

HIGH COURT OF CHHATTISGARH, BILASPUR

CRR No. 698 of 2017

Tarun Kumar, S/o. Ram Prakash, Aged About 32 Years, R/o. Punjabi Colony, Mainpur Uttar Pradesh, At Present Vikash Colony Farukhabad, Uttar Pradesh.

---- Applicant

Versus

State Of Chhattisgarh, Through The Police Station Basantpur, District Balrampur, Chhattisgarh

---- Respondent

For Applicant : Mrs. Hamida Siddiqui, Advocate

For Respondent : Mr. Ramakant Pandey, Panel Lawyer

Hon'ble Shri Justice Goutam Bhaduri

Order On Board

08.08.2017

Heard

1. The instant revision petition is against the order dated 06.04.2017 passed by the Special Sessions Judge, Surguja, Ambikapur (C.G.) in Special S.T. No.02/2017 whereby the charges under Section 376(2)(n) read with Section 3(2)(v) of the Scheduled Caste & Scheduled Tribe (Prevention of Atrocities) Act has been framed against the applicant.
2. Learned counsel for the applicant would submit that the prosecutrix was a major lady and she was a consenting party. She further submits that the applicant & prosecutrix were in love relation, however, the marriage could not be solemnized; consequently, the report has been made. Therefore, the case under Section 376(2)(n) of I.P.C. would not be made out. It is further submitted that the incident starts in the year 2014, which continued and the prosecutrix being a Doctor and major lady has herself accepted the relation. Thereby, even acceptance of the

entire statement, the case would not be made out against the applicant.

3. Per contra, learned State counsel opposes the argument advanced by the learned counsel for the applicant.
4. Perused the statement of the victim under Section 161 & 164 of Cr.P.C. which shows that in the year 2014, the applicant and victim came in contact with each other. Subsequently, on the pretext of marriage, many a time she was subjected to sexual intercourse. The statement of the victim suggests that every time on the allurement of marriage, she was subjected to physical relation.
5. Reading the statement under Section 161 & 164 of Cr.P.C. together would lead to show that *prima facie* it has been alleged that the victim was subjected to rape on the pretext of marriage and whether such intention of allurement exists from the day one or not can only be established after the evidence is adduced before the Court and parties are subject to examination and cross-examination. The statement raises all suspicions.
6. The Supreme Court in a case of ***Shoraj Singh Ahlawat Vs. State of U.P.*** reported in ***AIR 2013 SC 52*** 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. 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.”

10. 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 v. Fatehkaran Mehdu***, reported in ***AIR 2017 SC 796***. It is stated that at the stage of framing of a 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.
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 applicant 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. Accordingly, the revision petition is dismissed.

Sd/-
(Goutam Bhaduri)
Judge