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THE GAUHATI HIGH COURT
(HIGH COURT OF ASSAM, NAGALAND, MIZORAM AND ARUNACHAL PRADESH)

Case No. : CrI.Pet./1132/2023

JIGNESH MEVANI @ JIGNESH N. MEVANI
S/O NATWAR LAL PARMAR
R/O 104, CHUVAL NAGAR PART-II, BHARGAV ROAD,
P.S. MEGHARI NAGAR
DIST. AHMEDABAD, GUJRAT

VERSUS

THE STATE OF ASSAM AND ANR
REP. BY THE PP, ASSAM

2:SMTI. DEVIKA BRAHMA
D/O KRISHNA KANTA BRAHMA
R/O KUOI KACHARI GAON
P.S. JAGIROAD
DIST. MORIGAON
ASSA

Advocate for the Petitioner : MR. K N CHOUDHURY, MR H P NEPAL, MR S BORTHAKUR
Advocate for the Respondent : PP, ASSAM, MR. M PHUKAN, LD, PP, ASSAM

JUDGMENT & ORDER (CAV)

28-11-2025

1. This matter is specially assigned to this Bench by Hon'ble the Chief Justice in terms of the direction of the Hon'ble Apex Court in ***Ashwini Kumar Upadhyay Vs. Union of***



India reported in **2023 SCC Online SC 1463**, as the petitioner herein is a Legislator.

2. Heard Mr. K. N. Choudhury, learned Senior Counsel, assisted by Mr. S. Borthakur, learned Counsel for the petitioner. Also heard Mr. K. Gogoi, learned Public Prosecutor (PP), Assam, for the respondents.

3. The present petition is filed under Section 482 CrPC, seeking quashment of an order dated 19.09.2023 passed in P.R.C. No. 900/2022 by the learned Additional Chief Judicial Magistrate, Barpeta, whereby charges were framed against the petitioner under Sections 352/354 IPC.

4. The facts in nutshell are that, on 21.04.2022, the petitioner was arrested in connection with Kokrajhar P.S. Case No.183/2022 registered under Sections 120(B)/153(A)/295(A)/504/505(1)(b) (c)(2)IPC read with Section 66 of the Information Technology (I.T.) Act, 2000.

5. During police custody in connection with the aforementioned case, he was again shown to have been arrested on 26.04.2022 by Barpeta Road Police in connection with Barpeta Road Police Case No. 81/2022 which was registered under Sections 294/323/353/354 IPC, based on allegation of a lady police officer, respondent No.2, who alleged inappropriate behavior of the petitioner towards her, inside a police vehicle while he was taken from Guwahati to Kokrajhar in connection with Kokrajhar P.S. Case No. No.183/2022 after arrest. This is the case where charges against the petitioner were framed.

6. Subsequently, the petitioner was granted bail by a competent Court. While the petitioner was on bail, the investigating authority filed a charge sheet on 07.07.2022 under Sections 294/353/354 IPC.

7. The matter was thereafter transferred for trial to the Additional Chief Judicial Magistrate, Barpeta and PRC No. 900/2022 was registered.

8. Thereafter, by the impugned order dated 19.09.2023, charges were framed



under Sections 352/354 IPC against the petitioner while discharging him from the offences under Sections 294/353 IPC. This order is the subject matter of the present petition.

9. Mr. K.N.Choudhury, learned Senior counsel for the petitioner while referring to the statements of the victim as well as the other police personnel present inside the vehicle recorded under Sections 161 CrPC and 164 CrPC contends that the allegations are too trivial to attract offence under Section 354 IPC as there is neither any suggestion of intend to outrage the modesty nor does it disclose any obstruction of a public servant on use of criminal force under Section 352 IPC. Learned Senior counsel for the petitioner in this regard places reliance on the decision of the Hon'ble Apex Court passed in ***Rupan Deol Bajaj Vs. KPS Gill*** reported in **(1995) 6 SCC 194** and ***Raju Pandurang Mahale*** reported in **(2004) 4 SCC 371**.

10. Mr. Choudhury, learned Senior counsel for the petitioner, referring to the statements of the witnesses and the victim argues that the alleged act cannot be said to be even suggestive of having any sexual tone according to the common notions of mankind; the action as alleged cannot be perceived as one which is capable of shocking the sense of decency of a woman. Therefore, according to him, the alleged act of the petitioner cannot be said to be an act of any combination of person and mind, and as such, it cannot be said to be an act of outraging the modesty of the victim.

11. It is also contended by Mr. Choudhury, learned Senior counsel for the petitioner, that the law is well settled that the offence under Section 352 IPC, with the offence under Section 354 IPC, includes the ingredients of Section 354 IPC and therefore, no case of Section 352 IPC is made out, when no material is there under Section 354 IPC.

12. Par contra, Mr. K. Gogoi, learned PP, contends that the learned Trial Court has rightly framed the charges. According to him, at the stage of framing the charge, the Court is concerned not with proving the allegation; instead, it has to focus on the materials available on record and to form an opinion whether there is a strong suspicion



that the accused has committed an offence, which puts it to trial to prove his guilt. He contends that the framing of a charge is not a stage at which the final test of guilt is to be applied.

13. Referring to the statements of the victim as well as other witnesses, the learned PP contends that the learned Trial Court has rightly formed the opinion. Therefore, at this stage, this Court may not like to test the evidence.

14. According to the learned PP, at this stage, neither the Trial Court nor this Court, in exercise of its power under Section 482 CrPC, can examine the facts, evidence and the materials available on record as to whether, there is sufficient materials based on which the case would end in conviction; rather the Court is concerned primarily with the allegation taken as a whole, which shall constitute an offence. The learned counsel further contends that in the present case, when the offence is broadly satisfied, the Court should be more inclined to permit continuation of prosecution, rather than quashing it at the initial stage. There is no requirement to marshal the records with an object to determine the admissibility or reliability of the evidence to be recorded, but it is a prima facie opinion, which is available in the present case. Learned PP, in this regard, places reliance on the decision of the Hon'ble Apex Court passed in ***Muskan Vs. Ishaan Khan (Sataniya) and Ors.*** reported in ***(2025) SCC OnLine SC 2355*** and ***S.P.S.Rathore Vs. Central Bureau of Investigation and Anr.*** reported in ***(2017) 5 SCC 817***

15. Mr. Gogoi, learned PP, referring to ***Rupan Deol Bajaj*** (supra) contends that for commission of an offence under Sections 354/352 IPC, the intention or knowledge is one of the necessary ingredients and it is to be proved for convicting a person. Those ingredients, being state of mind, may not be proved by direct evidence and may have to be inferred from the attending circumstances of the given case. Therefore, as the present case is at its inception stage, such a state of mind cannot be conclusively determined. What is required to be seen is whether, prima facie, the background detailed in the FIR filed by the victim and her statement recorded under Sections 161 CrPC & 164 CrPC, disclose that the intention to outrage the modesty of the victim or she knew it to be likely



that he would have thereby outraged her modesty, which is prima facie available on the materials. Accordingly, he concludes that this is not a fit case to exercise the power of the Court under Section 482 CrPC to interfere with the well-reasoned order of framing charge against the petitioner and therefore, the present petition is liable to be dismissed.

16. I have given anxious consideration to the arguments advanced by the learned counsels for the parties and perused the materials available on record, including the statements of the witnesses recorded under Sections 161 CrPC & 164 CrPC.

17. At the outset, it is clarified that this Court will not deal with the part of the impugned order dated 19.09.2023, whereby the petitioner was discharged from the charges framed under Sections 294/353 IPC in absence of any challenge from the prosecuting agency; however, it shall deal with the part of the impugned order wherein the charges under Sections 354/352 IPC were framed.

18. The law relating to framing of charges is firmly settled. In ***Union of India Vs. Prafulla Kumar Samal and Anr.*** reported in ***(1979) 3 SCC 4***, the Apex Court held that the Court, at the stage of framing of charges, has to see the evidence to the limited extent, determining whether a prima facie case exists, but it cannot conduct a meticulous appreciation of the evidence. It was further observed that if it is in favour of the prosecution, the trial is to proceed.

19. Law is equally well settled that when the material placed before the Court discloses a grave suspicion against the accused, the Court will be justified in framing charges. It is also a settled proposition of law that neither a roving enquiry can be carried out nor is any mini-trial required at the stage of framing of charges.

20. A prima facie case must be made out before a charge can be framed, while doing so, a Court, has the power to shift and weigh the evidence for the limited purpose of finding out whether any prima facie case against the accused is made out. A prima facie case exists when there is material or evidence available and if viewed at its face value, leads to a reasonable suspicion that the accused might have committed the alleged



offence.

21. While exercising such power, the Court is required to evaluate the materials and documents on record with a view to finding out whether the facts emerging therefrom, taken at their face value, disclose the existence of all the ingredients constituting the alleged offence.

22. While exercising such power, the Court cannot act merely as a post office or 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, etc. Where grave suspicion exists against the accused, a Court shall be justified in framing a charge. When two views are equally possible and the material produced by the prosecution gives rise to some suspicion but not grave suspicion against the accused, the Court shall be within its jurisdiction to discharge the accused. The Court must apply its judicial mind to the material placed on record to have the aforesaid satisfaction.

23. Coming to Section 354 IPC, to attract the same, the prosecution must prima facie show from the material collected that the accused used criminal force on a woman, and such force was used with the intent to outrage her modesty or with knowledge that it was likely to have that effect.

24. The term "**modesty**" of a woman has been judicially interpreted to mean the attribute of female human beings that is capable of being outraged by an act intended or known to be likely to insult such virtue. The intention or knowledge is, therefore, the core ingredient. Mere rude or indecent behaviour without such intent will not suffice [**Ref: Rupon Deol Bajaj**].

25. The vital material relied by the prosecution in the present case are the FIR, the statement of the Victim recorded under Section 164 CrPC and the statements of the victim and other witnesses recorded under Section 161 CrPC.



26. In a case under the aforementioned Section, the statement of the victim as well as the allegations made are very important. That being the position, the same are reproduced below for completeness:

I. FIR:

With reference to the above I would like to inform you that today on 21.04.2022 while I was escorting the arrested accused person Sri Jignesh Mevani, S/o Natwar Lal Parmar in connection with Kokrajhar P.S. Case No. 183/2022 under Sections 120(B)/153(A)/ 295(A)/504/505(1)(b)(c) (2)IPC read with Section 66 of the I.T. Act, from LGB Airport, Guwahati to Kokrajhar along with Sri Surjit Singh Panesar, APS, Addl: Superintendent of Police (Head Quarter) Kokrajhar and TSI Mouti Basumatary in the Govt. vehicle. **On the way, just after crossing the Simalguri point in Barpeta district at about 1.30 pm, the accused person used slang towards me. When I asked him to behave properly, he became agitated and started using a lot of slang. He pointed a finger towards me and tried to frighten me, and pushed me on my seat with force. He thus assaulted me during the execution of my legal duty as a public servant and outraged my modesty by touching me inappropriately while pushing.** After reaching Kokrajhar, I immediately informed my senior officers. (emphasis supplied)

II. Statement of the victim recorded under Section 161 Cr.P.C. :

On 21.04.2022 I was detailed for escorting Sri Jignes Mavani, MLA, Vadgam, Gujarat from LGB Airport, Guwahati to Kokrajhar who was arrested in connection with Kekrajhar PS case no 183/2022 u/s 120(B)/15 A/295A/504/505(1)(b)(c)(2) IPC r/w sec 66 IT Act at Palanpur town in Banaskantha district of Gujarat and brought to Guwahati by flight. Sri Surjeet Singh Panesar, APS, Additional Superintendent of Police (HQ), Kokrajhar and TSI Mouti Basumatary were also with me in the vehicle along with the arrested accused person. After leaving airport we were on our way to Kokrajhar. **At around 1.30 PM just after crossing the Simalaguri point of Barpeta district, Sri Jignesh Mavani uttered slang words towards me. I asked him to behave properly but he got agitated and used more slang words. He pointed finger towards me and tried to frighten me and pushed me on my seat with force.** Sri Surjeet Singh Panesar, APS, Additional Superintendent of Police (HQ), Kokrajhar also asked him to behave properly and not to misbehave with a public Servant on duty. Since we did not wanted to create any scene on the road and were also in a hurry to reach the court at Kokrajhar we did not stop on the way. On reaching Kokrajhar I informed the matter to the Superintendent of Police, Kokrajhar who



instructed me to take legal action against Sri Jignesh Mavani. Thereafter I filed the FIR at Barpeta Road PS. **Sri Jignesh Mavani assaulted me during the execution of my legal duty and outraged my modesty by touching me inappropriately while pushing.** That's all I have to say. (emphasis supplied)

III. **Statement of the victim recorded under Section 164 Cr.P.C.:**

On 21.04.2022 I was deployed with my senior officer Sri Surjit Singh Panesar (Additional Superintendent of Police, headquarter), Kokrajhar and Sub-Inspector Mouri Basumatary along with one co assistant for the purpose of bringing Sri Jignesh Mevani from Lokpriya Gopinath Bordoloi International Airport to Kokrajhar. Jignesh Mevani was arrested in connection with Kokrajhar P.S. Case No. 183/2022. **While Jignesh Mevani was bringing to Kokrajhar on vehicle and on reaching Simaluguri in Barpeta Road I felt that Jignesh Mevani was pushing my body. Immediately I asked him to behave himself but he scolded me in his own language. On seeing this my senior officer Surjit Singh Panesar asked Mevani to maintain descent behavior with the on duty officials.** As I did not want any uproar situation and therefore I changed my seat and sat on another seat. On reaching Kokrajhar I informed the matter to the SP and later lodged an FIR before the Barpeta Road Police Station. This is my submission. (emphasis supplied)

27. On perusal of the FIR, the statements of the victim recorded under Section 161CrPC and Section 164 CrPC, what is seen is that in the FIR, it is alleged that while the victim, a public servant, was performing her official duty, the accused used slang words against her, pointed his finger towards her, pushed her to sit with force and also touched her inappropriately while pushing to sit her. Thus, in the FIR, the basic allegation of the victim is assault on her during the execution of her legal duty as a public servant, and also that while she was pushed to sit, she was touched inappropriately.

28. In her further statement recorded under Section 161CrPC, she reiterated that the accused used slang words against her, attempted to frighten her and pushed her to sit with force but there is no allegation of inappropriate touch.

29. In her statement recorded under Section 164CrPC, she also stated that she felt the accused pushed her while they were travelling in the vehicle and that he scolded her,



but there is no allegation of pushing her with force to sit or any allegation of inappropriate touch.

30. Thus, across all the versions, the consistent allegation is that the accused and the victim were inside the running vehicle when the offence was committed and the accused scolded her. In her statement recorded under Section 164 Cr.P.C., the addition is that the victim felt like being pushed by the accused. The allegation of inappropriate touching while forcefully being pushed is conspicuously absent in her subsequent and more detailed statements recorded under Section 164 CrPC, in which, it was explained that the altercation started when she felt that the accused was pushing her and she asked the accused to sit properly.

31. The statements of the other witnesses recorded under Section 161 CrPC indicate that the accused, the victim and another witness were seated in the rear seat of the vehicle with the accused occupying middle position. The witness stated that they were informed that the victim felt that the accused was pushing her body. The accused pointed his finger towards the victim, which led to a verbal altercation. They also stated that the accused uttered slang words and rebuked her in his own language, following which, the Additional Superintendent of Police intervened, admonished the accused and directed him to change his seat.

32. Thus, the statements suggest the physical contact in the form of pushing and using aggressive and abusive behavior towards the victim. However, there is no assertion of any sexually suggestive gesture or remark accompanied by such an act. None of the witnesses who were present in the vehicle spoke any act of suggestive sexual intent nor does the victim in her statements recorded under Sections 161Cr.P.C. or 164Cr.P.C. attribute any sexual element to the act of forceful push to sit. Thus, the contemporaneous versions of the other police personnel as well as the victim do not disclose any overt act that indicates sexual intent. The immediate intervention of the Senior officer and change of sitting position further support the inference that the matter arose out of an altercation rather than the deliberate attempt to outrage modesty. Therefore, the materials on



record, taken as a whole, do not disclose existence of legally sustainable suspicion inasmuch as at this stage, this Court is concerned not with proof, but with legally sustainable suspicion.

33. From the materials and surrounding circumstances, as well as the statements recorded under Sections 164 CrPC and 161 CrPC, it is clear that the incident took place inside a moving vehicle. The three people, including the victim and the accused, were sitting together in the back seat of the vehicle wherein the accused was sitting in the middle surrounded by the police personnel. In the running vehicle, the victim felt that the accused pushed her body. In the considered opinion of this Court, mere feeling of being pushed in the course of travelling, without any act, gesture or circumstances indicating any intention with any sexual tone, does not fulfill the statutory requirement. It is important to record that though the intention can be inferred from the nature of act and surrounding circumstances, but the act itself must carry a sexual overtone or be of such a character that modesty is likely to be affected, which is absent in the present case as discussed hereinabove.

34. It is the further opinion of this Court that the statement as recorded hereinabove cannot be perceived as one which is capable of shocking the sense of decency of a woman in the given facts of travelling three persons together in the back seat of a running vehicle, when the victim only stated in her statement recorded under Section 164 CrPC that she felt the accused pushed her.

35. A bald statement, in the given facts of the present case, that the victim felt that accused was pushing the victim, when three persons were sitting in the running vehicle, and when the sitting position of the accused was in the middle, surrounded by the victim and the other police official, in the considered opinion of this Court, cannot create a grave suspicion of commission of an offence under Section 354 IPC. In such a factual background, something more was required to arrive at such a conclusion.

36. Now, coming to the arguments of Mr. Gogoi, learned PP, as regards the state of mind, it is settled that for the commission of an offence under Section 354 IPC, the



intention or knowledge is one of the necessary ingredients and that such ingredients, being a state of mind, may not be proved by direct evidence and may have to be inferred from the attending circumstances of the given case; however, in the case in hand, there is nothing in the statement of the Victim, even remotely indicating any feelings of her modesty being outraged by the accused inasmuch as, such a state of mind is required to be expressed by the victim at least minimally, based on which the prosecution can proceed.

37. At the cost of repetition, it is reiterated that it is settled law that, at the stage of framing a charge, the Court is not required to meticulously appreciate the proposed evidence; it must be satisfied that the materials, if un-rebutted, would constitute the offence alleged. Mere suspicion, conjecture or vague allegation cannot be the basis of framing a criminal charge. The present materials fall short of those thresholds to frame charge under Section 354 IPC. Accordingly, this Court finds no sufficient ground for presuming or having a grave suspicion that the accused committed any offence punishable under Section 354 IPC.

38. Thus, the materials on record collected by the prosecution are wholly insufficient to frame charges against the accused under Section 354 IPC.

39. It is true that, though an order of framing charge is ordinarily amenable to revisional scrutiny, the Revisional Court is not expected to conduct a meticulous evaluation of evidence or hold a roving enquiry into the merits. However, the Supreme Court has consistently held that where the materials before the Trial Court do not disclose the basic ingredients of the alleged offence, the High Court may exercise such power to prevent miscarriage of justice.[Ref: ***Amit Kapoor Vs. Ramesh Chander and Anr.*** reported in **(2012) 9 SCC 460**].

40. In ***Sajjan Kumar Vs. Central Bureau of Investigation*** reported in **(2010) 9 SCC 368**, it was emphasised that the formation of a strong suspicion, necessary for framing a charge, must be based on legally admissible materials, which, if unrebutted, can reasonably link the accused to the alleged offence; suspicion cannot rest on



conjecture or vague assertions.

41. In the case in hand, when the allegation fails to satisfy even at the minimal threshold, particularly, when the essential ingredients required under Section 354 IPC are conspicuously absent, this Court is required to exercise its inherent power to prevent abuse of process and to secure the end of justice.

42. Therefore, in the totality of the matter, in the opinion of this Court, continuation of proceedings under section 354 IPC would amount to abuse of the process of law and miscarriage of justice.

43. Thus, even if the prosecution materials are taken at their face value, they do not disclose the ingredients required under Section 354 of the IPC.

44. Now, let this Court deal with the charge under Section 352 IPC, which penalises the use of criminal force, other than in cases of grave provocation.

45. “**Criminal Force**” as defined under Section 350 IPC, requires an act done with the intent to commit an offence, or with the intent or knowledge of causing injury, fear or annoyance.

46. Under Section 349 IPC, a person is said to use **force** on another if he/she causes motion, changes motion, or there is cessation of motion to that order or causes any substance to come into contact with any part of that other’s body by his/her bodily power. Thus, force presupposes a voluntary act by the accused causing physical contact or movement, and the contact must be perceived by the person affected. Such force becomes criminal when it is used intentionally without consent, knowing that it is likely to cause fear, annoyance or injury.

47. In the case in hand, applying the aforesaid definition, the allegation of the victim that the act of the accused forcefully pushing her to sit, supported by the similar statements of the other witnesses present in the vehicle, accompanied by the allegation of use of abusive language, in the opinion of this Court, is sufficient to prima facie infer



an intention to cause annoyance and also the use of criminal force for the purpose of Section 352 IPC subject to proof by the prosecution during trial, though, may not come within the ambit of Section 354 IPC.

48. For the reasons recorded hereinabove, the accused is, therefore, entitled to discharge from the offence under Section 354 IPC, however, not under Section 352 IPC.

49. In view of the determinations and discussions made hereinabove, the present petition stands partly allowed by discharging the accused from the charges leveled against him under Section 354 IPC in connection with PRC No. 900/2022, without interfering with the decision to frame charge under Section 352 IPC.

JUDGE

Comparing Assistant