

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**Criminal Revision NO. 346 of 2015**

Neeraj Kispotta S/o. Jabier Kispotta, aged about 22 years, Caste Oraon, R/o. Kunkuri, Police Station-Kunkuri, District Jashpur, Civil and Revenue District Jashpur (CG)

---Applicant**Versus**

State of Chhattisgarh through the Station House Officer, Police Station-Kunkuri, District Jashpur (CG)

----Respondent

For Applicant	:	Mr. Awadh Tripathi, Advocate
For Respondent	:	Mr. Anant Bajpai, Panel Lawyer

Hon'ble Shri Justice Sanjay K. Agrawal**Order on Board****28/08/2015**

1. Heard.
2. By this Criminal Revision, the applicant assails the order dated 21.1.2015 passed by the Additional Sessions Judge, Kunkuri, in S.T.No.62/2014, by which the trial Court has framed the charge for the offence punishable under Sections 376D and 506B of the IPC against the applicant.
3. Mr.Awadh Tripathi, learned counsel appearing for the applicant would vehemently submit that there is no material against the present applicant for framing of charge for the offence under Section 376D of the IPC and charge under Section 506B of the IPC is also not made out against him. Referring the statement of the prosecutrix, he would further submit that there is no allegation of rape having been made out against the present applicant

to connect him in offence of gang rape. He would also submit that it is a fit where the applicant deserves to be discharged from the aforesaid charges.

4. On the other hand, learned State counsel referring the definition of Section 376D of the IPC would submit that the applicant has acted in furtherance of common intention with the other co-accused persons namely Janu Tigga and Rohit Xalco constituting a group and not only the present applicant has consumed liquor with other co-accused persons but he has also provided house of Anmol for commission of offence and also brought food for the prosecutrix on the date of occurrence, therefore, it cannot be held that the applicant is not guilty for the offence punishable under Section 376D of the IPC.

5. Before proceeding further, it would be appropriate to notice relevant judgments of the Supreme Court with regard to jurisdiction of this Court to interfere with the order framing charge.

6. In **State of Maharashtra v. Priya Sharan Maharaj and others**¹, the Supreme Court has held that at the stage of framing charge, Criminal Court has to find out whether there is ground for presuming that accused has committed offence or not to following effect:-

“8. The law on the subject is now well settled, as pointed out in **Niranjan Singh Punjabi vs. Jitendra Bijjaya (1990) 4 SCC 76**, that at Sections 227 and 228 the Court is required to evaluate the material and documents on record with a view to finding out if the facts emerging therefrom taken in their face value disclose the existence of all the ingredients constituting the alleged offence. The Court may, for this limited purpose, sift the evidence as it cannot be expected even at that initial stage to accept all that the prosecution states as gospel truth even if it

1 (1997) SCC (Criminal) 584

is opposed to common sense or the broad probabilities of the case. Therefore, at the stage of framing of charge the Court has to consider the material with a view to find out if there is ground for presuming that the accused has committed the offence or that there is not sufficient ground for proceeding against him and not for the purpose of arriving at the conclusion that it is not likely to lead to a conviction.”

7. Very recently in **Vinay Tyagi v. Irshad Ali alias Deepak and Ors.**², the Supreme Court while considering Section 227 of the Cr.P.C. held as under:-

“12. On analysis of the above discussion, it can safely be concluded that 'presuming' is an expression of relevancy and places some weightage on the consideration of the record before the Court. The prosecution's record, at this stage, has to be examined on the plea of demur. Presumption is of a very weak and mild nature. It would cover the cases where some lacuna has been left out and is capable of being supplied and proved during the course of the trial. For instance, it is not necessary that at that stage each ingredient of an offence should be linguistically reproduced in the report and backed with meticulous facts. Suffice would be substantial compliance to the requirements of the provisions.”

8. In **Amit Kapur v. Ramesh Chander and another**³, the Supreme Court while considering the scope of jurisdiction of this Court in revision against the order of charge held as under:-

“The above-stated principles clearly show that inherent as well as revisional jurisdiction should be exercised cautiously. If the jurisdiction under Section 482 of the Code in relation to quashing of an FIR is circumscribed by the factum and caution afore-noticed, in that event, the revisional jurisdiction, particularly while dealing with framing of a charge, has to be even more limited. Framing of a charge is an exercise of jurisdiction by the trial court in terms of Section 228 of the Code, unless the ac-

22013 Cri.L.J. 754

3 JT 2012 (9) SC 329

cused is discharged under Section 227 of the Code. Under both these provisions, the court is required to consider the 'record of the case' and documents submitted therewith and, after hearing the parties, may either discharge the accused or where it appears to the court and in its opinion there is ground for presuming that the accused has committed an offence, it shall frame the charge. Once the facts and ingredients of the Section exists, then the Court would be right in presuming that there is ground to proceed against the accused and frame the charge accordingly. This presumption is not a presumption of law as such. The satisfaction of the court in relation to the existence of constituents of an offence and the facts leading to that offence is a sine qua non for exercise of such jurisdiction. It may even be weaker than a prima facie case."

9. In the aforesaid decisions, their Lordships of the Supreme Court have clearly held at the stage of framing of charge, the Court has to consider the material with a view to find out if there is ground for presuming that an accused had committed offence and not for the purpose of arriving at a conclusion that it is not likely to lead a conviction.

10. Taking into consideration the role of the present applicant with definition contained in Section 376D of the IPC, particularly, rape of a woman by one or more persons constituting a group or acting in furtherance of a common intention, each of those persons shall be deemed to have committed the offence of rape, I am of the considered opinion, the role of the present applicant as alleged by the prosecution and available in the case, it cannot be held that there is no evidence to frame the charge against the present applicant.

11. Consequently, the revision being without substance is liable to and is

accordingly dismissed. However, the applicant is free to establish his defence during the course of trial.

Sd/-

(Sanjay K. Agrawal)
JUDGE

B/-