

HIGH COURT OF CHHATTISGARH, BILASPUR

Cr.R. No.171 of 2020

- Rajendra Rai (Petitioner's Name Wrongly Mentioned As Rejendra Ray By The Lower Court) S/o Narmada Rai Aged About 39 Years R/o Ashyariya Apartment Goverdhan Thana, Chakardharnagar Raigarh, Tehsil And District - Raigarh Chhattisgarh

---- Applicant

Versus

- State Of Chhattisgarh Through Police Station City Kotwali, District - Raigarh, Chhattisgarh

---- Non-applicant

For Applicant	: Mr. R.K. Rathi with Mr. Vikash Shrivastava, Advocates.
For Non-applicant	: Mr. Shrikant Kaushik, Panel Lawyer.

Hon'ble Shri Justice Rajendra Chandra Singh Samant

Order on Board

24-02-2020

Heard.

1. This Criminal Revision has been brought challenging the legality, propriety and correctness of the order framing charge against the applicant.
2. The learned trial Court has framed charges against the applicant under Section 376 and 325 of I.P.C., on the allegation made by the prosecutrix and the material that is present in the charge-sheet.
3. Learned counsel for the applicant submits that there is no ingredient present to make a prima-facie case against the applicant for framing of charges against the applicant as it has been framed. Firstly, the

prosecutrix was not minor on the date of incident, secondly, it is her statement that the applicant increased the intimacy with her and then both of them performed a Gandharva Marriage and started living as husband and wife, having physical relation with each other. The grievance of the prosecutrix is only this that the applicant did not give her the status of legally married wife and when she came to know about the marriage of the applicant, then a dispute arose and it is alleged that the applicant has beaten the prosecutrix causing her grievous injury and fracture on her leg because of which she had to take treatment in hospital and also got operated for the same. It is further submitted that the whole investigation does not show any medical evidence regarding the grievous injury caused to the prosecutrix, therefore, neither of the charges are made out against the applicant. Therefore, the impugned order is liable to be set aside.

4. Learned State counsel opposes the submissions and submits that there is material present in the charge-sheet which makes out a prima-facie case against the applicant for framing of charges as mentioned hereinabove. Therefore, the revision is without any substance which may be dismissed.
5. Heard learned counsel for both the parties and also perused the documents present.
6. A written complaint has been filed on 09.09.2019 by the prosecutrix in Police Station, City- Kotwali, Raigarh, C.G. mentioning that the prosecutrix was already married, however, her marriage was dissolved in customary manner. Subsequent to which, in the year 2006, the applicant gained acquaintance with her, expressed his love and proposed to marry her. On 01.01.2007, both of them performed a

Gandharva Marriage in the temple of Chandrapur and thereafter, they started living as husband and wife and had physical relation with each other. In the complaint, it is mentioned that the applicant never gave the prosecutrix status of a legally wedded wife, then in the year 2012, the prosecutrix came to know that the applicant has married to some other woman. The prosecutrix then objected to the marriage of the applicant because of which she was beaten by the applicant and in that beating, she suffered the injury of fracture on her leg for which she had to take treatment and also has undergone surgery. These are mainly the contents of the written statement.

7. On perusal of the case diary, it is found that the statement given by the prosecutrix under Section 161 of Cr.P.C. is similar and so is the statement of other witnesses. The medical investigation is of no consequences as it does not give any opinion regarding the physical assault on the prosecutrix, therefore, this appears to be the whole evidence in the case.
8. On considering the evidence that is present for prosecution of the applicant in this case, it is found that the prosecutrix was of age capable for giving the consent. The performance of marriage and living as husband and wife for sometime also shows their relationship based on consent of each other. The real cause of grievance of prosecutrix is not this that she was exploited sexually but this that the applicant has performed another marriage. Therefore, on perusal of all the evidence, there is nothing to suggest that any of the act of the applicant falls in the definition of rape under Section 375 of I.P.C., therefore, the framing of charge against the applicant under Section 376 of I.P.C. appears to be erroneous for there is no prima-facie case present in this respect.

However, the charge under Section 325 of I.P.C. appears to be sustainable because there is evidence of oral account of the prosecutrix herself and since it is an incident of 2012 and there is no limitation for bringing in any such complaint for an offence punishable with imprisonment for more than three years, therefore, the applicant will have to face the trial on this charge.

9. As a result of the discussions made hereinabove and the conclusions drawn, this revision is allowed in part. The charge framed against the applicant under Section 376 of I.P.C. is set aside and the charge against the applicant under Section 325 of I.P.C. is sustained. The learned Court below is directed to do the needful for trial of the applicant in the remaining charge by sending the same to the competent Court.

10. Accordingly, the petition stands disposed off.

Sd/-
(Rajendra Chandra Singh Samant)
Judge