

HIGH COURT OF CHHATTISGARH, BILASPUR

Cr.R. No.311 of 2020

1. Vivek Mahant Aged About 32 Years, S/o Laxman Das Mahant
2. Laxman Das Mahant S/o Mangal Das Mahant Aged About 62 Years
3. Smt. Rajbala Mahant W/o Laxman Das Mahant Aged About 46 Years
(All are r/o H.I.G. 105 Housing Board Colony, Dadar Khurd, Korba,
Tahsil And District Korba Chhattisgarh)

---- Applicants

Versus

- State Of Chhattisgarh Through S.H.O., Police Station Ajak Korba,
District Korba Chhattisgarh

---- Non-applicant

For Applicant	: Mr. Ravindra Sharma, Advocate.
For Non-applicant/State	: Mr. Adil Minhaj, Govt. Advocate.

Hon'ble Shri Justice Rajendra Chandra Singh Samant

Order on Board

17-03-2020

Heard.

1. This revision petition is directed against the order dated 04.02.2020 passed by the Special Judge under S.C./S.T. (Prevention of Atrocities) Act, Korba, District- Korba, C.G., in Special Criminal Case No.33/2019 framing charges against the applicants. The trial Court has framed charge against the applicant No.1 under Sections 376(2)(n), 493, 294, 506 part II, 323/34 of I.P.C. and Sections 3(2)(V), 3(1)(W), 3(1)(R), 3(2)(V-A) of S.C./S.T. Act and against the applicant No.2 under Sections 294, 506 part- II and 323/34 of I.P.C. and Sections 3(1)(R), 3(2)(V-A) of S.C./S.T. Act and against the applicant No.3 under Sections 294, 506 part II, 323/34 of I.P.C. and Sections 3(1)(R), 3(2)(V-A) of S.C./S.T. Act
2. It is submitted by the learned counsel for the applicant that the charges

formed against the applicants are totally inconsistent with the material that is present in the charge-sheet and there is no prima facie case present for framing of charges. The prosecutrix and the applicant No.1 have duly performed marriage in the month of June 2012 and had been living together leading matrimonial life until June 2018. Earlier, the prosecutrix had made complaint in the Police Station- Ajak, Korba, C.G. but no offences were registered against the applicants. Subsequent to which the complaint was filed under Section 156(3) of Cr.P.C. and on the basis of the order passed by the concerned Court, the F.I.R. has been lodged in the case.

3. It is further submitted that looking to the marital status existing between applicant No.1 and the prosecutrix. There is no ground to hold that the offence under Section 376 and 493 of I.P.C. has been committed in this case. Similarly, there is no evidence to frame charge under Section 294, 506 Part-II and 323 of I.P.C.
4. It is submitted that there is no specific allegation made by the complainant regarding insulting her in caste name and on account of her social status, therefore, the charges framed under the provisions of S.C./S.T. (Prevention of Atrocities) Act are also not made out.
5. Placing reliance on the judgment of Supreme Court in the case of **Pramod Suryabhan Pawar Vs. State of Maharashtra & Anr.** reported in **AIR 2019 Supreme Court 4010**, it is submitted that there had been no intention of the applicant No.1 to deceive the complainant and similarly all the acts that have taken place regarding the abuse and insult of the complainant have not taken place in public place.
6. On the point of consent, relying on the judgment of Hon'ble Supreme Court in the case of **Dr. Dhruvaram Murlidhar Sonar Vs. State of**

Maharashtra & Ors. reported in ***A.I.R. 2019 Supreme Court 327***, it is submitted that the consent in the case was clearly given by the complainant to perform marriage and cohabit with applicant No.1, therefore, all the applicants are entitled for discharge, hence, it is prayed that the impugned order be set aside.

7. Learned counsel for the State opposes the grounds raised in the revision petition and the submissions made in that respect. It is submitted that the allegations made by the complainant against the applicants are in clear words supported by the statement of other witnesses as well. It is submitted that there is sufficient material present in the charge-sheet to hold that prima-facie case is made out against the applicants for framing of the charges which have been framed accordingly. Hence, the impugned order is correct which needs no interference.
8. Heard learned counsel for both the parties and also perused the documents present.
9. The F.I.R. has been lodged by the complainant/prosecutrix alleging that she had an affair with complainant No.1. The applicant No.1 and prosecutrix got an affidavit notarised on 14.06.2012 making a statement of marriage of the applicant with the complainant and thereafter both of them started living together in Korba. The complainant believed that she was married with the applicant No.1 and cohabited with the applicant No.1. When the applicant No.1 took the complainant to visit his parents, the other co-accused persons, they did not accept the marriage for the reason that the complainant belongs to a lower caste. She has alleged that applicants No.2 and 3 used to visit her and insult her by abusing her in her caste name and also they pressurised her to leave the applicant

No.1. The applicant No.1 then lived separately with prosecutrix for sometime and then on November, 2017, the applicant No.1 deserted her. She has alleged that while she was living singly, the applicants have visited her on numerous occasions to abuse her because of her caste. She has alleged that on one occasion she went to the house of the applicants and the applicants refused to welcome her, then by abusing her, they have assaulted and beaten her. The allegation of the complainant is this that she was made to believe that she is legally wedded wife of the applicant No.1 and on that basis, her consent was obtained deceitfully for physical relation. On the basis of these allegations, the offences have been registered against the applicants. The case has been investigated and charge-sheet has been filed.

10. Admittedly, there was no customary marriage performed between the prosecutrix and the applicant No.1. According to the statement given by the prosecutrix herself, the notarisation of the affidavit by applicant No.1 and the prosecutrix herself was made. There is nothing to suggest that the prosecutrix had no knowledge that the swearing in of any affidavit by itself is not a performance of legal marriage. The prosecutrix had been well aware of the status of marriage by the affidavit and she continued living with the applicant No.1 for about 6 years. All the problems started when she was deserted by applicant No.1 and the other events occurred in which the applicants No.2 and 3 also participated. The prosecutrix herein was of age of 22 years when the said notarised marriage was performed. Hence, it can be said that the prosecutrix herself consented to cohabit with the applicant No.1, despite knowing well that the said marriage was not in accordance with law. Hence, I am of this view that there had been no material to hold that the applicant No.1 had committed the offence under Section 376 of I.P.C. and neither

there is evidence present to hold that offence under Section 493 of I.P.C. was committed. Therefore, the framing of charge against applicant No.1 under Section 376 and 493 of I.P.C. appears to be incorrect.

11. As regarding the material for framing charge under Section 294, 506 part II and 323 of I.P.C., I am of this view that there is material present, on the basis of which it can be prima-facie held that the applicants can be tried for these offences. Hence, the charges under these offences can be said to be correct.

12. Section 376 of I.P.C. makes the offence punishable with sentence of imprisonment which may extend to life imprisonment and the offence under Section 493 of I.P.C. makes the offence punishable up to 10 years of imprisonment. Section 3(2)(V) of S.C./S.T. (Prevention of Atrocities) Act, 1989 is an additional offence to be charged in case, the offence punishable under I.P.C. is punishable for a term of 10 years or more and Section 3(2)(V)(a) of Act, 1989 is similar and additional charge can be framed in addition to the offences under I.P.C. which are mentioned in the schedule.

13. The schedule with respect to Section 3(2)(V)(a) of the Act, 1989 does not include the offence under plain Section 376(2)(n) I.P.C. and also Section 493 of I.P.C. However, this Court has held that the charges against the applicant No.1 under Section 376(2)(n), 493 of I.P.C. is not sustainable and there is no such charge and the schedule against the applicants No.2 and 3, therefore, the charge under Section 3(2)(V)(a) against the applicant No.2 and 3 and charge against the Section 3(2)(V) against the applicant No.1 also appears to be not maintainable.

14. There are ingredients present in the charge-sheet which make an offence under Section 3(1) of Act, 1989. Hence, on basis of these

findings this revision petition is allowed in part. The framing of charge against applicant No.1 under Sections 376(2)(n) and 493 of I.P.C. and Section 3(2)(V) of S.C./S.T. (Prevention of Atrocities) Act is hereby set aside.

15. Similarly, the charges framed against the applicant No.2 and 3 under Section 3(2)(V)(a) of S.C./S.T. (Prevention of Atrocities) Act is also set aside. The applicants are discharged from the offences as mentioned hereinabove. However, the trial against them shall continue in the remaining charges before the Court having jurisdiction.

16. Accordingly, the petition stands disposed off.

Sd/-

(Rajendra Chandra Singh Samant)

Judge