

**IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

**CRR No. 4988 of 2015 (O&M)
Date of Decision: 23.12.2015**

Rajat Beniwal

.....Petitioner

Vs.

Union Territory, Chandigarh

.....Respondent

CORAM : HON'BLE MR. JUSTICE RAMESHWAR SINGH MALIK

Present : Dr. Anmol Rattan Sidhu, Sr. Advocate with
Mr. Pratham Sethi, Advocate
for the petitioner.

1. Whether Reporters of local papers may be allowed to see the judgment?
2. To be referred to the Reporters or not?
3. Whether the judgment should be reported in the Digest?

RAMESHWAR SINGH MALIK J. (ORAL)

Feeling aggrieved against the impugned order dated 4.12.2015 passed by the learned trial court amending the charge, petitioner has approached this Court by way of instant criminal revision petition.

Learned senior counsel for the petitioner submits that the learned trial court misdirected itself, while passing the impugned order, which runs counter to the material available on record. He further submits that the deceased was 20 years old. He also submits that the deceased accompanied the petitioner and his other co-accused on her own, because of which the provisions of Section 376 of the Indian Penal Code ('IPC' for short) would not be applicable. He

also refers to the report of Serologist (Annexure P-12) in support of his contentions. He concluded by submitting that CFSL report dated 10.4.2015 would not make out a definite case for the charge under Section 376-D and 377 IPC. He prays for setting aside the impugned order, by allowing the present petition.

After hearing learned senior counsel for the petitioner at considerable length, careful perusal of record of the case and giving thoughtful consideration to the arguments advanced, this Court is of the considered opinion that in the peculiar facts and circumstances of the case, instant one has not been found to be a fit case warranting interference at the hands of this Court, while exercising its revisional jurisdiction, which itself is a limited one. To say so, reasons are more than one, which are being recorded hereinafter.

A bare perusal of the impugned order would show that the learned trial court rightly followed the law for the purpose of framing of charge. Before proceeding further, relevant observations made by the learned trial court in para 5 and 6 of the impugned order which deserve to be noticed, read as under:-

“It is settled proposition of law that at the time of framing of charge, the court need not delve deep into various aspects of the case in shifting and weighing the material. All that the court has to consider is whether the evidentiary material on record, if generally accepted would reasonably connect the accused with the crime, as at the stage of framing of charge, the truth, veracity and effect of

the evidence which the victim proposes to adduce are not to be meticulously judged. At this stage, even a very strong suspicion founded materials before the court, which leads the court to form a presumptive opinion as to the existence of the factual ingredients constituting the offence alleged, may justify the framing of charges against the accused in respect of the commission of the offences.

On perusal of the facts of the case in hand and in view of the settled position of law as discussed above, in my opinion there is substance in the arguments advanced by the learned SPP for the State alongwith learned counsel for the complainant to add Sections 376 (D) & 377 IPC in the charges already framed on 4.2.2015. As per CFSL report dated 10.4.2015 "Human semen was detected from exhibits 1 (An Anal swab of the deceased), 2 (A Vaginal Swab of the deceased) and 4 (A high vaginal swab of the deceased). Further, as per PMT report dated dt. 28.5.2015 issued BY GMSH Sector 32, Chandigarh, the board opined that natural sexual intercourse, vaginal and unnatural sexual intercourse, anal has taken place. Moreover, as per the prosecution story the deceased was last seen with the accused persons.

So far as the CFSL report dt. 2.12.2015 regarding DNA test of the accused is concerned, that is not to be considered because it is mentioned in the report itself that the blood sample was insufficient for DNA examination. Therefore, there is no merit in the arguments advanced by the Id. Defence counsel that no offence is made out against the accused persons under Section 376-D IPC read with Section 120-B IPC and under Section 377 IPC read with Section 120-B IPC. At the time of framing of charge only prima facie evidence is to be considered.”

The abovesaid observations made by the learned trial court have been found well justified on facts as well as in law. Sufficiency of evidence for the purpose of framing charge is not the requirement of law. Only a prima facie case is the requirement of law and the same was clearly made out for passing the impugned order. The learned trial court has not been found to have exceeded its jurisdiction while passing the impugned order. Having said that, this Court feels no hesitation to conclude that learned trial court committed no error of law, while passing the impugned order and the same deserves to be upheld.

Further, with the able assistance of learned senior counsel for the petitioner, this Court has also examined the report of the Serologist (Annexure P-12) and relevant part thereof, reads as under:-

Table No.1 : Description of Exhibits

<i>Sr. No.</i>	<i>Seal Impression/No.of seals</i>	<i>Exhibits No.</i>	<i>Description of Exhibits</i>
1	MO/GMSH/16/CHD/02	Exhibit-1	An anal swab
2	MO/GMSH/16/CHD/02	Exhibit-2	A vaginal swab
3	MO/GMSH/16/CHD/02	Exhibit-3	A Naral swab
4	MO/GMSH/16/CHD/02	Exhibit-4	A high vaginal swab
5	MO/GMSH/16/CHD/02		
			Clothes of victim
		Exhibit-5 A.	A violet coloured brow (no stain)
		Exhibit-5 B.	A dark blue without sleeve Banya (no stain)
		Exhibit-5 C.	A black round neck T-shirt (No stain)
		Exhibit-5 D.	A violet ladies underwear (stained)
		Exhibit-5 E.	A blue coloured jeans (No stain)
6	MO/GMSH/16/CHD/02	Exhibit-6	A brown coloured under (Jocky)
7	MO/GMSH/16/CHD/02	Exhibit-7A	A black white check underwear
		Exhibit-7B	A blue coloured jeans (no stain)
		Exhibit-7C	A black colured without sleeve banyan (no stain)
		Exhibit-7D	A green white check shirt, full sleeve (arrow)
		Exhibit-7E	A leather brown belt (no stain)

Opinion:-

After an intensive chemical and microscopical Examination of exhibits as mentioned in Table 1, it is inferred that:

“Human semen was detected from exhibits 1,2 and 4. However, semen was not detected from exhibits 3,5A to 5E and 7A to 7E.”

So far as the argument raised by learned senior counsel for the petitioner that deceased was 20 years of age and she went with the petitioner and other co-accused on her own is concerned, the same is not relevant for the purpose of framing of charge for the

offence under Section 376 (D) and 377 IPC.

It is also the settled proposition of law that if after framing of charge, learned trial court comes to a conclusion at the end of trial that prosecution has failed to bring home guilt qua any particular charge against any of the accused, learned trial court would do well while granting benefit of doubt to the accused. However, so far as the impugned order is concerned, the same has not been found suffering from any patent illegality or perversity because of which it deserves to be upheld.

Coming to the argument raised by learned senior counsel for the petitioner regarding medical report of the petitioner (Annexure P-11) and also the Forensic DNA report (Annexure P-15), appreciation of evidence to such an extent is not at all required at the time of framing charge. As observed hereinabove, if the learned trial court, at the end of trial, comes to a conclusion that prosecution has failed to prove any particular charge against any of the accused, learned trial court would be justified in granting benefit of doubt to that accused.

However, there is no denying the fact that there is a grave suspicion against the petitioner which is clearly made out against him on the basis of the abovesaid medical evidence available on record in the form of Annexure P-12. Nothing more was required for the learned trial court to pass the impugned order. Since the order passed by the learned trial court has been found fully justified on facts as well as in law, the same deserves to be upheld for this reason also.

During the course of hearing, learned senior counsel for the petitioner also failed to point out any jurisdictional error or patent illegality apparent on record of the case in the impugned order passed by the learned trial court, so as to convince this Court to interfere, while exercising its revision jurisdiction. In this view of the matter, it is unhesitatingly held that learned trial court was well within its jurisdiction, while passing the impugned order and the same deserves to be upheld for this reason also.

No other argument was raised.

Considering the peculiar facts and circumstances of the case noted above, coupled with the reasons aforementioned, this Court is of the considered view that present petition is misconceived, bereft of merit and without any substance. Thus, it must fail. No case for interference has been made out.

Resultantly, with the abovesaid observations made, present criminal revision petition stands dismissed, however, with no order as to costs.

(RAMESHWAR SINGH MALIK)
JUDGE

23.12.2015
Ak Sharma