

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

CRR No. 377 of 2017

- Santram Sahu S/o S/o Padumlal Sahu Aged About 26 Years Caste - Teli, R/o Ayodhyapuri, Jelgaon, Darri, Ward No. 46, Police Station- Darri, Tahsil- Katghora, District - Korba, Chhattisgarh.

---- **Petitioner**

Versus

- State of Chhattisgarh Through: Station House Officer House Officer, Police Station - Darri, District- Korba, Chhattisgarh.

---- **Respondent**

For Applicant : Mr. Vivek Tripathi,, Advocate

For Respondent/State : Mr. Anupam Dubey, Dy.G.A.

Hon'ble Shri Justice Goutam Bhaduri

Order on Board

2-5-2017

1. This revision is directed against the order dated 20-12-2016 passed in S.T.No. 21 of 2016 by learned Additional Session Judge, Katghora, District Korba whereby the trial Court in exercise of power under Section 217 of the Cr.PC., had made addition of charge under Section 417 of the IPC.
2. Learned counsel appearing for the applicant would submit that initially charge was filed under Section 376 of the IPC against the applicant and the prosecutrix was examined in this case on 6-9-2016 wherein she has stated that she was in love relation with the applicant and thereafter she became pregnant, therefore, there was no false pretext of marriage. He would further submit that when prosecutrix herself was major on the date of incident and she developed physical relation with the applicant, it cannot be said that the applicant had obtained consent on the basis of fraud. It is

further submitted that after examination of eight witnesses, the application moved by the prosecution was allowed whereby charge under Section 417 of IPC has been added, which is completely illegal. He has placed reliance on **2013(4) CCSC 2193 (SC) (Supreme Court) in the matter of Deepak Gulati Vs. State of Haryana** and would submit that allegation of sexual intercourse on false pretext of marriage is of no consequence. Therefore, considering all the facts and circumstances of the case, the order dated 20-12-2016 passed by the court below whereby charge under Section 417 of IPC has been added, be set aside.

3. On the other hand, learned State counsel opposes the revision petition and would submit that the trial Court after evaluating the entire evidence has rightly passed the order which does not require any interference by this Court.
4. I have heard learned counsel for the parties, perused the case record of the court below and also the statement of the prosecutrix.
5. Perused first information report lodged by the prosecutrix wherein it is stated that on the pretext of marriage the applicant had developed sexual relation with her and thereafter she became pregnant and when she asked the applicant to marry her, then he refused for which a report was made. Perusal of the record of the court below would show that prosecutrix was examined on 6-9-2016 wherein it is stated at para 9 that when she refused to have sexual intercourse on the ground that some untoward may happen, the applicant stated that he would support and marry her and on such assurance given by the applicant, physical relation was allowed by victim.

6. From the record, it appears that on 14-10-2016 the application was filed under Section 216 of the Cr.P.C., by the prosecution wherein charge was added under Section 417 of the IPC and the Court after evaluating the same framed charge under Section 417 of IPC against the applicant. Reliance placed by the applicant in the matter of Deepak Gulati (supra), would not be helpful to the applicant as the facts present case were entirely different from the facts of that case wherein the Supreme Court had given importance to the fact that prosecutrix had gone along with the applicant for marriage, however, marriage eventually could not be solemnized.
7. In the present case this fact does not exist and rather only promise was existing. The statement of the prosecutrix would show that the applicant had fraudulent and dishonest intention at the time of making promise of marriage. Since it is stated that when prosecutrix resisted physical relation, consent of the prosecutrix was further obtained on the pretext of false assurance of marriage.
8. The scope of interference and exercise of jurisdiction under Section 397 of Cr.P.C. was again reiterated by their Lordship in case of State of **Rajasthan Vs. Fatehkaran Mehdu, reported in AIR 2017 SC 796**. It is stated that framing of charge, the Court is concerned not with the proof of the allegation rather it has to focus on the material and form an opinion whether there is strong suspicion that the accused has committed an offence, which if put to trial, could prove his guilt. The framing of charge is not a stage, at which stage final test of guilt is to be applied.
9. 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.

10. Considering the first information report and the statement of prosecutrix, especially in para 9, I do not find that any jurisdictional error has been committed by the court below which does not warrant any interference by this Court.
11. Accordingly, the instant revision petition is dismissed at motion stage itself.

Sd/-
(Goutam Bhaduri)
Judge

Raju