

HIGH COURT OF CHHATTISGARH, BILASPUR

CRR No. 793 of 2019

Siddharthdas Vaishnav

Applicant

Versus

State of Chhattisgarh & Another

Respondents

Post for pronouncement of the order on 28 .11.2019

Sd/-

JUDGE

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**Order Reserved on : 29.08.2019****Order Delivered on : 28/11/2019****CRR No. 793 of 2019**

- Siddarthdas Vaishnav S/o Shashankdas Vaishnav Aged About 20 Years R/o Shanti Nagar, Rajnandgaon, Ward No. 30, Police Station - Kotwali, District Rajnandgaon Chhattisgarh.

---- Petitioner**Versus**

1. State Of Chhattisgarh Through In Charge, Police Station - Kotwali, Rajnandgaon, District Rajnandgaon Chhattisgarh.
2. Ku. Megha Tiwari D/o Alok Tiwari Aged About 22 Years R/o Ward No. 37, Gandhi Chowk, Brahman Para, Rajnandgaon, Police Station - City Kotwali, Rajnandgaon Chhattisgarh.

---- Respondents

For Applicant	: Shri Anand Shukla, Advocate
For Respondent No.1/State	: Shri Akhtar Hussain, PL

Hon'ble Smt. Justice Rajani Dubey**Order On Board****28/11/2019**

The applicant has filed this revision against the order dated 07.05.2019 passed by the Additional Sessions Judge (FTC), Rajnandgaon in Sessions Case NO. 05/.2019 whereby the learned Sessions Judge has framed charges against the applicant under Sections 376(2), 313 and 506 (Part II) IPC.

2. Brief facts of the case are that the complainant (prosecutrix) has filed a written complaint on 24.08.2018 alleging that the applicant had

committed sexual intercourse with her on the pretext of marriage during the period from August 2017 to June 2018 and later on refused to marry her and threatened her. On the basis of aforesaid complaint, offence was registered against the applicant under Sections 376 and 506 IPC. After completion of investigation, charge sheet was filed. Learned trial court on 07.05.2019, framed charges against the applicant under Sections 376(2), 313 and 506 (Part II) IPC. Feeling aggrieved against this, the revision has been filed by the applicant.

3. Counsel for the applicant submits that the applicant is innocent and he has been falsely implicated in the crime in question. He has submits that even as per the complaint lodged by the complainant, they were having love affair and their relationship existed for over a period of one year, with her consent they developed relations without lack of resistance by the complainant. The allegation made in the FIR and the complaint, even if taken at their face value and accepted in their entirety they do not prima facie constitute any case or make out a case against the applicant. He submits that the allegation in the FIR and other material do not disclose a cognizable offence justifying an investigation by police officer under Section 156(1) of the Code. Present case, is exception where the present applicant is actually a victim but made accused in the present case. Earlier, complainant has lodged a written complaint on 18.08.18 before the City Kotwali, Rajnandgaon however, she withdrew the same on the ground that the applicant would marry her after he attains the age of 21 years which clearly shows that even if the prosecution case is taken as it is, offence as alleged against him is not made out against the applicant. It is submitted that the present applicant is aged about 19 years and as per

Section 5 of the Hindu Marriage Act, in the present case, a marriage may be solemnized between any two Hindus, if the condition is fulfilled i.e. the bridegroom has completed the age of twenty one years and the bride the age of eighteen years at the time of the marriage. Complainant is aged about 21 years and is fully conversant that as per Section 5(3) of the Hindu Marriage Act, the bridegroom has to complete the age of 21 years therefore the allegation made by the complainant that the applicant had committed sexual intercourse on the pretext of marriage, having no place, falsely fabricated and no offence is made out against the applicant. The applicant is a young boy aged about 19 years, second year BBA student pursuing his studies from CIT college, Rajnandgaon and the complainant is a mature lady, fully knew the pros and cons of the live-in relationship. He submits that every breach of promise to marry cannot be said to be either cheating or a rape. He further submits that the entire story of prosecution is doubtful, suspicious and abuse of process of law and the basic ingredients of the offence under Sections 376(2), 313 and 506 (Part II) IPC are missing. Reliance has been placed in the matter of **Mahesh Balkrishna Dandane Vs. State of Maharashtra (In the High Court of Judicature at Bombay, Criminal Anticipatory Bail Application No. 27 of 2014 with Criminal Intervention Application No. 179 of 2014); Dhruvaram Murlidhar sonar Vs. State of Maharashtra and Others (AIR 2019 SC 327) and in the matter of Pramod Suryabhan Pawan Vs. State of Maharashtra (2019 SCC Online SC 1073).**

4. On the other hand counsel for the State supported the impugned order.

5. Heard counsel for the parties and perused the material placed on record.

6. Applicant has filed various documents along with the present petition and submitted that the applicant and complainant were in live-in relation and they had executed an agreement dated 27.12.2017 (Annexure A/4) wherein it has been mentioned that the applicant would marry her on his attaining the age of 21 years. Framing of charge is the first major step in a criminal trial where the Court is expected to apply its mind to the entire record and documents placed therewith before the Court. Taking cognizance of an offence has been stated to necessitate an application of mind by the Court but framing of charge is a major event where the Court considers the possibility of discharging the accused of the offence with which he is charged or requiring the accused to face trial. It has been held by Hon'ble Apex Court in the matter of **Amit Kapoor Vs. Ramesh Chander and Another reported in (2012) 9 SCC 460**, which reads as under:

“17. Framing of a charge is an exercise of jurisdiction by the trial court in terms of Section 228 of the Code, unless the accused is discharged under section 227 of the Code. Under both these provisions, the court is required to consider the “record of the case” and documents submitted therewith and, after hearing the parties, may either discharge the accused or where it appears to the court and in its opinion there is ground for presuming that the accused has committed an offence, it shall frame the charge. Once the facts and ingredients of the section exists, then the court would be right in presuming that there is ground to

proceed against the accused and frame the charge accordingly. This presumption is not a presumption of law as such. The satisfaction of the court in relation to the exercise of constituents of an offence and the facts leading to that offence is a sine qua non for exercise of such jurisdiction. It may even be weaker than a prima facie case. There is fine distinction between the language of Sections 227 and 228 of the Code. Section 227 is the expression of a definite opinion and judgment of the Court while Section 228 is tentative. Thus, to say that at the stage of framing of charge, the Court should form an opinion that the accused is certainly guilty of committing an offence, is an approach which is impermissible in terms of Section 228 of the Code.”

The trial Court after considering the record of case and documents submitted therewith, and hearing the parties shall frame charge if there are grounds for presuming that accused has committed the said offence. In the light of the above, after going through the records in proper perspective, the trial court has framed charges against the applicant, finding prima facie material against him. Hence, there is no illegality in the order impugned. I do not find any strain reason to interfere with the proceedings of the court below. Revision thus, has no merits and the same is accordingly dismissed.

Sd/-

(Rajani Dubey)
Judge