

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

CRR No. 1213 of 2019

- Raju Ram S/o Ayodhya Ram @ Joidhya, Aged About 19 Years, R/o Kosanga, P. S. Lakhanpur, District Surguja Chhattisgarh, District : Surguja (Ambikapur), Chhattisgarh

---- Petitioner

Versus

- State of Chhattisgarh Through The Station House Officer, Udaipur, District Surguja Chhattisgarh, District : Surguja (Ambikapur), Chhattisgarh

-----Respondent

For Petitioner : Shri Goutam Khetrapal and Shri Jitendra Shrivastava, Advocates.

For Respondent/State: Shri Ghanshyam Patel, Govt. Advocate.

Hon'ble Shri Justice Rajendra Chandra Singh Samant

Order on Board

22/10/2019

1. This petition has been filed challenging the order of framing charges dated 26-08-2019 passed by the Additional Sessions Judge (FTC) Ambikapur against the petitioner for offences under Section 363, 366A, 342, 376(2)(f), 323 of the IPC and Section 5(f) read with Section 6 of POCSO Act.
2. It is submitted that according to the FIR itself the date of incident is 20-03-2019, whereas, the FIR has been lodged on 20-05-2019 after due deliberation, therefore the complaint is totally concocted. It is further submitted that minority of the prosecutrix is also highly disputed for the reason that according to the entry in the School Register which is part of the charge sheet and copy of which has been filed as Annexure -P/3, shows the date of birth of the prosecutrix is 08-06-1998, therefore, on the date of incident the prosecutrix should be deemed as major, whereas, the prosecution placed reliance on another document

which has been seized in the investigation which does not reflect the name of the prosecutrix, however, the date of birth is shown as 18-05-2001, therefore, this document is of no relevance. It is submitted that in **Jarnail Singh Vs. State of Haryana**, (2013) 7 SCC 263, the Supreme Court has very clearly laid down that Rule 12 of Juvenile Justice (Protection and Care of Children) Rules, 2007 which is applicable for determination of age of a juvenile with conflict with law, should also be followed in determination of age of a victim of crime, according to which preference is given firstly of matriculation or equivalent certificate if available, secondly date of birth certificate from school which is based on the entry in the school register and thirdly birth certificate given by the municipal authority or Panchayat. Therefore, the evidence collected in the investigation in this case is entry in the school register which does not show the prosecutrix as a minor on the date of incident. Further reliance has been placed on the judgment of Hon'ble the Supreme Court in the matter of **State of Madhya Pradesh Vs. Anoop Singh**, (2015) 7 SCC 773 in which Hon'ble the Supreme Court has held that Rule 12 of the Juvenile Justice (Care and Protection of Children) Rules, 2007 should be followed in determining the age of the prosecutrix in cases where there is such dispute. Therefore, it is submitted that the offences charged against the petitioner under POCSO Act are not maintainable.

3. It is further submitted that offence under Section 376 of the IPC has also not been made out for the reason that the prosecutrix herself has stated that the petitioner has exploited her sexually on the pretext of marrying her for sometime and when the petitioner became violent she left her and she has lodged this FIR which shows that the relationship was going well, however because of the violence of the petitioner the

prosecutrix got aggrieved and has lodged the FIR, this shows that the relationship was consensual and there is nothing to suggest that this is a case of rape. It is submitted that Hon'ble the Supreme Court has in **Pramod Suryabhan Pawar Vs. State of Maharashtra and Another**, 2019 SCC OnLine SC 1073 has very categorically held that every breach of compromise cannot be said to be a false promise and the prosecutrix in this case has not said in her complaint that she left the petitioner because he breached his promise. Therefore, the petitioner is entitled to discharge in this case.

4. Learned counsel for the State/respondent opposes the grounds raised in the petition and the submission made by learned counsel for the petitioner. It is submitted that according to the material present in the charge sheet there is prima facie case made out for framing of charges as have been framed against the petitioner. The dispute regarding the age of the prosecutrix may be present in the charge sheet, which shall be resolved in trial itself. On the other hand, the mark sheet seized in the investigation does not reflect the name of the prosecutrix, but the statement of her parents very clearly mention that the prosecutrix was born in the year 2001 which can be rebutted only in evidence, relying on the ratio laid down in **Jarnail Singh Vs. State of Haryana** (supra) and **State of Madhya Pradesh Vs. Anoop Singh** (supra), it is submitted that determination of age of the prosecutrix is not permissible at the stage of framing of charge which can be determined only at the stage of trial following the guideline laid down and the rules under Juvenile Justice (Care and Protection of Children) Rules, 2007. Placing reliance on the judgment of this Court in the matter of **Yanesh @ Yogesh Kumar Sahu Vs. State of Chhattisgarh**, 2017 SCC OnLine Chh 652 in which it was held that an accused can be

discharged only when the Court considers that the charges against the accused are groundless and there is nothing to make out that the charges against the petitioner are groundless, hence, the petition be dismissed.

5. In reply it is submitted by learned counsel for the petitioner that this Court has in **Yanesh @ Yogesh Kumar Sahu Vs. State of Chhattisgarh** (supra) decided that the defence of the accused cannot be taken into consideration at the stage of framing charge, whereas in this particular case, the material present in the charge sheet itself are sufficient to falsify the case against the petitioner. Therefore, the petition may be allowed.
6. Heard learned counsel for the parties and perused the documents.
7. The FIR has been lodged by the prosecutrix stating that she was of about 17 years when the petitioner on pretext that he will marry her by force took her to a village and while cohabitation with her exploited her sexually. When the prosecutrix insisted upon the marriage, the petitioner then started torturing her by beating her and driving her out of his house. Therefore, she has lodged the FIR.
8. Although there is delay of two months in lodging the FIR, but that is subject to explanation and it would be not appropriate for the revisional Court to discard any evidence on the basis of delay only. Such finding that the statement made is unreliable is reserved only for the trial Court, a finding that is required to be established in the revision petition is such that allegation made is without any basis.
9. The dispute regarding the age of the prosecutrix appears to be present according to the material present in the charge sheet itself. The seizure of school register has been made which shows the date of birth of the prosecutrix is 08-06-1998, but, father of the prosecutrix has

made statement that his daughter was born in the year 2001 and similar is the statement of her mother and the mark sheet which the prosecution has relied has been seized from the mother of the prosecutrix. A revisional Court cannot hold trial and give a finding as to which of the statement is a correct statement. Therefore, in the present state of things the statement made by the parents of the prosecutrix are sufficient to make out a prima facie case to show that there is substance, according to which it can be made out that the prosecutrix may be a minor on the date of incident. Therefore, where a simple doubt is present that itself is a substance and prima facie case for framing of charge. The ratio laid down in the matter of **Jarnail Singh Vs. State of Haryana** (supra) and **State of Madhya Pradesh Vs. Anoop Singh** (supra) are the decisions of Hon'ble the Supreme Court while exercising appellate jurisdiction i.e. after conclusion of the trial, there is no direction that any such interference can be made in the stage of framing of charges, therefore, the opposition made by learned State counsel has substance. As there is substance to show that the age of the prosecutrix may be below 18 years on the date of incident, hence, it is sufficient to make out a prima facie case, that the prosecutrix is a minor that is sufficient material for framing of charges.

10. No inquiry and no appreciation of evidence is permitted at the stage of framing charge. In case of **Supdt. & Remembrancer of Legal Affairs West Bengal Vs. Anil Kumar Bhunja & Ors.**, (1979) 4 SCC 274, three judges of Supreme Court has held that the truth, veracity and effect of the evidence which the prosecutor proposes to adduce are not to be meticulously judged. The standard of test, proof and judgment which is to be applied finally before finding the accused guilty or otherwise, is not exactly to be applied at the stage of Section

227 or 228 of the Code of Criminal Procedure, 1973. At this stage, even a very strong suspicion founded upon materials before the Magistrate, which leads him to form a presumptive opinion as to the existence of the factual ingredients constituting the offence alleged; may justify the framing of charge against the accused in respect of the commission of the offence.

11. In case of **R.S. Nayak vs A.R. Antulay & Anr**, reported in **(1986) 2 SCC 716**, the ratio laid down in case of Supdt. & Remembrancer of Legal Affairs West Bengal Vs. Anil Kumar Bhunja (supra) has been further elaborated. It was also held that if the evidence which the prosecution proposes to adduce to prove the guilt of the accused even if fully accepted before it is challenged in cross- examination or rebutted by the defence evidence, if any, cannot show that the accused committed the offence, then there will be no sufficient ground for proceeding with the trial.
12. In **Niranjan Singh Karam Singh Punjabi Advocate Vs. Jitendra Bhimaraj Bijje and Ors.**, reported in (1990) 4 SCC 76, it has been further held that evidence can be sifted and marshalled, only for a limited purpose to evaluate the material and the documents present on record. It has been similarly held in **State of M.P Vs. S.B. Johari & Others**, reported in (2000) 2 SCC 57. Therefore, the principle which is culled out from the judicial pronouncements mentioned herein above is that the material on the basis of which prosecution has been initiated, without any challenge and rebuttal would lead to conviction then that would be the prima-facie case for framing of charge in that particular case. The statement of the prosecutrix and other witnesses along with mark-sheet is reliance of the prosecution. However, the school register seized is contradictory and not in favour of the prosecution, but the

truth of the same has to be decided in trial on the basis of which a clear finding may be arrived at by the trial Court itself.

13. On the basis of the aforesaid discussion, the other circumstances from which the argument has been submitted that the relationship of the petitioner and the prosecutrix was consensual needs no consideration only for the reason that it is prima facie finding that the prosecutrix is minor, therefore, I do not find any substance in this revision petition and the same is dismissed accordingly.

Sd/-
(Rajendra Chandra Singh Samant)
Judge