



IN THE COURT OF ADDITIONAL SESSIONS JUDGE-08, WEST DISTRICT TIS HAZARI COURTS, DELHI

Presided by: Hem Raj, DHJS

CNR No. DLWT01-002868-2023

Cr. Revision No. 189/2023

In the matter of :

State (Govt. of NCT of Delhi)

Through Public Prosecutor

..... Revisionist

Versus

Ankit Tiwari

S/o Sh. Ram Sukh Tiwari

R/o 1/222, Vastu Khand Gaumti Nagar,

Lucknow, U.P.

..... Respondent

Date of Institution of revision : 31-03-2023

Date of reserving for order : 05-04-2024

Date of pronouncement of order : 05-04-2024

ORDER

1. The revisionist finds the grievance with the order dated 13.01.2023 (impugned order) passed by Ld. MM (Trial Court), whereby Ld. MM discharged the respondent (accused) from the of-

fence U/s 354A(4) IPC. Two other accused persons namely Gajendra Prasad Singh and Harshit Tripathi were completely discharged from the case. The respondent Ankit Tiwari was charged for the offences u/s 354D/509 IPC. He was discharged for the offences u/s 354A/506 and 109 IPC. The State has only challenged the discharge of respondent for the offence u/s 354A IPC.

2. The relevant portion of the impugned order reads as under:-

“As far as accused no.1 Ankit Tiwari is concerned he is charge-sheeted u/s 354A/354D/506/509/109 IPC. There are allegations against him that he made obscene call to the complainant and sent objectionable messages to her on Whatsapp. The IO has placed CDR and CAF record along with chargesheet which show that the mobile number 8318501931 from which calls were made to the complainant on 29.06.2018 belongs to accused Ankit Tiwari and it is disclosed by the accused Ankit Tiwari during investigation that the other number 9455804034 also belongs to him from which series of messages were sent to the complainant on WhatsApp. The complainant has further mentioned in her complaint that she was threatened to be killed, abducted and harassed over whatsapp messages. The said part has not been mentioned by the complainant in her statement u/s 164 Cr.P.C made on 07.07.2018. The complainant provided screen shot of the messages sent to her on the whatsapp. The screen shot of those messages also nowhere shows any such threatening message made to her. Therefore, this court is of opinion the allegation relating to sending threatening messages to her is groundless.

Accordingly, in view of the entire discussion this court is of opinion that prima facie case is made out against accused Ankit Tiwari u/s 354D/509 IPC only.”

3. The State (revisionist) challenges the impugned order on the following grounds:-

(a) The Ld. MM ignored the specific allegations against the accused regarding the sexually coloured remarks made by him to the complainant.

(b) The Ld. MM ignored the statement u/s 161 Cr.P.C. of the complainant.

(c) The Ld. MM ignored that the complainant corroborated her complaint in her statement u/s 164 Cr.P.C.

4. The Ld. Prosecutor advanced arguments in consonance with the ground taken in the revision petition.

5. On the other hand, Ld. Counsel for the respondent supported the impugned order submitting that there is no infirmity in the same.

6. The necessary facts for the disposal of the present revision petition in brief are that on 29.06.2018, complainant received two calls from an unknown number i.e. 8318501931 on which caller made obscene remarks to her. Further, complainant received whatsapp messages from another number i.e. 9455804034, wherein she received threatening messages. As a result, complainant filed a complaint which was registered u/s 506 r/w 509 IPC. During investigation, it was revealed that mobile number i.e. 8318501931 belongs to the respondent, who on interrogation, disclosed that both the numbers belong to him and he procured the mobile number of complainant from one Harshit Tiwari. In the statement of complainant u/s 161 Cr.P.C., she stated that she was undergoing some matrimonial dispute and other accused persons, namely, Gajendra Prasad Singh and Harshit Tripathi are close relatives of her estranged husband. Respondent Ankit Tiwari was charge-sheeted u/s 354A/354D/506/509/109 IPC.

7. I have heard the arguments and perused the trial court record.

8. Section 397 CrPC provides the revisional powers of the Court and the same reads as under:-

397. Calling for records to exercise powers of revision – (1) The High Court or any Sessions Judge may call for and examine the record of any proceedings before any inferior Criminal Court situate within its or his local jurisdiction for the purpose of satisfying itself or himself as to the correctness, legality or propriety of any finding, sentence or order, recorded or passed, and as to the regularity of any proceedings of such inferior Court, and may, when calling for such record, direct that the execution of any sentence or order be suspended, and if the accused is in confinement, that he be released on bail or on his own bond pending the examination of the record.

Explanation – All Magistrates, whether Executive or judicial and whether exercising original or appellate jurisdiction, shall be deemed to be inferior to be Sessions Judge for the purposes of this sub-section and of section 398.

(2) The powers of revision conferred by sub-section (1) shall not be exercised in relation to any interlocutory order passed in any appeal, inquiry, trial or other proceeding.

(3) If any application under this section has been made by any person either to the High Court or to the Sessions Judge, no further application by the same person shall be entitled by either of them.

9. In the judgment of **Amit Kapoor v. Ramesh Chander**, (2012) 9 SCC 460 the Hon'ble Supreme Court discussed the revisional power of the court in great length. The relevant observations are reproduced as under:-

“12. Section 397 of the Code vests the court with the power to call for and examine the records of an inferior court for the purposes **of satisfying itself as to the legality and regularity of any proceedings or order made in a case. The object of this provision is to set right a patent defect or an error of jurisdiction or law.** There has to be a well-founded error and it may not be appropriate for the court to scrutinise the orders, which upon the face of it bears a token of careful consideration and appear to be in accordance with law. **If one looks into the**

various judgments of this Court, it emerges that the revisional jurisdiction can be invoked where the decisions under challenge are grossly erroneous, there is no compliance with the provisions of law, the finding recorded is based on no evidence, material evidence is ignored or judicial discretion is exercised arbitrarily or perversely. These are not exhaustive classes, but are merely indicative. Each case would have to be determined on its own merits.”

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“13. Another well-accepted norm is that the revisional jurisdiction of the higher court is a very limited one and cannot be exercised in a routine manner. One of the inbuilt restrictions is that it should not be against an interim or interlocutory order. The Court has to keep in mind that the exercise of revisional jurisdiction itself should not lead to injustice ex facie. **Where the Court is dealing with the question as to whether the charge has been framed properly and in accordance with law in a given case, it may be reluctant to interfere in exercise of its revisional jurisdiction unless the case substantially falls within the categories aforesaid. Even framing of charge is a much advanced stage in the proceedings under the CrPC.**”

“20. The jurisdiction of the court under Section 397 can be exercised so as to examine the correctness, legality or propriety of an order passed by the trial court or the inferior court, as the case may be. Though the section does not specifically use the expression “prevent abuse of process of any court or otherwise to secure the ends of justice”, the jurisdiction under Section 397 is a very limited one. The legality, propriety or correctness of an order passed by a court is the very foundation of exercise of jurisdiction under Section 397 but ultimately it also requires justice to be done. The jurisdiction could be exercised where there is palpable error, non-compliance with the provisions of law, the decision is completely erroneous or where the judicial discretion is exercised arbitrarily. On the other hand, Section 482 is based upon the maxim *quando lex aliquid alicui concedit, concedere videtur id sine quo res ipsa esse non potest* i.e. when the law gives anything to anyone, it also gives all those things without which the thing itself would be unavoidable. The section confers very wide power on the Court to do justice and to ensure that the process of the court is not permitted to be abused.”

10. In the case of **Union of India v. Prafulla Kumar Samal, (1979) 3 SCC 4** the Hon'ble Supreme Court culled out the following propositions on the point of charge:-

“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 weigh 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 court cannot act merely as a Post Office or a mouthpiece 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.”

11. In the case of **Dipakbhai Jagdishchandra Patel v. State of Gujarat, (2019) 16 SCC 547** the Apex Court held that as to what could be the ground of raising a grave or strong suspicion against the accused. It was observed as under:

“23. All that is required is, the court must be satisfied that with the materials available, a case is made out for the accused to stand trial. A strong suspicion suffices. However, a strong suspicion must be founded on some material. The material must be such as can be translated into

evidence at the stage of trial. The strong suspicion cannot be the pure subjective satisfaction based on the moral notions of the Judge that here is a case where it is possible that the accused has committed the offence. Strong suspicion must be the suspicion which is premised on some material which commends itself to the court as sufficient to entertain the prima facie view that the accused has committed the offence.”
(Emphasis supplied)

12. The aforesaid is the well settled propositions of law at the time of consideration of the charge.

13. A careful perusal of the impugned order would show that the Ld. MM although made deliberations on the material on the record as far as offence u/s 506 IPC is concerned. The Ld. MM further opined that considering the material on record, the allegations relating to sending threatening messages to the complainant is groundless. However, no discussions have been made by the Ld. MM for the offence u/s 354 A IPC if the said offence is also made out or not. The Ld. MM without giving any reasoning thereof, discharged the respondent Ankit Tiwari from the offence u/s 354 A IPC. It is trite law that while discharging the respondent for an offence, the Ld. MM has to give reasons thereof. Although if the Ld. MM is framing the charge, then the detailed reasons are not to be given. The impugned order is clearly devoid of any reasons as to why the respondent was discharged from the offence u/s 354A IPC. The reasons are the hallmark of a judicial order as a court is duty bound to give reasons to come to any conclusion so that the aggrieved may challenge the same on the reasoning given in the order. By not giving any reasons thereto, this court finds that the Ld. MM clearly erred in passing the impugned order.

14. Therefore, this court finds that the impugned order discharging the accused for the offence u/s 354A IPC suffers from infirmity and thus, is liable to be set aside.

15. Accordingly, the impugned order is set aside and the case is remanded back to the Ld. MM with the direction hear the arguments on the point of charge afresh and pass a fresh order thereof. It is needless to mention there that while passing the fresh order, the Ld. MM shall be guided by the settled law thereof.

16. Revision petition stands disposed off accordingly.

17. Trial court record along with an attested copy of this order be sent back to trial court.

18. Revision petition file be consigned to record room.

**Pronounced in the open
Court on 05-04-2024.**

**(Hem Raj)
Additional Sessions Judge -08
(West) Tis Hazari Courts Delhi**