

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**WA No. 288 of 2019**

Saket Sharma S/o Shri Hiramani Sharma Aged About 31 Years R/o
Gokulpur Ward, Near Laxmi Niwas, Dhamtari, District Dhamtari
Chhattisgarh. **Petitioner/Appellant**

Versus

1. State of Chhattisgarh through Mahila Police Station Ajak, Iucaw,
District Kanker Chhattisgarh.
2. Smita Patil D/o Shri D.M. Patil Aged About 29 Years R/o Qtr. No.
B/41, Karamchari Nagar, Sikola Basti, Near Shiv Temple, Durg,
Tahsil And District Durg Chhattisgarh. **--- Respondents**

Presence:

For the Appellant : Mr. B.P. Sharma Advocate with Mr.
Manaynath Thakur, Advocate

For the State/R-1 : Mr. Gagan Tiwari, Govt. Advocate.

**HON'BLE SHRI JUSTICE P.R. RAMACHANDRA MENON, C.J., &
HON'BLE SHRI JUSTICE GOUTAM BHADURI, J**

ORDER/JUDGMENT ON BOARD**(18.06.2019)****Per Goutam Bhaduri, J**

1. Heard on admission.
2. The present appeal is against the order dated 30.04.2019
passed by the learned Single Judge whereby the interim
application to stay the proceedings of Criminal Case pending
before the Court below was dismissed by learned Single
Judge.
3. Brief facts of the case are that a charge sheet was filed

against the appellant for the alleged offence punishable under Sections 450, 376(2)(n) of the IPC; section 3(2)(v) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989 (for short “ the Act of 1989”); section 294 of the IPC; section 3(1)(s) of the Act of 1989; Section 354D of the IPC; and Sections 67 & 67A of the Information Technology Act, 2000.

4. In the writ petition, the FIR was sought to be quashed along-with the charge sheet and also the challenge was made to the charges framed. Learned counsel for the appellant would submit that the learned single judge though had admitted the writ petition wherein filing of the charge sheet and the FIR was challenged, but has dismissed the application for grant of stay. It is contended that since the petition was admitted for hearing being arguable, the refusal to grant stay at the same time would amount to a contradictory order as in the meanwhile, if the criminal case is decided the writ petition which was admitted would become infructuous. It is further contended that the prosecutrix and the complainant (respondent No.2 herein) claimed that the appellant has committed forcible sexual intercourse on the pretext of marriage. It is further contended that the said allegation on the face of it cannot be accepted for the reason that the appellant and respondent No.2 were living together and she performed a consensual sex with the appellant. It is further stated that the offence under the provisions of Special Act would not be attracted as the complainant who belonged to a particular caste “*Mahar*” is not recognized as an SC/ST caste in the State of

Chhattisgarh. Therefore, the said offence under the Special Act would also not be attracted.

5. It is further contended that if the original criminal case is decided then the writ petition would become infructuous. Learned counsel placed in **2009 10 SCC 388 Zenit Mataplast Private Limited Vs. State of Maharashtra** and would submit that since the application seeking interim prayer is based on fundamental right guaranteed by the Constitution, the provisions of sections under the SC/ST Act for the very offence would not be applicable and the interim relief ought to have been granted. It is further contended that various statements of the prosecutrix which are placed would further show that she was a consenting party as she was in the company of the appellant and the allegations of rape under the facts cannot be attracted. It is submitted that the writ petition was admitted, therefore, the proceeding before the Court below may be stayed for a particular period and in the meanwhile, the writ petition may be decided.
6. During the course of hearing, it was submitted that the prosecutrix has been examined. A perusal of the writ petition would show that the charges were framed on 27.02.2019 and the same was also under challenge. The charges having been framed and since the prosecutrix has been examined, this Court would follow the ratio as has been laid down in State of **Rajasthan v. Fatehkaran Mehdu AIR 2017 SC 796**, which contemplates that the Court would not be concerned with the proof of allegation, only it has to focus on material and form an opinion that whether the accused has committed 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.

7. Applying the aforesaid principles and considering the subsequent development in this case as it has been stated that the prosecutrix has already been examined before the Court, any interpretation of facts at this stage would amount to exercise of appellate jurisdiction of criminal appeal even without the statement recorded in sessions trial before the Court below. Any finding may prejudice rights of either of the parties. The interim prayer having been refused and the discretion being exercised on a statement u/s 164 of Cr.P.C., we are unable to agree with the contention of the counsel for the appellant. Accordingly, we are not inclined to interfere with the order of the learned single judge.
8. Under the circumstances, the appeal has no merit and is dismissed. The appellant shall be at liberty to raise all the grounds before the court below during the course of trial.

Sd/-

**P.R. RAMACHANDRA MENON
CHIEF JUSTICE**

Sd/-

**GOUTAM BHADURI
JUDGE**