

HIGH COURT OF CHHATTISGARH, BILASPUR

CRMP No. 1221 of 2016

Kamal Kumar Gupta, S/o. Late Nandu Gupta, Aged About 42 Years, R/o. Ward No.14, North Jhagrakhand, Police Station Jhagrakhand, District Korea, Chhattisgarh.

---- Applicant

Versus

State Of Chhattisgarh, Through Police Station Jhagrakhand, District Korea, Chhattisgarh.

---- Respondent

For Petitioner : Mr. Raghavendra Verma, Advocate.

For Respondent : Mr. Anil S. Pandey, Govt. Advocate.

Hon'ble Shri Justice Goutam Bhaduri

Order On Board

09.11.2016

Heard

1. The petition is against framing of charge under Section 294, 506-B, 354-A readwith Section 12 of Protection of Children from Sexual Offences Act.
2. Learned counsel for the petitioner would submit that the petitioner is a maternal uncle of the prosecutrix and no criminal force was used and at the relevant time, the petitioner was drunk. He went through the statement of the witnesses and would submit that in the facts of this case, framing of charge is completely bad.
3. Perused the statement of the victim/ girl wherein direct allegations have been attributed against the petitioner. *Prima facie*, it goes to show that the offence is made out.
4. In case of ***Amit Kapoor Vs. Ramesh Chander and another, 2012 9 SCC 460*** it has been laid down that at the initial stage of framing

of a charge, the Court is concerned not with proof but with a strong suspicion that the accused has committed an offence, which, if put to trial, could prove him guilty. It is further held that all that the court has to see is that the material on record and the facts would be compatible with the innocence of the accused or not and the final test of guilt is not to be applied at that stage. The extract of principles laid down in paras 27 & 30 are reproduced hereunder:

“27.2. The Court should apply the test as to whether the uncontroverted allegations as made from the record of the case and the documents submitted therewith prima facie establish the offence or not. If the allegations are so patently absurd, and inherently improbable that no prudent person can ever reach such a conclusion and where the basic ingredients of criminal offence are not satisfied then the Court may interfere.

27.3. The High Court should not unduly interfere. No meticulous examination of the evidence is needed for considering whether the case would end in conviction or not at the stage of framing of charge or quashing of charge.

27.9 Another very significant caution that the courts have to observe is that it cannot examine the facts, evidence and materials on record to determine whether there is sufficient material on the basis of which the case would end in a conviction; the court is concerned primarily with the allegations taken as a whole whether they will constitute an offence and, if so, is it an abuse of the process of court leading to injustice.

27.10 It is neither necessary nor is the court called upon to hold a full-fledged enquiry or to appreciate evidence collected by the investigating agencies to find out whether it is a case of acquittal or conviction.

27.12 In exercise of its jurisdiction under Section 228 and/or under Section 482 Cr.P.C., the Court cannot take into consideration external materials given by an accused for reaching the conclusion that no offence was disclosed or that there was possibility of his acquittal. The Court has to consider the record and documents annexed therewith by the prosecution.

27.13. *Quashing of a charge is an exception to the rule of continuous prosecution. Where the offence is even broadly satisfied, the Court should be more inclined to permit continuation of prosecution rather than its quashing at that initial stage. The Court is not expected to marshal the records with a view to decide admissibility and reliability of the documents or records but is an opinion formed prima facie.*

27.14. *Where the charge sheet, report under Section 173(2) of the Code, suffers from fundamental legal defects, the Court may be well within its jurisdiction to frame a charge.*

27.16..... *Where the factual foundation for an offence has been laid down, the Courts should be reluctant and should not hasten to quash the proceedings even on the premise that one or two ingredients have not been stated or do not appear to be satisfied if there is substantial compliance with the requires of the offence.”*

“30. *We have already noticed that the legislature in its wisdom has used the expression “there is ground for presuming that the accused has committed an offence”. This has an inbuilt element of presumption once the ingredients of an offence with reference to the allegations made are satisfied, the Court would not doubt the case of the prosecution unduly and extend its jurisdiction to quash the charge in haste. A Bench of this Court in State of Maharashtra v. Som Nath Thapa (1996) 4 SCC 659 referred to the meaning of the word “presume” while relying upon Black’s Law Dictionary. It was defined to mean “to believe or accept upon probable evidence”; “to take as proved until evidence to the contrary is forthcoming”. In other words, the truth of the matter has to come out when the prosecution evidence is led, the witnesses are cross-examined by the defence, the incriminating material and evidence is put to the accused in terms of Section 313 of the Code and then the accused is provided an opportunity to lead defence, if any. It is only upon completion of such steps that the trial concludes with the court forming its final opinion and delivering its judgment.”*

5. Following the aforesaid principles and verifying the same with the statement of the prosecutrix, I do not find any substance in the argument to discharge the petitioner.
6. Accordingly, the petition is liable to be and is hereby dismissed at the admission stage itself.

Ashok

Sd/-
(Goutam Bhaduri)
Judge