

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

CRR No.2740 of 2018

Date of decision : 04.10.2018

Gurmeet Ram Rahim

.....Petitioner

Versus

Central Bureau of Investigation

...Respondent

CORAM : HON'BLE MRS. JUSTICE DAYA CHAUDHARY

Present : Mr. Tanveer Ahmed Mir, Advocate with
Mr. Dhruv Gupta, Advocate and
Mr. Munish Behl, Advocate for the petitioner.

Mr. Sumeet Goel, Advocate for respondent – C.B.I.

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DAYA CHAUDHARY, J.

Petitioner Gurmeet Ram Rahim has approached this Court by way of filing the present revision petition to challenge two impugned orders dated 03.08.2018, passed on the same date by the Special Judicial Magistrate, CBI, Haryana at Panchkula in case FIR No.RC1(S)/2015 SCU.V/SCII/CBI/New Delhi dated 07.01.2015 under Sections 120-B, 326, 417 and 506 of the Indian Penal Code, 1860 (hereinafter referred to as 'IPC') Police Station SC-II CBI/New Delhi, whereby an application moved by the petitioner-accused under Section 239 of the Code of Criminal Procedure, 1973 (hereinafter referred to as 'the Code') has been dismissed and charges have been framed against him and other accused under Section 120-B read

with Section 417, 326 and 506 IPC and substantive offences punishable under Section 326 read with Section 120-B IPC and further charges against the petitioner under Sections 417 and 506 IPC.

Briefly, the facts of the case as made out in the petition are that the petitioner is facing trial in said FIR. After conclusion of investigation, final report dated 31.01.2018 under Section 173(2) of the Code was submitted against petitioner-accused Gurmeet Ram Rahim and other co-accused namely Dr. Pankaj Garg and Dr. Mahendra Pratap Singh. Thereafter, charges were framed against the petitioner and other two accused under Section 120-B read with Section 417, 326 and 506 IPC and substantive offences punishable under Section 326 read with Section 120-B IPC and further framed charges against the petitioner under Sections 417 and 506 IPC. Petitioner-accused also filed an application under Section 239 of the Code before the trial Court for discharge, which was also dismissed on the same date *i.e.* 03.08.2018. Both the said orders are subject matter of challenge before this Court in the present revision petition.

Learned counsel for the petitioner submits that the petitioner has falsely been implicated in the case, whereas no offence is made out against him. The application moved by the petitioner under Section 239 of the Code has wrongly been dismissed, whereas petitioner should have been discharged as no case is made out under the aforesaid sections. Learned counsel further submits that there is unexplained delay and the petitioner deserves to be discharged only on this ground alone. Neither any explanation has come forward on the part of prosecution nor it has been

considered by the trial Court while framing the charges. A judgment passed by Hon'ble the Apex Court in case *Dilawar Singh Vs. State of NCT of Delhi, 2007 (12) SCC 641* was relied upon but the same has not been considered. Learned counsel further submits that total 166 such persons who were in touch in the investigation. They were asked to join investigation for the purpose of recording their statements but only 128 persons who, were allegedly castrated, were examined by the Investigating Officer and out of those 128 persons, only 6 persons came forward to depose against the petitioner. Around 20 persons who were examined during course of the investigation had admitted that they had been castrated but 20 such persons did not support the case of the prosecution with regard to alleged allegation of castration and refused to undergo medical examination. Learned counsel also submits that an application under Section 207 read with Section 91 of the Code was moved to place on record the aforesaid statements but it was dismissed by the trial Court on 05.05.2018. The petitioner approached this Court by way of filing CRM-M No.22639 of 2018, whereby the liberty was given to the petitioner to avail the appropriate remedy at the appropriate stage. Learned counsel also submits that as per provisions of Section 114 (g) of the Indian Evidence Act, 1872 an adverse inference ought to have been drawn against the prosecution and benefit should have been extended to the petitioner. It is a settled proposition of law that in case two views are possible and even in case of suspicion, no charge could have been framed and benefit should have gone to the accused. Learned counsel further submits that no

ingredient of offence under Section 417 IPC is fulfilled as neither there was any intention of fraud or dishonesty to induce any person by deceiving him nor any person was induced for castration. Learned counsel also submits that even in case the entire case of prosecution is believed to be correct and true, still no offence is made out under Section 417 IPC. Nothing has come in the investigation as to how the deceit or fraudulent act was done by the petitioner-accused. No material is available on record to show as to how wrongful gain was there to the petitioner and how those persons were cheated and loss was caused to them. Learned counsel further submits that it is a simple case of surgery and no offence under Sections 326 and 120-B IPC is made out. There was no corroborating material as the alleged act of castration had taken place more than a decade back. The FIR was registered on 07.01.2015 and the alleged castration pertains to the year 2000 and 2002. The petitioner is entitled to be discharged in view of provisions of Section 468 of the Code and no cognizance could have been taken by the Court beyond the period of limitation. At the most it can be a case of 325 IPC, wherein maximum sentence is seven years and admittedly the cognizance has been taken after a period of seven years. As per provisions of Section 460 (e) and 461 (1) of the Code, the proceedings are void. Learned counsel also submits that said provisions have not been appreciated properly and judgment relied upon by the trial Court in case ***Sarah Mathew Vs. Institute of Cardio Vascular Diseases by its Director and others 2014(2) SCC 62*** is not applicable to the present case being wrongly interpreted. Learned trial Court has wrongly relied upon the provisions of Section 473 of the Code

just not to give benefit of Section 460 (e) and 461 (l) of the Code. There is no explanation of delay in initiating the complaint by the alleged victims and the trial Court could not have invoked the provisions of Section 473 of the Code. Learned counsel further submits that even *prima facie* no offence under Section 120-B IPC is made out. There is no evidence collected by the investigating agency to show any meeting of minds with the accused persons and simply on the basis of bald statement of some of the witnesses, charge under Section 120-B IPC has been framed. No evidence has been collected by the investigating agency to show that any pressure was put or even any allurements were given. Neither any compelling circumstance was there nor any force was used. Learned counsel also submits that even as per the story of the prosecution also, no charge can be framed under Section 326 IPC as the injection cannot be said to be a weapon as per the meaning given in Law Lexicon Dictionary. At the most it can be a case under Sections 323, 324 and 325 IPC and not under Section 326 IPC. Even in case of Section 325 IPC, the intensity of injury should be of higher magnitude caused with deadly weapon. Learned counsel also submits that there was no threat to the life during surgery as it was done by the competent doctor with all due medical equipment and it cannot be termed as a case of grievous hurt. There was a consent of those persons who underwent castration and there was no intention on the part of the petitioner to cause grievous injury with deadly weapon attracting Section 326 IPC. Learned counsel also submits that there is a difference between Sections 325 and 326 IPC as to in which manner the alleged offence is committed. In

case of offence under Section 326 IPC, the expression “any instrument which used as a weapon of offence is likely to cause death” has to be determined after taking note of the heading of the Section. At the end, learned counsel for the petitioner submits that the impugned orders have been passed by the trial Court without any application of mind and without taking into consideration the law laid down in judgments relied upon by the petitioner. In support of his arguments, learned counsel for the petitioner has placed reliance upon judgments of Hon'ble the Apex Court in cases *Dilawar Singh Vs. State of Delhi (supra)*, *Union of India Vs. Prafulla Kumar Samal and Anr. 1979(3) SCC 4*, *Dilawar Balu Kurane Vs. State of Maharashtra 2002(2) SCC 135*, *Gurmeet Singh Bagga Vs. State of Rajasthan and Anr. 2010 CriLJ 1886*, *Ram Jas Vs. State of U.P. 1970(2) SCC 740*, *Hariday Ranjan Prasad Verma & Ors. Vs. State of Bihar & Anr. 2000 (4) SCC 168*, *Esher Singh Vs. State of A.P. 2004(11) SCC 585*, *Tamaso Bruno Vs. State of U.P. 2015(7) SCC 178*, *Mathai Vs. State of Kerala 2005(3) SCC 260*, *Shakeel Ahmed Vs. State of Delhi 2004(10) SCC 103*, *R. S. Nayak Vs. A.R. Antulay 1986 (2) SCC 716*, *Sanjiv Kumar Vs. State of Himachal Pradesh 1999 (2) SCC 288*, *Arulvelu & Anr. Vs. State represented by the Public Prosecutor & Anr. 2009(10) SCC 206*, *Jasvinder Saini & Ors. Vs. State (Govt. of NCT of Delhi) 2013(7) SCC 256* and judgment of Delhi High Court in case *Ms. Shreya Jha Vs. CBI ILR 2007 Supp. (2) Delhi 19*.

Mr. Sumeet Goel, learned counsel for respondent-CBI has opposed the submissions made by learned counsel for the petitioner on the

ground that there is limited scope in revision to challenge order of framing of charge. He submits that the trial Court has passed a very detailed reasoned order by mentioning facts and circumstances of the case and no interference is required. The investigation was conducted by the CBI under the directions issued by this Court. The delay in lodging the case cannot be considered as necessary factor in such circumstances. The judgment in ***Dilawar Singh's*** case (supra) is not applicable in the facts and circumstances of the present case. Every case is to be considered as per its own facts and circumstances. Learned counsel further submits that in view of ratio of judgment of Hon'ble the Apex Court in case ***Japani Sahoo Vs. Chandra Sekhar Mohanty 2007(7) SCC 394***, such case of serious offences cannot be thrown solely on the ground of delay. Learned counsel further submits that order dated 05.05.2018 passed by the trial Court was challenged before this Court and said order was upheld on 28.05.2018 on merits. The charges have been framed on the basis of evidence collected by the investigating agency and it cannot be said that no offence is made out under Sections 417, 326 and 120-B IPC. In this case a clear cut intentional inducement, dishonesty, cheating, deceit, persuasion are there and personal harm has been caused to the body of injured-victims. The devotees would not have undergone castration had such innocent devotees would not have succumbed to the inducement. Such inducement, as established on the part of the petitioner-accused, meets the basic ingredients of Section 417 IPC. There is sufficient evidence available on record which shows that innocent devotees were castrated by giving benefit of financial, social and spiritual

goals and to meet out their ulterior motives. The victims/devotees have specifically mentioned in their statements that they had undergone medical treatment and it was done in a close room. Learned counsel also submits that charge has been framed under Section 326 IPC read with Section 120-B IPC against accused-petitioner and in case the same is proved, the sentence be of imprisonment for life and as per provisions of Section 468 of the Code it is within period of limitation. Learned counsel further submits that judgment of **Sarah Mathew's** case (supra) is not applicable in the present case. In case any instrument is used in the commission of offence not only the intention but how it is used is relevant and under such circumstances an instrument becomes weapon. The conspiracy is a matter of evidence which is to be considered by the trial Court during trial and at this stage it cannot be said that there is no conspiracy. Learned counsel further submits that grievous hurt has been defined in Section 320 IPC and castration/emasculatation comes in the first part as it has specifically been mentioned as to which of the injury can be said to be grievous hurt. Emasculation and castration is the same thing. As per Eighthly clause, in case there is severe bodily pain and a person is not in a position to follow his ordinary pursuits within the period of 20 days then also it comes in the definition of grievous hurt attracting Section 326 IPC. At the end, learned counsel for CBI submits that even in case the order passed by the trial Court may not be nicely worded and detailed one, even then this Court is having inherent power to examine as to whether offence punishable under Section 326 IPC is made out or not on the basis of material available on the file. In

support of his submissions, learned counsel for respondent-CBI has placed reliance upon judgments of Hon'ble the Apex Court in cases ***Union of India Vs. Prafulla Kumar Samal and Anr. 1979 (3) SCC 4, State of Maharashtra Vs. Som Nath Thapa, 1996 (4) SCC 659, State of Bihar Vs. Ramesh Singh, Criminal Appeal No.51 of 1977 decided on 02.08.1977, Supdt. and Remembrancer of Legal Affairs, West Bengal Vs. Anil Kumar Bhunja & Ors. 1979(4) SCC 274 and Amit Kapoor Vs. Ramesh Chander & Anr. 2012 (9) SCC 460.***

Heard arguments of learned counsel for the parties and have also perused the impugned orders *i.e.* the order of rejection of application filed under Section 239 of the Code as well as the order of framing of charges.

Facts of the case to the extent of conducting investigation by CBI, presentation of challan and framing of charges are not disputed.

In the present case, there are following three main issues for consideration before this Court :-

- (1) Scope of interference by High Court while exercising the revisional power.
- (2) Whether the offence committed falls under Section 325 or 326 IPC.
- (3) Period of limitation while framing charges.

In the present revision petition, not only order of framing of charges but order of rejection of application moved by the petitioner under Section 239 of the Code has also been challenged. At this stage, the Court is not to see as to whether there is a sufficient ground for conviction of the

accused or whether the trial is sure to end in conviction. Charges can be framed even on the basis of strong suspicion against the accused. However, strong suspicion against the accused cannot take place of proof of his guilt at the conclusion of the trial. At the initial stage, if there is a strong suspicion which leads the Court to think that there is a ground of presuming that accused has committed an offence, then it is not open to the Court to say that there is no sufficient ground for proceeding against the accused. The theory of benefit of doubt can be given at the end of the trial and not at the stage of framing of charge. At the initial stage of framing of the charge, the Court has to *prima facie* consider as to whether there is sufficient ground for proceeding against the accused. The Court is not required to appreciate the evidence and arrive at the conclusion that the material produced by the prosecution is sufficient for convicting the accused. If the Court is satisfied that a *prima facie* case is made out for proceeding further then charge is to be framed. The charge can be quashed if the evidence which the Prosecutor proposes to adduce to prove the guilt of the accused, even if fully accepted before it is challenged in cross examination or rebutted by defence evidence, if any, cannot show that the accused committed the particular offence. In such case there would be no sufficient ground for proceeding with the trial. Meaning thereby, at the stage of framing of charge, the trial Court makes the presumptive opinion of existence of ingredients constituting *prima facie* material of offence.

(1) Scope of interference by High Court while exercising the revisional power.

An objection has been raised by learned counsel for the CBI

that revision is not maintainable and a limited scope is there to interfere. The inherent powers of the High Court are not defined in the Code but the inherent powers can be exercised in case facts and circumstances of the case are as such. As per Sub-section 3 of Section 397 revisional jurisdiction can be invoked by “any person” but the Code has not defined the word “person”. However, under Section 11 IPC “person” includes any Company or Association or body of persons, whether incorporated or not. The word “person” would, therefore, include not only the natural person but also judicial person in whatever form designated and whether incorporated or not. By implication, the State stands excluded from the purview of the word “person” for the purpose of limiting its right to avail the revisional power of High Court under Section 391 (1) of the Code for the reason that the State, being the Prosecutor of the offender, is enjoyed to conduct prosecution on behalf of the society and to take such remedial steps as it deems proper. The object behind criminal law is to maintain law, public order, stability as also peace and progress in the society. Normally, private complaints under Section 202 of the Code are laid in respect of non-cognizable offences or when it is found that police has failed to perform its duty under Chapter XII of the Code or to report a mistake of fact. The prohibition under Section 397(3) on revisional power given to the High Court would not apply when the State seeks revision under Section 401 of the Code. Accordingly, the State is not prohibited to avail revisional power of the High Court under Section 397(1) read with Section 401 of the Code.

The revisional jurisdiction of the Court under Section 397 of

the Code can be exercised to examine the correctness, legality or propriety of an order passed by the trial Court or the inferior Court, as the case may be. However, the section does not use the expression 'prevent abuse of process of any Court or otherwise to secure ends of justice', the jurisdiction under Section 397 of the Code is very limited one. The legality, propriety or correctness of an order passed by a Court is the very foundation of exercise of jurisdiction under Section 397 of the Code but it requires justice to be done. The jurisdiction can be exercised when there is apparent error, non-compliance with the provisions of law, the decision is completely erroneous or where the judicial discretion is exercised arbitrarily. Section 482 of the Code confers a very wide power to the Court to do justice and to ensure that the process of the Court is not permitted to be abused. It can safely be concluded that this Court is having revisional jurisdiction against the order of framing of charge.

2. Whether the offence committed falls under Section 325 or 326 IPC.

Section 325 IPC deals with punishment for voluntarily causing grievous hurt. Section 326 IPC deals with offence of voluntarily causing hurt by dangerous weapons or means.

Section 326 IPC provides that whoever, except in the case provided for by Section 335, voluntarily causes grievous hurt by means of any **instrument** for shooting, stabbing or cutting, or any **instrument** which, used as a weapon of offence, is likely to cause death, or by means of fire or any corrosive substance, or by means of any explosive substance, or by means of any substance which is deleterious to the human body to inhale, to

swallow, or to receive into the blood, or by means of any animal, shall be punished with imprisonment for life or with imprisonment of either description for a term which may extend to ten years, and also with a liability to pay a fine.

Sections 325 and 326 IPC, like the two Sections immediately preceding, provide the ordinary punishment and punishment under certain aggravating circumstances of the offences mentioned thereunder. The two latter Sections apply to the case of causing "grievous hurt" and the immediately preceding two Sections to the case of 'hurt'.

"Grievous hurt" has been defined in Section 320 IPC, which read as follows:

"320 Grievous Hurt - The following kinds of hurt only are designated as "grievous"-

- First - Emasculation.
- Secondly - Permanent privation of the sight of either eye.
- Thirdly - Permanent privation of the hearing of either ear.
- Fourthly - Privation of any member or joint.
- Fifthly - Destruction or permanent impairing of the powers of any members or joint.
- Sixthly - Permanent disfiguration of the head or face.
- Seventhly - Fracture or dislocation of a bone or tooth.
- Eighthly - Any hurt which endangers life or which causes the sufferer to be during the space of twenty days in severe bodily pain, or unable to follow his ordinary pursuits."

Some hurts which are not like those hurts which are mentioned

in the first seven clauses, are obviously distinguished from a slight hurt, may nevertheless be more serious. Thus a wound may cause intense pain, prolonged disease or lasting injury to the victim, although it does not fall within any of the first seven clauses. Before a conviction for the sentence of grievous hurt can be passed, one of the injuries defined in Section 320 IPC must be strictly proved, and the eighth clause is no exception to the general rule of law that a penal statute must be construed strictly.

The expression “any instrument, which is used as a weapon of offence, is likely to cause death” has to be seen by taking note of the heading of the Section. What would be considered as a ‘dangerous weapon’ would depend upon many factors and it cannot be made generalize. To attract Section 326 IPC, it is to be seen that the injury/hurt is voluntarily caused, which must be grievous and the same has been caused by dangerous weapon or means including instrument. There is no such thing as a regular or earmarked weapon for committing murder or for that matter a grievous injury. Whether a particular article can per se cause any serious wound or grievous hurt or injury has to be determined factually. The inevitable conclusion is that a grievous hurt has been caused by any deadly weapon or instrument. It depends upon many factors like size, sharpness. It will be seen by the trial Court as to whether the offence under Section 326 IPC is made out or Section 325 IPC.

This case can be examined from the point of view of Section 320 IPC, wherein grievous hurt has been defined. This provision enumerates eight injuries which could be designated as ‘grievous hurt’. The

relevant kind of hurt for the purpose of this case is the first type of injury narrated under Section 320 IPC *i.e.* ‘emasculatation’. Mention of this kind of hurt under Section 320 IPC clearly reflects that the injury if not fatal by shock or hemorrhage, will not be enough in ordinary course of nature to cause death. **Dictionary meaning of “emasculatation” is depriving a male of masculine vigor. So, this clause is not applicable to female victims. This could be done by castration, by cutting the male organ, or by causing injury to testis or to the spinal cord at the level of 2nd to 4th lumbar vertebrae to result in impotence. “Permanent” does not mean that it should be incurable.** For instance, loss of sight occurring due to corneal opacity resulting from injury to the cornea may be curable by corneoplasty but being permanent by itself constitutes a grievous hurt and chances of treating by corneoplasty do not lower its gravity. **The gravity of injury lies in its permanency because it deprives a person of the use of the organ of sight and also disfigures him. Permanent privation of sight can be caused by gouging out of eyes, poking eyes, chemicals, etc.**

In Grievous Hurt, the life is endangered due to injury while in Culpable Homicide; death is likely to be caused. However, acts neither intended nor likely to cause death may amount to grievous hurt even though death is caused.

The essential ingredients to attract Section 326 are: (1) voluntarily causing a hurt; (2) hurt caused must be a grievous hurt; and (3) the grievous hurt must have been caused by dangerous weapons or means. Whether a particular article can per se cause any serious wound or grievous

hurt or injury has to be determined factually. Medical personnel/Forensic Specialist can opine whether the alleged weapon of offence is dangerous weapon or not. However, Court will finally decide whether the assailant was armed with dangerous weapon or not, depending upon the circumstances of the case and expert medical opinion. In ***Prabhu Vs. State of Madhya Pradesh 2009(1) R.C.R. (Criminal) 284***, the Hon'ble Apex Court held that the expression "any instrument which, used as a weapon of offence, is likely to cause death" has to be gauged taking note of the heading of the Section. What would constitute a 'dangerous weapon' would depend upon the facts of each case and no generalization can be made. The intention of the accused is gathered from the nature of the weapon used, the part of the body chosen for assault and other attending circumstances. Sections 324 and 326 expression "dangerous weapon" is used. In some other more serious offences the expression used is "deadly weapon" (e.g. Sections 397 and 398). The facts involved in a particular case, depending upon various factors like size, sharpness, would throw light on the question whether the weapon was a dangerous or deadly weapon or not.

At the time of framing of the charge for saying whether the essential ingredients to attract Section 326 IPC are there or not is to be seen that voluntarily causing hurt is there and a grievous hurt has been caused and same has been done with dangerous weapon or means. In case by using a particular instrument a serious wound or grievous hurt is caused it is to be seen at the time of appreciation of evidence by the trial Court. As many factors are to be taken into consideration like size, sharpness, which would

throw light on the question whether the weapon was dangerous or deadly or not. It will be determined by the trial Court after appreciation of evidence available on record and after hearing arguments that the offence under Section 325 or 326 IPC is made out or not. **In case the trial Court comes to the conclusion that on the basis of evidence on the file, the offence is not made out under Section 326 IPC and the same is made out under Section 325 IPC, the trial Court is having power to convert it into Section 325 IPC.**

(3) Period of limitation while framing charges.

The issue of limitation has to be considered by keeping in view the sentence provided. In case of Section 326 IPC the maximum sentence can be imprisonment for life and the argument raised by learned counsel for the petitioner, by considering the maximum sentence in case of charge under Section 326 IPC, does not carry any weight.

Although the order passed by the trial Court is detailed one and a finding has been given while dismissing the application of discharge, but the averments raised in the application as well as the arguments raised by the other side should have been considered. When an application has been filed under Section 239 of the Code, it is required as to what is distinction between offence under Sections 325 and 326 IPC. While giving findings no such distinction has been mentioned. But still in case the detailed discussion is not there with regard to distinction and averments made in the application have not been discussed in detail, this Court has power to examine on the basis of material available on the record by explaining the ingredients/

requirements of Sections 325 and 326 IPC and it is held that the charges have rightly been framed. At the time of framing of charges, the trial Court is to see as to whether *prima facie* case is made out for framing charge under Section 326 IPC or not. On perusal of allegations against the petitioner-accused and the evidence collected by the investigating agency and statements of witnesses recorded by the investigating agency, this Court is of the considered opinion that the view taken by the trial Court is possible and plausible. The impugned orders passed by the trial Court cannot be termed as perverse. The view of the trial Court cannot be said to be contrary to law or evidence.

Accordingly, the present petition being devoid of any merit is hereby dismissed.

04.10.2018*sunil yadav***(DAYA CHAUDHARY)
JUDGE**

Whether speaking/reasoned : Yes / No

Whether reportable : Yes / No