

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**Criminal Revision No. 628 OF 2015**

Piyush Sharma, aged about 23 years, son of Shri Ashok Sharma, resident of Quarter No. 290, Ward No. 19, Poonam Colony, P.S. Kotwali, Rajnandgaon, Revenue Distt. and Sessions Division-Rajnandgaon (C.G.)

---Applicant**Versus**

State of Chhattisgarh, through the District Magistrate, Rajnandgaon (C.G.)

----Non-applicant

For Applicant	:	Mr. P.K.C. Tiwari, Senior Advocate with Mr. Shashi Bhushan, Advocate
For Non-applicant	:	Mr. Siddharth Rathore, Dy. Govt. Advocate

Hon'ble Shri Justice Sanjay K. Agrawal**Order on Board****07/08/2015**

1. Heard on the question of admission.
2. By this criminal revision applicant assails the order dated 15/06/2015 passed by Additional Session Judge (F.T.C.), Rajnandgaon, Chhattisgarh, framing charge for the offence punishable under Sections 341, 294, 324, 354A(i) of the Indian Penal Code (for short 'IPC') and Section 12 of the Protection of Children from Sexual Offences Act, 2012 (for short 'POCSO Act').
3. At the very outset, Mr. P.K.C. Tiwari, Sr. counsel with Mr. Shashi Bhushan, learned counsel appearing for the applicant would submit that he would confine his submission to the order framing charge for the offence under Section 354A(i) of the IPC and Section 12 of the POCSO Act. He would further submit that taking into entire charge sheet as it, no case is made out for the offence under Section 354A(i) of the IPC and Section 12 of the

POCSO Act. He would further submit that complainant is close relative of the applicant and on account of some family dispute, he has been falsely implicated. He would also submit that torn clothes have not been seized and the material available on record do not constitute the offence under Section 354A(i) of the IPC and also the ingredients of Section 11 of the POCSO Act is not available.

4. The question in the present case is, as to whether, considering and accepting the entire material available on record a *prima-facie* case for framing charges for alleged commission of offence punishable under Section 354A(i) of the IPC and Section 12 of the POCSO Act is made out against the present applicant or not?

5. To resolve the controversy, it appears necessary first of all to have a look on the provisions of Section 354A(i) of IPC and Section 11 of the POCSO Act, which reads as under-

“354A. Sexual harassment and punishment for sexual harassment.- (1) A man committing any of the following acts-

- (i) physical contact and advances involving unwelcome and explicit sexual overtures; or
- (ii) a demand or request for sexual favours; or
- (iii) showing pornography against the will of a woman; or
- (iv) making sexually coloured remarks,

shall be guilty of the offence of sexual harassment.”

11. Sexual harassment.- A person is said to commit sexual harassment upon a child when such person with sexual intent-,

- (i) utters any word or makes any sound, or makes any gesture or exhibits any object or part of body with the intention that such word or sound shall be heard, or such gesture or object or part of body shall be seen by the child; or
- (ii) makes a child exhibit his body or any part of his body so as it is seen by such person or any other person; or

(iii) shows any object to a child in any form or media for pornographic purposes; or

(iv) repeatedly or constantly follows or watches or contacts a child either directly or through electronic, digital or any other means; or

(v) threatens to use, in any form of media, a real or fabricated depiction through electronic, film or digital or any other mode, of any part of the body of the child or the involvement of the child in a sexual act; or

(vi) entices a child for pornographic purposes or gives gratification therefor.

Explanation.- Any question which involves “sexual intent” shall be a question of fact.”

6. The statement of complainant recorded under Section 161 of the Cr.P.C. and the material available on record would clearly show that on 10/12/2014 applicant made physical contact with the complainant and not only assaulted her but also torn her clothes and thereby sexually harassed her. Therefore, it cannot be said that there is no material on record for framing charge against the applicant for commission of offence punishable under Section 354A(i) of the IPC and Section 12 of the POCSO Act and an accused charged under Section 354A(i) of the IPC and Section 12 of the POCSO Act cannot be discharged.

7. 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:-

8. 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:-

¹ (1997) SCC (Criminal) 584

“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 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.”

9. Very recently in **Vinay Tyagi v. Irshad Ali alias Deepak and Others²**, the Supreme Court while considering Section 227 of the Cr.P.C. held as under:-

“19. 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.”

10. In **Amit Kapur v. Ramesh Chander and another³**, the Supreme Court while considering the scope of jurisdiction of this Court in revision

² (2013) 5 SCC 762

³ JT 2012 (9) SC 329

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.”

11. 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. The learned Additional Session Judge (F.T.C.), Rajnandgaon, Chhattisgarh after considering the material on record clearly came to the conclusion that there is ground for presuming that applicant has committed offence under aforesaid Sections and framed charge for commission of aforesaid offences.

12. After hearing learned counsel appearing for the applicant and upon

perusal of the record; considering the charge framed; I do not consider it a fit case for interfering in the revision against order framing charge.

13. Consequently, criminal revision deserves to be and is accordingly dismissed at the admission stage without notice to other side.

Sd/-

(Sanjay K. Agrawal)
JUDGE

Tiwari