

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

CRR No. 1415 of 2019

Order Reserved on : 27/02/2020

Order Delivered on : 11/06/2020

1. Nimish Sunil Agrawal, S/o Shri Sunil Agarwal, Aged About 40 Years
R/o 1/45, Motilal Nehru Nagar (East), Bhilai Nagar, Police-Station
Supela Bhilai, District- Durg, Chhattisgarh.
2. Sunil Agarwal, S/o Late Shri L.N. Agarwal, Aged About 68 Years, R/o
1/45, Motilal Nehru Nagar (East), Bhilai Nagar, Police-Station Supela
Bhilai, District- Durg, Chhattisgarh.
3. Smt. Rekha Agarwal, W/o Shri Sunil Agarwal, Aged About 65 Years,
R/o 1/45, Motilal Nehru Nagar (East), Bhilai Nagar, Police-Station
Supela Bhilai, District- Durg, Chhattisgarh.

---- Applicants

Versus

1. State Of Chhattisgarh Through Police-Station-Supela, District- Durg,
Chhattisgarh.

---- Respondent

&

CRR No. 1462 of 2019

1. Smt. Neha Agrawal, W/o. Shri Udit Agrawal, Aged About 43 Years, R/o.
Apartment 1001, Tower B, Db Woods, Goregaon (East) Mumbai,
Maharashtra., District : Mumbai, Maharashtra

---- Applicant

Versus

1. State of Chhattisgarh Through Police-Station-Supela, District-Durg,
Chhattisgarh.

---- Respondent

For Applicants	:Mr. J.K. Gilda, Sr. Advocate with Mr. Manoj Paranjpe, Mr. Vaibhav A. Goverdhan and Mr. Bharat Sharma, Advocates.
For Respondents	:Mr. Devendra Pratap Singh, Dy. Adv. General.
For Complainant	:Mr. Gagan Gupta with Mr. Jaydeep Singh Yadav, Advocate.

Hon'ble Shri Justice Rajendra Chandra Singh Samant
CAV Order

11/06/2020

Heard.

1. Criminal Revision No.1415/2019 has been brought by the applicants/accused challenging the order dated 18.10.2019 passed by the trial Court framing charges under Sections 498A, 376, 377, 323, 34 of the Indian Penal Code (for short 'the IPC') and Sections 3 & 4 of the Dowry Prohibition Act, 1961 (for short 'the Act of 1961') against applicant No.1 and under Sections 498A, 323 read with Section 34 of the IPC along with Sections 3 & 4 of the Act of 1961 against rest of the applicants.
2. Criminal Revision No.1462/2019 is filed co-accused namely Smt. Neha Agrawal, challenging the order of framing charge against her under Sections 498A, 323/34 of the IPC and Sections 3 & 4 of the Act of 1961.
3. Based on the complaint made by Ruhi Agrawal, the police of Police Station-Supela, District-Durg had investigated the matter and on completion of investigation, filed charge-sheet against the applicants in both the cases. The learned Sessions Judge framed charges against the applicants in both the cases, as mentioned herein above, by holding that *prima facie* case is made out against all of them.

4. Mr. J.K. Gilda, learned Sr. Advocate appearing for applicants in CRR No.1415/2019 submits that the case against these applicants is totally concocted, baseless, false and liable to be rejected at the threshold. Complainant Ruhi Agrawal filed a hand written compliant against the applicants on 7.5.2016 in the police station-Supela levelling allegation of dowry demand, torture & cruelty only and other allegations have been added subsequently. Marital relation of applicant No.1 with the complainant were very much strained as a result of which applicant No.1 Nimish Sunil Agrawal had filed a complaint in Mahila Thana, Durg on 23.6.2014 expressing his apprehension of being false implicated by the complainant. Similar complaint was again given by applicant No.1 on 4.7.2014.
5. It is further submitted that, on the same date i.e. 7.5.2016, another type written complaint was filed by complainant in the police-station making substantial and material improvements as compared to her earlier hand written complaint and based on this improved written complaint, FIR has been lodged against the applicants. Infact, it is a case of matrimonial dispute only regarding which an agreement was entered into between the parties on 12.5.2016, which was in the nature of a commercial agreement, and as per terms of this agreement, the applicants have made payment of huge amount through demand draft and other modes to the complainant side. In a matter pending before the Family Court, the complainant has made different and contradictory statement. There is evidence present that the dispute between the applicants and the complainant family was of commercial nature as shares have been transferred as agreed between the parties under the agreement. The medico legal examination as also report of the complainant are false & concocted.
6. Applicants in both the cases had filed a petition under Section 482 of CrPC before the High Court for quashment of the charge-sheet filed against them, which came to be registered as CRMP No.967/2018. The said petition was disposed of vide order dated 14.9.2018 granting liberty to the applicants to raise all the grounds, as urged in the petition, before the trial Court at the stage of framing of charges. According to the applicants, all the grounds, as raised in CrMP No.967/18, were raised before the trial Court, but the same have not

been considered in proper manner and the impugned order was passed. The offence under Section 376 of IPC has been added later on, regarding which there was no material present in the statement of witnesses. Consequent to the direction contained in the order passed in CrMP No.967/2018, the applicants filed an application for discharge and the same has been rejected by the impugned order.

7. It is submitted that there is no material for framing charge under Section 376 of IPC. The act complained of does not come within the purview of Section 375 of IPC. It is further submitted that, it is demonstrated from the evidence present in the charge-sheet itself that there had been business transactions between the business institutions of the applicants and the complainant side, which has been named as 'dowry'. Therefore, there was no ground available to hold that the *prima facie* case was made out against the applicants for framing the charge. Hence, the impugned order is liable to be interfered with.

In support of above submissions, learned counsel places his reliance on the judgments delivered in the matters of Union of India v. Prafulla Kumar Samal, reported in (1979) 3 SCC 4, Niranjana Singh Karam Singh v. Jitendra Bhimraj Bijayaa and others, reported in (1990) 4 SCC 76, Minakshi Bala v. Sudhir Kumar and others, reported in (1994) 142, Shiv Kumar v. Hukam Chand and another, reported in (1999) 7 SCC 467, Dilawar Balu Kumane v. State of Maharashtra, reported in (2002) 2 SCC 135, Dr. Sunil Puri v. State of C.G., reported in 2006 CrLJ 2866, Prashant Bharti v. State(NCT of Delhi), reported in (2013)9 SCC 293, Amit Hamza Shaikh and others v. State of Maharashtra, reported in 2019 SCC Online SC 976 & Rekha Murarka v. State of West Bengal, reported in 2019 SCC Online 1495.

8. Learned counsel representing applicant in Cr. Revision No.1462/2019 would argue that this applicant has been falsely implicated in this case. This applicant never resided in the house, after the marriage of complainant with co-accused Nimish Sunil Agrawal. This applicant is daughter of co-accused Sunil Agrawal & Smt. Rekha Agrawal. She got married in the year 2000 and thereafter she has resided in United States of America (USA) for sometime. Presently this applicant is

residing in Bombay. Marriage of the complainant with co-accused Nimish Sunil Agrawal was solemnized much after the marriage of this applicant i.e. on 16.1.2007. In both the complaints submitted by complainant on 7.5.2016, neither name of this applicant is mentioned nor is there any allegation against her. The complainant made improvements while giving statement to the police under Section 161 of CrPC and levelled allegation against this applicant, which is of vague nature. To buttress his submissions, the learned counsel places reliance on the judgment of Hon'ble Supreme Court in the matters of K. Subba Rao & others v. State of Telangana, reported in (2018) 14 SCC 452; Kailash Chandra Agrawal & another v. State of U.P. & others, reported in (2014) 16 SCC 551 & Ram Saran Varshney & others v. State of Uttar Pradesh & another, reported in (2016) 3 SCC 724.

9. Learned counsel for State opposes the submissions made by the counsel for applicants in both the cases and submits that the arguments advanced by the counsel for applicants do not hold any ground. There are sufficient materials present in the charge sheet to hold that *prima facie* case is made out against the applicants and on the basis of which the charges have been framed accordingly. Variations pointed out in the written complaint, typed complaint and submissions are of no help at the stage of framing charges because at the stage of framing charge, the Court is not required to make any analysis of the statements and give conclusion on that basis. It is submitted that there is no ground for interference in the impugned order.

Reliance has been placed on the judgment of Chand Dhawan (Smt) v. Jawahar Lal and others, reported in (1992) 3 SCC 317, State of Maharashtra v. Priya Sharan Maharaj and others, reported in (1997) 4 SCC 393, State of Delhi v. Gyan Devi and others, reported in (2000) 8 SCC 239, State of Orissa v. Debendra Nath Padhi, reported in (2005) 1 SCC 568, State of Orissa and another v. Saroj Kumar Sahoo, reported in (2005) 13 SCC 540, Rajendra Kumar Pati v. Union of India, reported in 2015 Cr.L.J. 1392, State by the Inspector of Police, Chennai v. S. Selvi and another, reported in (2018) 13 SCC 455.

10. In reply it is submitted by learned counsel for the applicants, that the glaring discrepancies appearing in the statement of complainant and her witnesses cannot be ignored and as such, statement cannot be believed. Secondly, Exception to Section 375 of the IPC itself provides that "sexual intercourse by a man with his own wife, the wife not being under fifteen years of age, is not rape". Therefore, the order framing charge under Section 376 of IPC against applicant Nimish Sunil Agrawal is erroneous and liable to be quashed.
11. Learned counsel appearing on behalf of the complainant assisting learned Deputy Advocate General of the State, has submitted written arguments.
12. I have heard both the parties and perused the documents on record.
13. Since the order framing of charge is questioned in both the revision petition, let us first recapitulate the settled principles of law to be followed in framing the charge against an accused by the criminal Courts. In the matter of State of Orissa v. Debendra Nath Padhi, reported in (2005) 1 SCC 568, a Bench of three Judges of Hon'ble Supreme Court has held as under:-

“ We are unable to accept the aforesaid contention. The reliance on Articles 14 and 21 is misplaced. The scheme of the Code and object with which Section 227 was incorporated and Sections 207 and 207 (A) omitted have already been noticed. Further, at the stage of framing of charge roving and fishing inquiry is impermissible. If the contention of the accused is accepted, there would be a mini trial at the stage of framing of charge. That would defeat the object of the Code. It is well-settled that at the stage of framing of charge the defence of the accused cannot be put forth. The acceptance of the contention of the learned counsel for the accused would mean permitting the accused to adduce his defence at the stage of framing of charge and for examination thereof at that stage which is against the criminal jurisprudence. By way of illustration, it may be noted that the plea of alibi taken by the accused may have to be examined at the stage of framing of charge if the contention of the accused is accepted despite the well settled proposition that it is for the accused to lead evidence at the trial to sustain such a plea. The accused would be entitled to produce materials and documents in proof of such a plea at the stage of framing of the charge, in case we accept the contention put forth on behalf of

the accused. That has never been the intention of the law well settled for over one hundred years now. It is in this light that the provision about hearing the submissions of the accused as postulated by [Section 227](#) is to be understood. It only means hearing the submissions of the accused on the record of the case as filed by the prosecution and documents submitted therewith and nothing more. The expression 'hearing the submissions of the accused' cannot mean opportunity to file material to be granted to the accused and thereby changing the settled law. At the state of framing of charge hearing the submissions of the accused has to be confined to the material produced by the police. ”

In the case of Sheoraj Singh Ahlawat and others v. State of U.P. reported in (2013) 11 SCC 476 it was held whether or not the allegation against accused is true is a matter which cannot be determined at the stage of framing charges. Similar was the view in State of M.P. v. S.B. Johri and others, reported in (2000) 2 SCC 57 wherein it was held that exercise of appreciating the materials produced by the prosecution at the stage of framing of the charge is wholly unjustified.

Sections 227 of Cr.P.C. reads thus:-

“Discharge-If, upon consideration of the record of the case and the documents submitted therewith, and after hearing the submissions of the accused and the prosecution in this behalf, the Judge considers that there is not sufficient ground for proceeding against the accused, he shall discharge the accused and record his reasons for so doing.

Sections 228 of Cr.P.C. reads thus:-

Framing of Charge-(1) If, after such consideration and hearing as aforesaid, the Judge is of opinion that there is ground for presuming that the accused has committed an offence which-

(a) is not exclusively triable by the Court of Session, he may, frame a charge against the accused and, by order, transfer the case for trial to the Chief Judicial Magistrate, and thereupon the Chief Judicial Magistrate shall try the offence in accordance with the procedure for the trial of warrant- cases instituted on a police report;

(b) is exclusively triable by the Court, he shall frame in writing a charge against the accused.

(2) Where the Judge frames any charge under clause (b) of sub-section (1), the charge shall be read and explained to the accused and the accused shall be asked whether he pleads guilty of the offence charged or claims to be tried.

14. The argument that the charge under Section 376 of IPC is not made out needs consideration. As per FIR and charge-sheet, the time of incident is from 16.1.2007 to the date of lodging of FIR i.e. 7.5.2016. The provision under Section 375 of IPC has been amended in the year 2013, the provision prior to this amendment was as under:-

[375. Rape.—A man is said to commit “rape” who, except in the case hereinafter excepted, has sexual intercourse with a woman under circumstances falling under any of the six following descriptions:—

First — Against her will.

Secondly — Without her consent.

Thirdly — With her consent, when her consent has been obtained by putting her or any person in whom she is interested in fear of death or of hurt.

Fourthly — With her consent, when the man knows that he is not her husband, and that her consent is given because she believes that he is another man to whom she is or believes herself to be lawfully married.

Fifthly — With her consent, when, at the time of giving such consent, by reason of unsoundness of mind or intoxication or the administration by him personally or through another of any stupefying or unwholesome substance, she is unable to understand the nature and consequences of that to which she gives consent.

Sixthly — With or without her consent, when she is under sixteen years of age. Explanation.—Penetration is sufficient to constitute the sexual intercourse necessary to the offence of rape.

Exception — Sexual intercourse by a man with his own wife, the wife not being under fifteen years of age, is not rape.] STATE AMENDMENT

After amendment of 2013, Section 375 of the IPC is as such:-

A man is said to commit “rape” if he—

penetrates his penis, to any extent, into the vagina, mouth, urethra or anus of a woman or makes her to do so with him or any other person; or

inserts, to any extent, any object or a part of the body, not being the penis, into the vagina, the urethra or anus of a woman or

makes her to do so with him or any other person; or

manipulates any part of the body of a woman so as to cause penetration into the vagina, urethra, anus or any ~ of body of such woman or makes her to do so with him or any other person; or

applies his mouth to the vagina, anus, urethra of a woman or makes her to do so with him or any other person, under the circumstances falling under any of the following seven descriptions:—

First.—Against her will. Secondly.—Without her consent.

Thirdly.—With her consent, when her consent has been obtained by putting her or any person in whom she is interested, in fear of death or of hurt.

Fourthly.—With her consent, when the man knows that he is not her husband and that her consent is given because she believes that he is another man to whom she is or believes herself to be lawfully married.

Fifthly.—With her consent when, at the time of giving such consent, by reason of unsoundness of mind or intoxication or the administration by him personally or through another of any stupefying or unwholesome Substance, she is unable to understand the nature and consequences of that to which she gives consent.

Sixthly.—With or without her consent, when she is under eighteen years of age.

Seventhly.—When she is unable to communicate consent.

15. In view of the amendment so made under Section 375 of IPC, which is punishable under Section 376 of IPC, the act complained of by the complainant is found covered by this provisions. At the same time, the legislature has not made any amendment under Section 377 of IPC, therefore, to be on safer side, the learned Court below has also framed charge under Section 377 of IPC against applicant Nimish Sunil Agrawal. In view of new definition of 'rape' under Section 375 of IPC, this Court does not find any force in the arguments submitted on behalf of applicant Nimish Sunil Agrawal.

16. As regards the provision under Explanation-2 of Section 375 of IPC, it would be a matter of consideration in trial and this provision implies the normal physical relation between husband and wife in case the wife is not below the age of 15 years. The case in hand has different facts.

The complainant has not alleged for any forceful natural sexual act against the applicant No.1. The complainant has alleged against applicant Nimish Sunil Agrawal differently that he used to compel her for unnatural sexual intercourse, which is an offence punishable under Section 376 as well as 377 of IPC after the 2013 amendment.

17.As regards the other argument on this point that there had been no demand of dowry and instead it had been commercial transaction between two business houses, it is a ground of defence and such defence has to be established and proved in trial before it can be accepted, therefore, the material for defence cannot be taken into consideration at the stage of framing charge, which is very clearly settled in law.

18.A plain reading of above provisions would reveal that while discharging an accused, the Judge has to draw a conclusion that there is no sufficient ground for proceeding against the accused. Although the word 'sufficient' has been used, the insufficiency has to be determined by the Court itself. Present is a case in which the complainant and witnesses have made direct allegation against the applicants. There is specific allegation against applicant Nimish Sunil Agrawal regarding commission of offences of rape, harassment & torture for demand of dowry etc. Allegation against other applicants is with regard to torture for demand of dowry and causing simple hurt etc., which raises a ground for presumption against the applicants and on this basis that charge can be framed under Section 228 of CrPC.

19.As regards the argument advanced on behalf of applicant Smt. Neha Agrawal in CRR No.1462 of 2019 that she was not named in FIR. It would not hold any ground as it is settled that FIR itself is not an encyclopedia of the whole case. The complainant in her statement recorded under Section 161 of Cr.P.C. has stated about involvement/participation of this applicant in the commission of offence and that statement of complainant cannot be rejected at the stage of framing charge only for the reason that this version of the complainant does not find place in her earlier complaint. This also happens to be sufficient ground for drawing presumption against applicant Neha Agrawal, who claims to be residing separately living, but yet to be

brought in evidence and further, her presence on the occasion of the incident has also to be rebutted. All this can be done only in the course of trial.

20. In the matter of Superintendent & Remembrancer of Legal Affairs West Bengal v. Anil Kumar Bhunja & others, reported in (1979) 4 SCC 274, the Supreme Court has observed in Paragraph-18 as under:

“18. It may be remembered that the case was at the stage of framing charges; the prosecution evidence had not yet commenced. The Magistrate had therefore, to consider the above question on a general consideration of the materials placed before him by the investigating police officer. At this stage, as was pointed out by this Court in [State of Bihar v. Ramesh Singh](#)¹⁰, 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 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. ”

21. In view of the above settled legal principles and the provisions, I am of the opinion that the trial court has not committed any error in passing the impugned order dated 18.10.2019 and framing charges, as mentioned above, against the applicants.

22. For the foregoing discussions, both the revisions *sans merit* and are accordingly dismissed.

Sd/-

(Rajendra Chandra Singh Samant)
Judge