

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

Crl. Rev. No.1855 of 2016 (O&M)

Date of decision : 15.12.2016

Gurmit Singh & Anr.

.....Petitioner(s)

Versus

State of Punjab and Ors.

...Respondent(s)

CORAM: HON'BLE MRS. JUSTICE ANITA CHAUDHRY

Present: Mr. Sartaj Singh Gill, Advocate
for the petitioner.

ANITA CHAUDHRY, J.

This revision has been filed assailing the order dated 15.02.2016, passed by the Sessions Judge, Kapurthala vide which charge was ordered to be framed under Section 376, 366 read with Section 120-B IPC against the accused.

A complaint had been made on 11.04.2014. The complainant was having an affair with Manpreet, son of the petitioners. The allegations were that on 31.03.2014, marriage was performed in Shani Mandir and the couple stayed for a night in a hotel in Delhi. On their return to Jalandhar, the uncle of Manpreet came with 10 – 12 persons, some blank papers were got signed and they were taken to a shop where the father and uncle of the complainant were also present. The father of the complainant refused to take her back. The complainant stayed with

Manpreet for three days. The allegations are that no marriage was performed and Manpreet had raped her and he was refusing to perform the Court marriage. A supplementary statement was recorded and the parents of Manpreet were arrested. Charge was framed in December, 2014 and 16.05.2015. A criminal revision was filed and the order was challenged. The petitioners had approached the High Court with a petition under Section 482 Cr.P.C. for quashing the FIR. That petition was disposed of as pre-mature and liberty was granted to the petitioners to raise all the pleas at the time of framing of charge. After the charge was framed, another revision bearing Crl. Revision. No. 2548 of 2015 was filed and para no.6 of the order reads as under:-

“Without expressing any opinion on the merits but keeping in view the aforesaid aspect of the case, order dated December 16, 2014 and order dated May 16, 2015 are set aside by way of acceptance of instant revision petition and matter is remitted back to trial court with a direction to pass a fresh order after affording an opportunity of hearing to the parties.”

The Sessions Judge vide a detailed order, ordered the framing of charge on 15.02.2016. It noted that there were specific allegations against Gurmeet Singh and Amarjit Kaur in the supplementary statement. The trial Court took the view that the evidence was not to be appreciated at that stage and no detailed inquiry was required to be conducted and it framed the charges.

The counsel for the petitioners contends that the trial Court had failed to consider the order dated 04.08.2015 wherein the trial Court had been directed to consider the entire contention and pleas of the petitioners. It was urged that though the contentions are noted but no finding has been given in the 16 page order and it was a case where complainant and Manpreet had started living separately and had performed the marriage and the issue of rape could not be raised and no offence was made out against the parents as it was a case of elopement.

The counsel for the petitioners further contends that the couple had got married and there were no specific allegations against them and the trial Court has not given a finding on the pleas raised by them and improvement had been made in the supplementary statement. It was urged that in the 4th August order passed by this Court, directions were given to the trial Court to consider all the pleas and contentions and deal with the same and it was required to then pass an elaborate and reasoned order, which has not been done and therefore, the matter be sent back to the Court again.

It is not in dispute that Manpreet is absconding. The allegations levelled by the girl are that under the guise of marriage she had been ravished and there are specific allegations against the petitioners. At the stage of framing of charge the merits of the case are not to be gone into. On numerous occasions it has been held that the charges can be framed on the basis of material on record and whether the offence has been committed or not can only be decided at the trial. The probative value of the material or the statements cannot be gone into. A

charge can be framed on the basis of suspicion. The husband is on the run. The veracity and effect of the statement of the prosecutrix is not to be meticulously gone into at this stage nor the trial Court was required to give finding on merits.

The Hon'ble Supreme Court in [State of Bihar v. Ramesh Singh](#), 1977 (4) SCC 39, [Union of India v. Prafulla Kumar Samal](#), 1979(3) SCC 4 and [Supdt. and Rememberancer of Legal Affairs, West Bengal v. Anil Kumar Bhunja](#), 1979 (4) SCC 274, held thus:-

"From the above discussion it seems well settled that at the [Sections 227-228](#) stage the Court is required to evaluate the material and documents on record with a view to finding out if the facts emerging therefrom taken at their face value disclose the existence of all the ingredients constituting the alleged offence. The Court may for this limited purpose shift (sift ?) the evidence as it cannot be expected even at the 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."

In [Sanghi Brothers \(Indore\) Pvt.Ltd., v. Sanjay Chaudhary and ors.](#) 2008 (4) RCR (Criminal) 640, on the question of framing of charge, the Hon'ble Apex Court observed as under:

"11. The present case is not one where the High Court ought to have interfered with the order of framing the charge. As rightly submitted by learned counsel for the appellant, even if there is a strong suspicion about the commission of offence and the involvement of the accused, it is sufficient for the court to frame a charge. At that stage, there is no necessity of formulating the opinion about the prospect of conviction. That being so, the impugned order of the High Court cannot be sustained and is set aside. The appeal is allowed."

Hence, in view of the aforementioned authoritative manoeuvres, the trial court was only to see prima facie case at the time of framing of charge and even if the Court thinks that the accused might have committed the offence, it can frame the charge though for conviction it is to conclusively determine that the accused had committed the offence. The probative value of the material on the record cannot be gone into and that the material brought on the record by the prosecution has to be accepted as true at this stage.

In view of the legal proposition settled by Hon'ble Apex Court, and in view of the facts of the case, there is no merit in the petition and the same is dismissed in limine.

15.12.2016

Sunil

(ANITA CHAUDHRY)
JUDGE

Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No