

**State Vs. Vikas
FIR No. 212/16
PS North Rohini**

30.05.2017

Present: Sh. Himanshu Garg, Ld Addl. PP for the State.
Accused on bail with counsel Sh. Anil Pawar.

I have heard both the sides on the point of charge.

It is submitted by the Ld Defence counsel that statements of the prosecutrix are inconsistent and therefore cannot be relied upon for the purpose of framing of charge.

On the other hand, Ld Addl. PP for the State submits that there is specific statement made by the prosecutrix against the accused and that has to be taken into consideration for the purpose of framing of charge.

The law on the question of consideration of charge is well settled. If the criminal Court, on consideration of the material submitted with the charge sheet finds that a grave suspicion exists about the involvement of the accused in the crime alleged, it is expected to frame the charge and put the accused on trial. At such initial stage of the trial, the truth, veracity and effect of the evidence which the prosecutor proposed to adduce are not required to be meticulously judged, nor any weight is to be attached to the probable defence of the accused.

It was held in the case of ***Union of India vs Prafulla Kumar Samal and another, (1979) 3 SCC*** that :

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

(1) That the Judge while considering the question of framing the charges under Section 227 of the Code has the undoubted power to sift and wight the evidence for the limited purpose of finding out whether or not a prima facie case against the accused has been made out.

(2) Where the materials placed before the Court disclose grave suspicion against the accused which has not been properly explained the Court will be, fully justified in framing a charge and proceeding with the trial.

(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.

(4) That in exercising his jurisdiction under section 227 of the Code the Judge which under the present Code is a senior and experienced Judge cannot act merely as a Post office or a

mouth-piece of the prosecution, but has to consider the broad probabilities of the case, the total effect of the evidence and the documents produced before the Court, any basic infirmities appearing in the case and so on. This however does not mean that the Judge should make a roving enquiry into the pros and cons of the matter and weigh the evidence as if he was conducting a trial.....”

The scope of Section 227 of Code was considered by Apex Court in the case of **State of Bihar vs Ramesh Singh (1977) 4 SCC 39**, wherein it was observed that : -

“4 Strong suspicion against the accused, if the matter remains in the region of suspicion, cannot take the place of proof of his guilt at the conclusion of the trial. 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 presumption of the guilt of the accused which is to be drawn at the initial stage is not in the sense of the law governing the trial of criminal cases in France where the accused is presumed to be guilty unless the contrary is proved. But it is only for the purpose of deciding prima facie whether the Court should proceed with the trial or not. 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.....”

This Court has thus held that whereas strong suspicion may not take the place of the proof at the trial stage, yet it may be sufficient for the satisfaction of the Trial Judge in order to frame a charge against the accused.

Coming to the present case, FIR in the present case was registered on the basis of statement given by the prosecutrix. She also deposed under section 164 CrPC wherein she specifically named the accused for establishing physical relations with her against her consent. There is prima facie sufficient material to proceed with the trial against the accused for the offences under section 342/323/506/354(B)/376IPC. Statements of the prosecutrix are specific and cannot be brushed aside at this stage. The acts of the accused are covered within the ambit of offences mentioned above and accordingly, I order that charges be framed.

Formal Charges for commission of offences punishable under Section **342/323/506/354(B)/376IPC** framed against the accused to which he pleads not guilty and claims trial.

Put up for **PE on 22.09.2017.**

(ANJU BAJAJ CHANDNA)
ASJ-Special Fast Track Court
North-West, Rohini Courts
Delhi/30.05.2017.