

NAFR**HIGH COURT OF CHHATTISGARH, BILASPUR****CRR No. 474 of 2018**Order reserved on : 11/09/2019Order Delivered on: 10/12/2019

- Manoj Kumar Patel S/o Banrarsi Ram Patel, aged 35 years, R/o village – Bejiya, Police Station – Chhal, District Raigarh (C.G.)

-----Applicant**Versus**

- State of Chhattisgarh Through : P.S. Chhal, District Raigarh (C.G.)

----- Respondent

For Applicant	:	Shri Sanjay Agrawal, Advocate
For Respondent/State:		Shri B.L. Sahu, P.L.

Hon'ble Smt. Justice Rajani Dubey**C A V Order****10/12/2019**

01. The applicant has preferred the instant revision against the order dated 09.04.2018 passed by the 2nd Additional Sessions Judge, Raigarh, District Raigarh (C.G.), in Sessions Trial No.31/2018, whereby the learned 2nd Additional Sessions Judge framed charges against the applicant under Sections 506 and 376(2) IPC.

02. The prosecution story, in brief, is that on 22.08.2017, complainant (Prosecutrix) made a written complaint before

the police station, Chhal, alleging therein that in the year 2008 the applicant committed sexual intercourse with the prosecutrix many times against her wishes and also threatened her for dire consequences. Further allegation is that when she was posted as Teacher in Ekal Vidyalay at village Chuhkimala and used to go Chhal for meeting, at the relevant time, the applicant used to come there and commit sexual intercourse with her, thereafter, in the year 2009, she married to one Kamal Kishore Patel and residing at village Govindpur, District Janjgir-Champa. On the basis of this complaint, the crime No.95/2017 was registered against him and, after investigation, charge-sheet has been filed against the applicant before the Court of 2nd Additional Sessions Judge, who in turn, framed charges under Sections 376(2) and 506 IPC. Hence, this revision petition by the applicant.

03. Learned counsel for the applicant submits that there is no incriminating material against the applicant and no case under Sections 376 (2) and 506 IPC is made out. The order of framing of charges against the applicant is against the settled principles of law. He further submits that the basic ingredients of Sections 376(2) and 506 IPC is completely missing in this case. He also submits that even if it is considered and accepted the entire material on record on its face value, prima-facie no case under Section 376(2) and 506 IPC is made out against the applicant. There is no evidence on record to show that the applicant in any manner committed

rape with prosecutrix, therefore, the offence as alleged is not applicable against him. It is next submitted that the trial Court has not considered the fact that there is delay of about 8 years in lodging the FIR and the prosecutrix herself has not revealed the incident to anyone. At the stage of framing of charges, the Court is required to prima-facie consider whether there are sufficient grounds for proceeding under Section 376(2) and 506 IPC. The learned Court below, at the stage of discharging or framing of charge, is required to evaluate the material and documents on record with a view to find out, if the facts emerging therefrom, taken at their face value, disclosed the existence of all ingredients constituting the alleged offence. He further added that prosecution of the accused is nothing but abuse of process of law and, therefore, the impugned order deserves to be set aside. In support of his argument, he placed reliance on the order of High Court of Madhya Pradesh in the matter of *Ajay Singh & another Vs. State of M.P. & another* reported in **(2016) 1 MPWN 283** and **Sunder Singh Vs. State of Madhya Pradesh** reported in **(2014) 2 ANJ 158**.

04. Learned counsel for State supported the impugned order passed by the trial Court. He submits that the Court below having considered the material on record prima-facie found involvement of the applicant and framed charges against him.

05. Heard learned counsel for the parties and perused the material on record.

06. While considering the issue of framing of charge, in **Sajjan Kumar V. C.B.I.**¹, Hon'ble the Apex Court held that *"at the time of framing of charges, the Court must apply its judicial mind on the material placed on record and must be satisfied that the commission of offence by the accused was possible. If on the basis of the material on record, the Court could form an opinion that the accused might have committed offence, it can frame the charge, though for conviction the conclusion is required to be proved beyond reasonable doubt that the accused has committed the offence. At the time of framing of charges, the Court is not expected to go deep into the matter and hold that the materials would not warrant conviction. The Court is required to evaluate the material on record at the stage of Sections 227 or 239 of the Code, as the case may be"*. Hon'ble the Supreme Court in the matter of **Om Wati (Smt) and Another V. State, Through Delhi Admn. And Others**², has held in para 10 as under:-

"10. A three-Judge Bench of this Court in Supdt. & Remembrancer of Legal Affairs, W.B. V. Anil Kumar Bhunja [(1979), 4 SCC 274] reminded the courts that at the initial stage of framing of charges, the prosecution evidence does not commence. The court has, therefore, to consider the question of framing the charges on general considerations of the material placed before it by the investigating agency. At this stage, the truth, veracity and effect of the judgment which the prosecution proposes to adduce are not to

1 (2010) 9 SCC 368

2 (2001) 4 SCC 333

be meticulously judged. The standard of test, proof and judgment which is to be applied finally before finding an accused guilty or otherwise is not exactly to be applied at the stage of framing the charge. Even on the basis of strong suspicion founded on materials before it, the court can form a presumptive opinion regarding the existence of factual ingredients constituting the offence alleged and in that event be justified in framing the charges against the accused in respect of the commission of the offence alleged to have been committed by them. Relying upon its earlier judgments in Ramesh Singh and Anil Kumar Bhunja cases this Court again in *Satish Mehra v. Delhi Admn.* [(1996) 9 SCC 766] reiterated ; (SCC pp.769-70, para 9).

“9. Considerations which should weigh with the Sessions Court at this stage have been well designed by Parliament through Section 227 of the Code of Criminal Procedure (for short 'the Code') which reads thus:

'227. Discharge- If, upon consideration of the record of the case and the documents submitted therewith, and after hearing the submissions of the accused and the prosecution in this behalf, the Judge considers that there is not sufficient ground for proceeding against the accused, he shall discharge the accused and record his reasons for so doing.'

Section 228 contemplates the stage after the case survives the stage envisaged in the former section. When the court is of opinion that there is ground to presume that the accused has committed an offence the procedure laid down therein has to be adopted. When those two sections are put in juxtaposition with

each other the test to be adopted becomes discernible: Is there sufficient ground for proceeding against the accused? It is axiomatic that the standard of proof normally adhered to at the final stage is not to be applied at the stage where the scope of consideration is where there is 'sufficient ground for proceeding'."

07. Again, Hon'ble the Supreme Court has held in the matter of **Munna Devi Vs. State of Rajasthan and Another**³ that *"revisional powers cannot be exercised in a routine and casual manner. Recourse to such powers for quashing the charges can be taken only if there is a legal bar against the continuance of the criminal proceedings or the framing of charge or where no offence is being made out against the accused considering the entire facts stated in the FIR. In revision, the High Court cannot appreciate the evidence in the manner the trial court and the appellate court are required to do. On facts, it was premature for the High Court to have exercised its revisional powers. Trial court to conduct trial and dispose of the matter on merits"*.

08. Learned counsel for the applicant has strenuously argued that there is delay of about 8 years in lodging the FIR and the prosecutrix herself has not disclosed the incident to anyone, this Court must make it clear that at the stage of framing of charges, the Court will not weigh the evidence. The stage for appreciating the evidence for the purpose of

3 (2001) 9 SCC 631

arriving at a conclusion as to whether the prosecution was able to bring home the charge against the accused or not would arise only after all the evidences are brought on records at the trial.

09. From perusal of the documents and record, in particular the written report made before the Superintendent of Police, Raigarh by the prosecutrix, it is evident that from 2008 to 18.05.2017, the applicant committed sexual intercourse with the prosecutrix many times and also threatened her for dire consequences while she was going to village Chhal for attending meeting. The aforesaid statement of the prosecutrix also finds corroboration from her statement recorded under Section 164 Cr.P.C.

10. The Court at the stage of framing charge exercises a limited jurisdiction. It would only have to see as to whether prima-facie case has been made out. Whether a case of probable conviction for commission of an offence has been made out on the basis of the materials found during investigation should be the concern of the Court. It, at the stage, would not delve deep into the matter for the purpose of appreciation of evidence. It would ordinarily not consider as to whether the accused would be able to establish his defence, if any. This Court does not find any illegality or infirmity in the order impugned warranting interference.

11. In view of the aforesaid discussion and in view of

judgments of Hon'ble the Apex Court in the matters of **Sajjan Kumar** (Supra), **Om Wati** (Supra) and **Munna Devi** (supra), the revision is liable to and is hereby dismissed.

Sd/-

(Rajani Dubey)
JUDGE

Pekde