

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

CRR No. 1493 of 2019

1. Ambikeshwar Singh S/o Late Shri Awadh Bihari Singh Aged About 59 Years Caste Kushwaha, Permanent R/o Village Chanwari Dand, Police Station Khadgawan, Present R/o Sonamani, Domanhill, Chirmiri, Koriya Chhattisgarh, District : Koriya (Baikunthpur), Chhattisgarh
2. Ku. Injoriya D/o Shri Ram Prasad Aged About 21 Years Caste Harijan, R/o Village Podidih Chapar, Police Station Khadgawan, District Koriya Chhattisgarh, District : Koriya (Baikunthpur), Chhattisgarh

---- Applicants

Versus

State Of Chhattisgarh Through The Station House Officer, Police Station Khadgawan, District Koriya Chhattisgarh.

---- Respondent

For Applicants	: Shri Sunil Otwani, Advocate
For Respondent/State	: Shri Devendra Pratap Singh, Dy. A.G.

Hon'ble Shri Justice Rajendra Chandra Singh Samant

Order on Board

21-01-2020

Heard.

1. This revision petition has been brought challenging the legality, correctness and propriety of the order framing charge by the Special Court of the Scheduled Caste and Scheduled Tribe (Prevention of Atrocities) Act, 1989, District Koriya (Baikunthpur), Chhattisgarh in Criminal Case No.33 of 2019 against the applicants. On the basis of the charge-sheet filed, learned trial Court has framed the charges against the applicants for the offences under Sections 376(g), 376(2)(f)(n), 313 and 506(B) of the Indian Penal Code, under Section 6 of the Protection of Children from Sexual Offences Act, 2012 and also for the offences under Sections 3 to 5 of the Scheduled Caste and Scheduled Tribe (Prevention of Atrocities) Act, 1989 against applicant No.1 and has

framed charges under Section 376(g) of the IPC alongwith offences under Section 6 read with Section 17 of the Protection of Children from Sexual Offences Act, 2012 against applicant No.2.

2. It is submitted by counsel for the applicants that the applicants now pressing upon only on the framing of one of the charges under Section 313 of the IPC against applicant No.1. It is also submitted that there is altogether no evidence to make out a *prima facie* case for framing charge under Section 313 of the IPC. The statement of the prosecutrix and other witnesses has not been verified and no evidence has been collected regarding the illegal abortion carried out on the prosecutrix. The doctor concerned who conducted the procedure for abortion has not been made an accused, therefore, there is no basis for framing this charge. Hence, the applicants be discharged for the same.
3. Learned Counsel appearing for the respondent/ State opposes the submissions so made and submits that, it is mentioned in the charge-sheet itself that the doctor concerned shall be charge-sheeted separately after completion of investigation against him. The said doctor has been charge-sheeted on 4.1.2020. It is also submitted that there is sufficient evidence present in the charge-sheet to make out a *prima facie* case for framing charge under Section 313 of the IPC, therefore, this petition is without any substance which may be dismissed.
4. In reply, it is submitted by counsel for the applicants that the charge has been framed on 3.10.2019 before the doctor was charge-sheeted i.e. on 4.1.2020, therefore the evidence regarding the illegal abortion was not present at that stage, hence, framing of charge under Section 313 of the IPC is erroneous.
5. Heard both counsel for the parties and perused the material available on record.

6. On perusal of the entire copy of the charge-sheet filed alongwith the petition, it is found that the prosecutrix has made a statement from very initial stage regarding her sexual exploitation made by the applicants and that when she got pregnant, applicant No.1 took her with him for conducting the procedure of abortion and then the abortion was done. This is a clear and direct statement given by the prosecutrix and other witnesses which cannot be discarded or ignored at the stage of framing charge. The statement of the prosecutrix and other witnesses may be separate matter of appreciation in the trial on the basis of other circumstances which are pointed out by counsel for the applicants in his argument and on that basis, the trial Court may take a decision on the point of reliability of the evidence of the prosecutrix and supporting witnesses. Therefore, I am of this view that there is sufficient evidence present to make out a *prima facie* case under Section 313 of the IPC against applicant No.1. Hence, this petition is without any merit, which is dismissed at motion stage.

Sd/-

(Rajendra Chandra Singh Samant)
Judge