

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

CRR No. 100 of 2017

- Dhaniram Banjare S/o Mahettar Banjare Aged About 43 Years
R/o Village Ranigarh (Chhuiya), Police Station Bilaigarh,
District Baloda Bazar Bhatapara, Chhattisgarh.

---- Petitioner

Versus

- State of Chhattisgarh Through Police Station Bilaigarh, District
Baloda Bazar Bhatapara, Chhattisgarh.

---- Respondent

For Applicant : Mr. Vineet Kumar Pandey Advocate

For Respondent/State : Mr. Vivek Singhal, Panel Lawyer

Hon'ble Shri Justice Goutam Bhaduri

Order on Board

12-04-2017

1. This revision petition is directed against the order dated 23-11-2016 passed by the learned Additional District and Sessions Judge (FTC), Baloda Bazar, District Baloda Baar Bhatapara (CG) in Sessions Trial No. 50 of 2016 whereby charges under Sections 376(1), 3134 and 506(2) of IPC have been framed against the applicant..
2. The brief facts of the case are that first information report was lodged by the victim girl that the applicant on the pretext of marriage committed sexual intercourse with her and when she became pregnant, she was administered some drugs whereby she suffered abortion and thereafter a report was made on 16-6-2016.

3. Learned counsel appearing for the applicant would submit that the documents annexed along with charge-sheet would indicate that the pregnancy of the victim girl was terminated. It is further submitted that the victim girl is aged about 38 years and she was able to understand and she was a consenting party and as such offence under Section 376 (1) of the IPC would not be made out, therefore, the applicant has been falsely implicated in this case. Reading of the statement of the victim girl would not make out any charges against the present applicant. The trial Court while framing charges against the applicant has not considered the relevant aspects of the matter and thereby committed illegality. Therefore, considering all the facts and circumstances, the revision be allowed and the charges framed against the applicant be quashed.
4. On the other hand, learned State counsel opposed the revision petition.
5. Perused the statement of the victim girl. Perusal of the statement of the victim girl would show that after death of her husband she was living along with her children. The applicant came to her and assured that he will look after her children. Subsequently, he developed intimacy that he would marry the prosecutrix and on different points of time committed sexual intercourse with her. When she became pregnant, she was given certain pills which resulted into abortion, thereafter she was admitted in hospital after discharge a report was made. Perusal of the documents annexed to petition would show that the victim girl was admitted

in hospital and while she was being brought to hospital, she was bleeding which is supported by the statement of the victim and direct allegations have been attributed to the present applicant that he committed sexual intercourse with victim girl on the pretext of marriage though he was already married. In view of such facts, it appears that the trial Court after going through the statement and the documents has framed the charges against the applicant.

6. The Supreme Court in a case law reported in AIR 2013 SC 52 – Shoraj Singh Ahlawat Vs. State of U.P has observed that the Court trying the case can direct discharge only for the reasons to be recorded by it and only if it considers that the charges against the accused to be groundless. Section 240 of Cr.P.C. provides for framing of a charge which reads as under:

“240. Framing of charge.- (1) If, upon such consideration, examination, if any, and hearing, the Magistrate is of opinion that there is ground for presuming that the accused has committed an offence triable under this Chapter, which such Magistrate is competent to try and which, in opinion, could be adequately punished by him, he shall frame in writing a charge against the accused.”

7. Reading of Section 240 shows that if, upon consideration of the police report and the documents sent therewith and making such examination, if any, of the accused as the Magistrate thinks necessary or the Magistrate is of the opinion that there is ground for presuming that the accused has committed an offence triable under Chapter XIX, which such Magistrate is competent to try

and which can be adequately punished by him. The ambit of section 239 Cr.P.C., and the approach to be adopted by the Court while exercising the powers vested in it under the said provision fell for consideration of this Court in **Onkar Nath Mishra Vs. state (NCT of Delhi) (2008) 2 SCC 561 : (AIR 2008 SC (Supp) 204 : 2008 AIR SCW 96)**.

8. Hon'ble the Supreme Court has further observed that it is well settled that at the stage of framing of charge, the defence of accused could not be put forth. The acceptance of the contention of the learned counsel for the accused would mean permitting the accused to adduce his defence at the stage of framing of charge and for examination thereof at that stage which is against the criminal jurisprudence. Therefore, taking into account the above position of law, the argument which has been advanced by the learned counsel for the applicant, cannot be accepted as prima facie the Court has to only see whether there is ground to presume that the accused had committed the offence or not ?
9. Therefore, reading the contents of FIR and the documents would go to show that strong suspicion about existence of facts constituting offence is made out at this stage, when the evidence is not adduced.
10. Further the Supreme Court in a case law reported in M/s. Zandu Pharmaceutical Works Ltd. And others v. Md. Sharaful Haque and others (AIR 2005 SC 9), held thus :-

“8. Exercise of power under Section 482 of the Code in a case of this nature is the exception and not the rule. The Section does not confer any

new powers on the High Court. It only saves the inherent power which the Court possessed before the enactment of the Code. It envisages three circumstances under which the inherent jurisdiction may be exercised, namely, (i) to give effect to an order under the Code, (ii) to prevent abuse of the process of court, and (iii) to otherwise secure the ends of justice. It is neither possible nor desirable to lay down any inflexible rule which would govern the exercise of inherent jurisdiction. No legislative enactment dealing with procedure can provide for all cases that may possibly arise. Courts, therefore, have inherent powers apart from express provisions of law which are necessary for proper discharge of functions and duties imposed upon them by law. That is the doctrine which finds expression in the section which merely recognizes and preserves inherent powers of the High Courts. All courts, whether civil or criminal possess, in the absence of any express provision, as inherent in their constitution, all such powers as are necessary to do the right and to undo a wrong in course of administration of justice on the principle "*quando lex aliquid alicui concedit, concedere videtur et id sine quo res ipsae esse non potest*" (when the law gives a person anything it gives him that without which it cannot exist). While exercising powers under the section, the court does not function as a court of appeal or revision. Inherent jurisdiction under the section though wide has to be exercised sparingly, carefully and with caution and only when such exercise is justified by the tests specifically laid down in the section itself. It is to be exercised *ex debito justitiae* to do real and substantial justice for the administration of which alone courts exist. Authority of the court exists for advancement of

justice and if any attempt is made to abuse that authority so as to produce injustice, the court has power to prevent abuse. It would be an abuse of process of the court to allow any action which would result in injustice and prevent promotion of justice. In exercise of the powers court would be justified to quash any proceeding if it finds that initiation/continuance of it amounts to abuse of the process of court or quashing of these proceedings would otherwise serve the ends of justice. When no offence is disclosed by the complaint, the court may examine the question of fact. When a complaint is sought to be quashed, it is permissible to look in to the materials to assess what the complainant has alleged and whether any offence is made out even if the allegations are accepted in toto.”

11. Applying the aforesaid principles in this case after going through the charge sheet and the documents annexed thereto, at this stage, the defence adduced by the petitioner cannot be accepted as gospel truth. The same has to be decided on the floor of the Court during evidence while they are tested by virtue of examination and cross examination

12. Therefore, in view of the forgoing discussion, I am not inclined to interfere with the order of framing of charge at this stage.

13. Accordingly, the petition is dismissed.

Sd/-
(Goutam Bhaduri)
Judge

Raju

