

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

CRR No. 1368 of 2019

Nitesh @ Deepak Jaiswal S/o Jagdish Jaiswal Aged About 20 Years R/o. Village- Birkona, Police Station- Koni, District- Bilaspur, Chhattisgarh.

---- Applicant

Versus

State Of Chhattisgarh Through Station House Officer, Police Station- Koni, District- Bilaspur, Chhattisgarh.

---- Respondent

For Applicant	: Mr. Rohit Sharma, Advocate
For Respondent/State	: Mr. Shrikant Kaushik, Panel Lawyer

Hon'ble Shri Justice Rajendra Chandra Singh Samant

Order on Board

17-03-2020

Heard.

1. This revision petition has been brought being aggrieved by the order dated 25.6.2019, by which the learned trial Court has framed charges against the applicant under Sections 376 and 417 of the Indian Penal Code.
2. It is submitted by counsel for the applicant that the impugned order is erroneous which suffers from illegality. There is practically no material present in the charge-sheet to frame charges against the applicant for commission of offences under Sections 376 and 417 of the IPC. The prosecutrix was aged about 20 years on the date of incident, which is mentioned in the FIR and in the charge-sheet and from 1.11.2017 to 1.12.2017, the relation of the applicant with the prosecutrix was totally consensual. There is only one word mentioned in the FIR that the first incident that happened in the compound of the house of the prosecutrix was rape. But the prosecutrix herself in her statement under Section

161 of the Cr.P.C. said that it was a physical relation. Apart from that, the prosecutrix has also made a statement that she and the applicant both got married in a temple which further confirms their consensual relationship. It is further submitted that the prosecutrix in separate proceedings filed an application under Section 125 of the Cr.P.C. praying for grant of maintenance to her on the basis that she is a legally married wife of the applicant and at the same time, she has also filed an application under Section 12 of the Protection of Women from Domestic Violence Act in which she again admits the marriage with the applicant. It is also submitted that on perusal of all the material of the charge-sheet itself, the claim of the prosecutrix and her statement against the applicant get falsified. Therefore, there had not been any case against the applicant and the charge framed against him is totally unsustainable.

3. Learned counsel appearing for the respondent/ State opposes the grounds raised in the revision petition and the submissions made in this respect. It is submitted that according to the material present in the charge-sheet, there is no error committed by the trial Court in framing of charges against the applicant.
4. Heard both counsel for the parties and perused the material available on record.
5. According to the contents of the FIR lodged, it is stated by the prosecutrix that she is aged about 20 years and was widowed. She was looking for a match for marriage. The applicant approached her and promised that he will marry her. Then, on one occasion he raped her and when the prosecutrix objected, he said that he will marry her. He continued with that exploitation of the prosecutrix and thereafter, both of them performed a fraudulent marriage in a temple.

6. In her statement under Section 161 of the Cr.P.C., the prosecutrix has said that the applicant had kept promising that he will marry her and then on one occasion he had physical relation with the prosecutrix in the compound of his house and subsequent to that, the marriage was performed in the temple in front of Mahila Thana, Bilaspur. She has further stated that she and the applicant both started living together in a rented house but subsequent to that, the applicant deserted her, then the prosecutrix complained to the police and a counseling procedure was also taken up. The applicant then alleged that the prosecutrix is having illicit relation with somebody else and living a promiscuous life. Similar is the statement of other witnesses who have given statement under Section 161 of the Cr.P.C.
7. On plain perusal of the FIR and the statement of the witnesses under Section 161 of the Cr.P.C., it appears that merely by mentioning word rape it does not become an incident of rape. Even otherwise, the statement of the witnesses itself discloses that a sort of marriage was performed to which the applicant and the prosecutrix both had agreed. The applicant and the prosecutrix both had a relationship for a short time and thereafter, because of the disputes which are mentioned in the statement of the witnesses, the applicant has refused to have the prosecutrix back. The prosecutrix and the applicant both had been major at the time of incident. Hence, the material itself shows that the relationship of the applicant and the prosecutrix was totally consensual, although the consequences of this relationship has not turned out as desired by the prosecutrix, that is why she has come forward and lodged the FIR against the applicant, hence it cannot be said that it is a case of rape in the definition under Section 375 of the IPC. Similarly, there appears no ingredient regarding the commission of offence of

cheating. The evidence and the material in the case show that the relationship of the applicant with the prosecutrix started and thereafter, they have also performed the marriage but in the subsequent development, due to some reasons, which are unknown, the applicant has alleged that the respondent is living a promiscuous life and that is why he has deserted her. Hence, it does not appear to be a case in which the applicant had intention to cheat the prosecutrix and got her consent for physical relationship in a deceitful manner from the very beginning. Hence, I am of this view that the charges framed against the applicant are unsustainable. Therefore, the revision petition is allowed. The charges framed against the applicant are set aside and the applicant stands discharged.

Sd/-

(Rajendra Chandra Singh Samant)
Judge