

**HIGH COURT OF CHHATTISGARH, BILASPUR****Criminal Revision No.640 of 2015**

Uttam Chand Jaiswal, S/o Manilal Jaiswal, aged-38 years, R/o Village Khadagwankala, Police Station & Tahsil – Pratappur, Distt. Surajpur (C.G.)

---- Applicant

**Versus**

State Of Chhattisgarh Through: Police Station – Ambikapur, District - Surguja (C.G.)

---- Non-applicant

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| For Applicant:    | Mr. Vikash Pandey, Advocate               |
| For Respondents : | Mr. Anupam Dubey, Dy. Government Advocate |

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**Hon'ble Shri Justice Sanjay K. Agrawal**

**Order on Board**

**06/08/2015**

1. Heard on the question of admission.
2. By the impugned order dated 03.07.2015, charge has been framed against the applicant for the offence punishable under Section 376(2)(n) of the Indian Penal Code as the applicant is said to have committed sexual intercourse with the prosecutrix on the pretext of marriage from April 2013 to January, 2014.
3. Learned counsel for the applicant would submit that the applicant has not committed any offence; and the charge under Section 376(2)(n) has wrongly been framed against the applicant as there is no material available on record to support such charge against the applicant.
4. 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.

5. In **State of Maharashtra v. Priya Sharan Maharaj and others**<sup>1</sup>, 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 **Nirranjan 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 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.”

6. Very recently in **Vinay Tyagi v. Irshad Ali alias Deepak and Ors.**<sup>2</sup>, 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 re-

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1 (1997) SCC (Criminal) 584

22013 Cri.L.J. 754

port and backed with meticulous facts. Suffice would be substantial compliance to the requirements of the provisions.”

7. In **Amit Kapur v. Ramesh Chander and another**<sup>3</sup>, 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 accused 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.”

8. 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.

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<sup>3</sup> JT 2012 (9) SC 329

9. Taking into consideration the submission of learned counsel appearing for the applicants, further taking into consideration the papers filed along with statement of the prosecutrix and the other material available on record against the applicant; I do not consider it a fit case for interfering in the impugned order framing charge against the applicant for offence under Sections 376 (2)(n) of the IPC.

10. The revision is, therefore, liable to be dismissed and it is hereby dismissed at the admission stage itself without notice to the other side.

11. Certified copy as per rules.

**Sd/-  
(Sanjay K. Agrawal)  
JUDGE**

D/-