

**HIGH COURT FOR THE STATES OF PUNJAB & HARYANA AT
CHANDIGARH**

CRR-3036-2014
Date of decision:7.9.2015

Ramesh Kumr @ Neeta

Petitioner

Versus

State of Punjab

...Respondent

CRR-3081-2014

Rohsal Lal @ Billa and another

...Petitioner

Versus

State of Punjab

...Respondent

CORAM: HON'BLE MR. JUSTICE RAMESHWAR SINGH MALIK

1. To be referred to the Reporters or not ?
2. Whether the judgment should be reported in the Digest ?

Present: Mr.Surinder Sharma, Advocate and
Mr.T.P.S.Tung, Advocate for the petitioner(s).

Mr. K.D.Sachdeva, Addl. A.G., Punjab.
Mr.Vipul Aggarwal, Advocate for the complainant.

RAMESHWAR SINGH MALIK, J. (Oral)

These two identical criminal revision petitions bearing Nos.
CRR-3036-2014 (Ramesh Kumar @ Neeta v. State of Punjab) and CRR-
3081-2014 (Roshan Lal @ Billa and another v. Stae of Punjab) are directed
against the similar orders of even date, i.e. 26.8.2014, passed by the same
learned Additional Sessions Judge, whereby charges were framed against

the petitioners.

Notice of motion was issued and thereafter these cases were referred to the mediation centre, to explore the possibility of an amicable settlement between the parties. However, parties did not succeed to arrive at an amicable settlement.

Learned counsel for the petitioners in both these cases submit that there was no sufficient evidence for framing the charges against the petitioners. The impugned order framing the charges is patently illegal. Since the daughter of the complainant performed the marriage on her own, there was no scope of registration of the FIR for the offences under Sections 363, 366-A and 120-B IPC, in spite of the fact that she was minor at the time of marriage. So far as the failing of effort for amicable settlement was concerned, they submit that daughter of the complainant was wanting only a simple divorce from her husband, because of which the petitioner was not bound to pay any amount to her. They pray for setting aside the impugned orders dated 26.8.2014, framing the charges, by allowing both these petitions.

On the other hand, learned counsel for the State as well as learned counsel for the complainant submit that since the daughter of the complainant was admittedly minor, a clear cut case of kidnapping was made out against the petitioners, in both the cases. She was born on 6.12.1993, whereas date of incident was 6.7.2010. Daughter of the complainant was just about 16 ½ years of age on the date of occurrence. The conciliation proceedings also failed only because of the mala fide intention of the petitioners. At the time of getting the compromise effected, they insisted that the issue of payment by the petitioners to the daughter of

the complainant, should not come in writing and they will pay the agreed amount. However, later on, they backed out from the said part of the compromise. They did not pay even a single penny to the daughter of the complainant and she has been left in lurch, without any kind of financial support. She was also turned out of matrimonial home along with her daughter of tender age. They further submit that the daughter of the complainant was still ready to settle the matter amicably, in case petitioners stand by their word given to her at the time of compromise, to pay her an amount of Rs.1.5 lacs towards permanent alimony. They pray for dismissal of both these petitions.

Having heard the learned counsel for the parties at considerable length, after careful perusal of the record of the case and giving thoughtful consideration to the rival contentions raised, this Court is of the considered opinion that the petitioners have misconducted themselves to such an extent that they have rendered themselves totally disentitled for any kind of relief, at the hands of this Court.

The matter was referred to the Mediation Centre for exploring the possibility of an amicable settlement between the parties. The complainant as well as his daughter have been found by this Court to be reasonable, regarding every aspect of the matter, right from day one. However, petitioners were trying to play smart not only with the complainant and his daughter but with this Court, as well.

It is a matter of record that petitioners did not pay even a single penny to the daughter of the complainant in spite of the fact that she has agreed for mutual divorce. She has been turned out of matrimonial home along with her daughter of tender age. Neither the petitioners are ready to

allow her to stay in the matrimonial home, without disclosing any reasons, much less justified reasons, nor they are ready to pay even a single penny to her towards maintenance for herself as well as for minor daughter. What could be a more reasonable amount to be demanded by a wife for mutual divorce less than Rs.1.5 lacs towards permanent alimony. Petitioners were granted sufficient time to think it over time and again but they did not agree to pay even Rs.1.5 lacs to the daughter of the complainant. Thus, this conduct of the petitioners was not only unethical but also does not appeal to reason at all.

Coming to the merits of the case, it is the settled proposition of law that for the purpose of framing charge, only prima facie case is the requirement of law and the same has been clearly made out against the petitioners. It has gone undisputed on record that the age of the daughter of the complainant was 16 ½ years at the time of incident. It is also not in dispute that she was in the custody of her parents, before she was enticed away by the petitioners, alluring her for performing the marriage. In such a situation, learned trial Court has not been found to have exceeded its jurisdiction, while framing the charge by passing the impugned order and the same deserves to be upheld.

Further, revisional jurisdiction of this Court is itself a limited one. The impugned order framing the charge could have been interfered with, only if no prima facie case would have been made out against the petitioners. However, in view of the foregoing discussion, it cannot be said that on the basis of uncontroverted allegations levelled against the petitioners, no offence was made out against them. Argument raised by the learned counsel for the petitioners that there was no sufficient evidence for

recording the conviction of the petitioners is only to be noted to be rejected. It is so said, because sufficiency of evidence for recording the conviction, is not the requirement of law, for framing of charge.

The above-said view taken by this Court also finds support from the following judgments of the Hon'ble Supreme Court:-

1. **Supdt. & Remembrancer of Legal Affairs, West Bengal v. Anil Kumar Bhunja & others, 1979 (4) SCC 274;**
2. **State of H.P. v. Krishan Lal Pardhar & Ors., 1987 (2) SCC 17;**
3. **Niranjan Singh Karam Singh Punjabi, Advocate v. Jitendra Bhimraj Bijjaya & Ors., 1990 (4) SCC 76;**
4. **State of M.P. v. S.B.Johari, 2000 (2) SCC 57;**
5. **State of M.P. v. Mohan Lal Soni, 2000 (6) SCC 338;**
6. **State of Orissa v. Debendra Nath Padhi, 2005 SCC (Crl.) 415;**
7. **Soma Chakravarty v. State (Th. CBI), 2007 (2) SCC (Crl.) 514;**
8. **State of Madhya Pradesh v. Rakesh Mishra, 2015 (2) RCR (Crl.) 573;**
9. **State through Inspector of Police v. A. Arun Kumar & anr., 2015 (2) SCC 417.**

The relevant observations made by the Hon'ble Supreme Court in paras 8 and 9 of its judgment in **A.Arun Kumar's case** (supra), which can be gainfully followed in the present case, read as under:-

“The law on the point is succinctly stated by this Court in Sajjan Kumar v. CBI wherein after referring to Union of

India v. Prafulla Kumar Samal and Dilawar Balu Kurane v. State of Maharashtra this Court observed in para 19 thus:

“It is clear that at the initial stage, if there is a strong suspicion which leads the Court to think that there is ground for presuming that the accused has committed an offence, then it is not open to the court to say that there is no sufficient ground for proceeding against the accused. The presumption of the guilt of the accused which is to be drawn at the initial stage is only for the purpose of deciding prima facie whether the Court should proceed with the trial or not. If the evidence which the prosecution proposes to adduce prove the guilt of the accused even if fully accepted before it is challenged in cross-examination or rebutted by the defence evidence, if any, cannot show that the accused committed the offence, then there will be no sufficient ground for proceeding with the trial.”

This Court then went on to cull out principles as regards scope of Sections 227 and 228 of the Code, which in our view broadly apply to Sections 238 and 239 of the Code as well. It was observed thus in para 21:

“Exercise of jurisdiction under Sections 227 & 228 of Cr.P.C.

21. On consideration of the authorities about the scope of Section 227 and 228 of the Code, the following principles emerge:

(i) The Judge while considering the question of framing the charges under Section 227 of the Cr.P.C. 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. The test to determine

prima facie case would depend upon the facts of each case.

(ii) 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.

(iii) The Court cannot act merely as a Post Office or a mouthpiece of the prosecution but has to consider the 9 Page 10 broad probabilities of the case, the total effect of the evidence and the documents produced before the Court, any basic infirmities etc. However, at this stage, there cannot be a roving enquiry into the pros and cons of the matter and weigh the evidence as if he was conducting a trial.

(iv) If on the basis of the material on record, the Court could form an opinion that the accused might have committed offence, it can frame the charge, though for conviction the conclusion is required to be proved beyond reasonable doubt that the accused has committed the offence.

(v) At the time of framing of the charges, the probative value of the material on record cannot be gone into but before framing a charge the Court must apply its judicial mind on the material placed on record and must be satisfied that the commission of offence by the accused was possible.

(vi) At the stage of Sections 227 and 228, the Court is required to evaluate the material and documents on record with a view to find out if the facts emerging therefrom taken at their face value discloses the existence of all the ingredients

constituting the alleged offence. 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.

(vii) If two views are possible and one of them gives rise to suspicion only, as distinguished from grave suspicion, the trial Judge will be empowered to discharge the accused and at this stage, he is not to see whether the trial will end in conviction or acquittal.”

Coming back to the peculiar fact situation obtaining in the present case and respectfully following the law laid down by the Hon'ble Supreme Court, in the judgments referred to hereinabove, it is unhesitatingly held that the learned Additional Sessions Judge has not exceeded his jurisdiction, while passing the impugned order dated 26.8.2014, framing the charges against the petitioners in both the cases. Thus, the impugned order deserves to be upheld, for this reason also.

The law on the subject, as laid down by the Hon'ble Supreme Court, is that there cannot be a mini trial at the stage of framing of charges. The accused cannot put forth his defence at that stage. A strong suspicion may justify the framing of charge against the accused. The only test of “prima facie” is to be applied at the time of framing of the charge. Sufficiency of evidence for conviction is not the requirement of law for framing of charge.

The only requirement of law for framing of charge, is whether there was a strong suspicion existing against the accused, making out a prima facie case, enabling the court for proceeding further with the trial.

Since the above-said ingredients have been fulfilled and on the basis of strong suspicion against the accused-petitioners, charges have been framed by the learned trial court, the impugned order has not been found to be suffering from any patent illegality, which may warrant any interference at the hands of this Court, while exercising its revisional jurisdiction, which itself is a limited one.

No other argument was raised.

Considering the peculiar facts and circumstances of the case noticed above, coupled with the reasons aforementioned, this Court is of the considered view that both the criminal revisions petitions are wholly misconceived, bereft of merit and without any substance, thus, these must fail. No case for interference has been made out.

Resultantly, with the above-said observations made and leaving the scope of an amicable between the parties, still open, both the criminal revision petitions stand dismissed, however, with no order as to costs.

7.9.2015
mks

(RAMESHWAR SINGH MALIK)
JUDGE