accused is not entitled to discharge."

7. As far as the matters to be considered by a Court of Session when considering the plea of discharge under Section 227 of Cr.P.C and framing of charge under Section



228 of Cr.P.C are concerned, the law is well settled. In the decision reported in ***Sandeep G v. State of Kerala [2024 SCC OnLine KER 3564]*** this Court after referring the decisions of the Apex Court, stated as under:

“(i) Matters to be considered at the time of considering discharge and while framing charge are not aimless etiquette. Concomitantly the same are not scrupulous exertion. Keeping an equilibrium in between aimless etiquette and scrupulous exertion, the trial judge need to merely examine the materials placed by the prosecution in order to determine whether or not the grounds are sufficient to proceed against the accused on the basis of police charge/final report. The trial Judge shall look into the materials collected by the investigating agency produced before the Court, to see, prima facie, whether those materials would induce suspicious circumstances against the accused, so as to frame a charge and such material would be taken into account for the purposes of framing the charge. If there is no sufficient ground for proceeding against the accused necessarily, the accused would be discharged. But if the court is of the opinion, after such consideration of the materials there are grounds for presuming that accused has committed the offence/s which is/are triable, then necessarily charge shall be framed.



(ii) The trial Judge has to apply his judicial mind to the facts of the case, with reference to the materials produced by the prosecution, as may be necessary, to determine whether a case has been made out by the prosecution for trial on the basis of charge/final report.

(iii) Once the accused is able to demonstrate from the materials form part of the charge/final report at the stage of framing the charge which might drastically affect the very sustainability of the case, it is unfair to suggest that such material should not be considered or ignored by the court at this stage. The main intention of granting a chance to the accused of making submissions as envisaged under Section 227 of the Cr.P.C. is to assist the court to determine whether it is required to proceed to conduct the trial.

(iv) At the stage of considering an application for discharge the court must proceed on an assumption that the materials which have been brought on record by the prosecution are true and evaluate said materials, in order to determine whether the facts emerging from the materials taken on its face value, disclose the existence of the ingredients necessary of the offence/s alleged.

(v) The defence of the accused not to be looked into at the stage when the accused seeks discharge. The expression "the record of the case" used in Section 227 Cr. P.C. is to be understood as the



documents and objects, if any, produced by the prosecution. The Code does not give any right to the accused to produce any document at the stage of framing of the charge. The submission of the accused is to be confined to the material produced by the prosecution.

(vi) The primary consideration at the stage of framing of charge is the test of existence of a prima-facie case, and at this stage, the probative value of materials on record shall not be evaluated.

(vii) At the stage of framing of charge, the court has to form a presumptive opinion to the existence of factual ingredients constituting the offence alleged and it is not expected to go deep into probative value of the material on record and to check whether the material on record would certainly lead to conviction at the conclusion of trial.

(viii) In assessing this fact, it is not necessary for the court to enter into the pros and cons of the matter or into a weighing and balancing of evidence and probabilities which are really the function of the trial Judge, after the trial. At the stage of Section 227, the Judge has merely to sift the prosecution materials in order to find out whether or not there are sufficient grounds to proceed with trial of the accused.

(ix) Strong suspicion in favour of the accused, cannot take the place of proof of his guilt at the conclusion of the trial. But at the time of framing



charge, if there is 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. In such case also charge needs to be framed to permit the prosecution to adduce evidence.

(x) If the evidence which the Prosecutor proposes to adduce to prove the guilt of the accused even if fully accepted before it is challenged in cross-examination or rebutted by the defence evidence, if any, cannot show that the accused committed the offence, then there will be no sufficient ground for proceeding with the trial.

17. Applying the principles as enunciated above, no doubt, the court has power to discharge an accused, if the entire materials produced by the prosecution do not disclose, prima facie, materials to frame charge, and to proceed with trial. Except in the said circumstances, it is possible for the court to frame charge based on the materials and to proceed with trial."

8. In this matter, it is found by the Special Court that in the statement given by the victim, she has specifically stated that the accused herein subjected her to repeated sexual intercourse on the promise of marriage and thereafter he retracted therefrom. Thus, it appears *prima*



facie that the sexual intercourse between the defacto complainant and the accused was on the basis of the promise of marriage. In such a case, the consent, if any, given by the defacto complainant is vitiated as dealt under Section 90 of IPC.

9. On evaluation of the entire matters involved, the prosecution materials herein would *prima facie* show commission of the offence alleged by the accused so as to proceed further under Section 228 of the Cr.P.C. as rightly found by the Special Court.

10. Another contention raised by the learned counsel for the revision petitioner is that, the Special Court failed to consider a document produced by the revision petitioner in the form of a complaint alleged to be lodged by the defacto complainant before the Yuvajana Commission admitting the relationship as consensual, while addressing the plea of discharge. In this regard, the question arises for discussion is: whether the Sessions Court/Special Court can look into materials placed by the accused apart from the prosecution records while considering the plea of discharge?

11. In response to this question, it is held that, while



considering the plea of discharge, the Special Court has to consider the records of the case and the documents submitted therewith by the prosecution. The scope and ambit of discharge shall not be available beyond the prosecution records and the court cannot look into any document other than the prosecution records, either presented by the accused or by any other means which do not form part of the prosecution records, while considering plea of discharge. Therefore, non-consideration of the copy of the complaint by the Special Court only to be justified.

12. In view of the above discussion, the order impugned dismissing the discharge plea at the instance of the petitioner/accused does not require any interference.

13. In the result, this revision petition must fail and accordingly the same stands dismissed.

Registry is directed to forward a copy of this order to the Special Court, within three days, for information and further steps.

Sd/-
A. BADHARUDEEN
JUDGE