

HIGH COURT OF CHHATTISGARH, BILASPUR

CRR No. 368 of 2017

Raj Das S/o Ramdas Aged About 24 Years R/o Village- Kurda,
Police Station- Champa, Civil & Revenue District- Janjgir- Champa,
Chhattisgarh.

---- Applicant

Versus

State Of Chhattisgarh Through The Station House Officer, Police
Station- Rampur, District- Korba, Chhattisgarh.

---- Respondent

For applicant- Shri Samsun Samual Masih, Advocate.
For State- Shri Anupam Dubey, Dy.G.A.

Hon'ble Shri Justice Goutam Bhaduri

Order

10/04/2017

1. Petition is against the framing of charge under Section 373, 376(2)(n) of IPC, Section 6 of Protection of Children from Sexual Offences Act, 2012 and Section 75 of Juvenile Justice (Care and Protection of Children) Act, 2015.
2. Learned counsel for the applicant would submit that the prosecutrix herself has eloped with a boy and on the date she was major. Doctor has stated her age to be in between 18 to 20 years and in the radiologist report bony age is shown to be more than 21 years. Therefore, she herself had went along with other boys. She was a consenting party and there is difference of date has been mentioned by Harmonika and Manohar Singh that the date of birth is 1/09/1999 whereas doctor has contradicted it. Subsequently, facts of this case would show that charge framed under the POCSO Act and IPC are completely bad. Therefore,

applicant may be discharged.

3. Learned State counsel opposes the same.
4. Perused the FIR, statement and the documents. Perusal of the record would show that FIR was lodged by Rachna Rajwade on 9/05/2016 that her niece the victim was missing. Subsequently, the victim was recovered on 27/07/2016 from gram Bardaha from one Vijay Shankar Dubey. Statement of the victim was also perused wherein she has stated that she was forced in the flesh trade by one Rachna who was her relative. Statement would show that she was forced to accompany different persons and in lieu thereof amount was being taken by the relative. Statement would also show that all the time she was subjected to forceful sex, she was sent to company of different persons and reading of the statement would show that she was sent to one birthday party forcefully to Bilaspur wherein the present applicant alongwith other Wilson and one more committed repeated sexual intercourse and amount was given to the Sheki. Subsequently, she was sent to Banaras forcefully to dance in the party. Statement of the prosecutrix would show that she was not a consenting party, she was forced in the trade by different persons by her relative.
5. With respect to the age also the date of birth is shown as 17/06/1999 whereas statement of the witness shows that her age was recorded in the register of the school as 1/09/1999 and the doctor has stated her age to be between 18 to 20 years. Therefore, admittedly there is conflict of facts. However, even if age is ignored but statement of the prosecutrix would show that

she was subjected to forceful sexual intercourse. As there is contradiction of age it is to be proved during evidence. At this stage, no conclusion can be drawn that she was major therefore was a consenting party.

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 his 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, reading statement of the prosecutrix, argument advanced by the applicant cannot be accepted as gospel truth. Same has to be decided on the floor of the court during evidence and prima facie statement of the prosecutrix would show that she was subjected to forcefull rape many a times. The veracity of such statement has to be made after examination of the prosecutrix. Therefore, I am not inclined to interfere with the order of framing of charge. Accordingly, the petition is dismissed.

Sd/-

(Goutam Bhaduri)

JUDGE