

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

CR.R. No. 1153 of 2016

Dr. Suraj Singh Rathore, aged about 26 years, R/o. Village Portha, Tehsil Satti and District Janjgir Champa, Chhattisgarh and temporary R/o Quarter No. F-1, D.N.K. Colony, Kondagaon, District Kondagaon, Chhattisgarh.

---- Applicant

Versus

State of Chhattisgarh, Through : District Magistrate Kondagaon, Chhattisgarh.

-----Respondent

For Applicant : Mr. Raza Ali, Advocate

For Respondent/State : Mr. Adil Minhaj, Govt. Advocate

Hon'ble Shri Justice Rajendra Chandra Singh Samant

Order On Board

09/02/2021

1. This criminal revision has been brought being aggrieved by the order dated 27.10.2016, dismissing the application of the applicant filed under Section 227 of Cr.P.C. praying for discharge and the order dated 01.11.2016, by which, the charge has been framed against the applicant under Section 376 and 506 of the Indian Penal Code by the Sessions Judge (F.T.C.), Kondagaon, District – Kondagaon in Sessions Case No. 45 of 2016.
2. It is submitted by the learned counsel for the applicant, the impugned orders have been erroneously passed by the trial Court. The contents of the FIR, the statement of the prosecutrix and other witnesses clearly demonstrate, that there had been a

consensual relationship between the applicant and the prosecutrix. The prosecutrix has stated in her statement under Section 161 of Cr.P.C. that on 02.05.2009, this applicant performed marriage with her by putting vermilion on her head and also given her *Mangalsutra* to wear. Hence, the consequences of such relation, the physical intimacy of the applicant with the prosecutrix can not be termed as rape. Witness Bhupendra Chandrakar has stated that he has seen the applicant meeting with the prosecutrix and it was his impression that both of them liked each other.

3. Placing reliance on the judgment in case of **Satish Mehra Vs. Delhi Administration & Anr.**, reported in **(1996) 9 SCC 766**, it is submitted that the provision under Section 227 of the Cr.P.C. enables the Court to decide, whether it is necessary to proceed to conduct the trial. If the case ends there it gains a lot of time of the court and saves much human effort and cost, therefore, the Sessions Judge should resort to section 227 of the Code for passing appropriate orders. Reliance has also been placed on the judgment of High Court of Delhi in **Chandan Sawhney Vs. State**, reported in **2020 LawSuit (Del) 177**, in which, the High Court has observed that the FIR was lodged after delay of about 8 months and the evidence in the charge sheet was not sufficient hence, it was held that, if the, evidence on record as per the prosecution case is accepted in toto, still conviction can not be awarded to the accused, therefore, the accused could not be

directed to face trial. It is submitted that it is a similar case, the relationship of the applicant with the prosecutrix was continuously consensual. The prosecutrix in this case is a major woman, who has willingly consented for such relationship and when the things went wrong she has lodged false FIR against this applicant. Hence, it is prayed that the impugned orders be set-aside and the applicant be discharged.

4. Learned State counsel opposes the petition and the submission made in this respect. It is submitted, that the material in the charge-sheet clearly make out a prima-facie case against this applicant, for framing of charge against this applicant for commission of offence under Section 376 and 506 of the Indian Penal Code. The prosecutrix is a Mohammadan, whereas, the applicant is a Hindu, therefore, the evidence regarding performance of marriage in Hindu customary manner itself shows that it was a sham marriage. It is further submitted that the submission made by the applicant side are ground of his defence and it is not a case, in which, the result can be certainly said to be an acquittal, therefore, no error has been committed by the trial Court in passing the impugned orders. The revision petition be dismissed.
5. I have heard the learned counsel for the parties and perused the documents placed on record.
6. Considered on the submissions. The prosecutrix has lodged FIR that she is a divorcee. She got acquainted with the applicant and

at the same time, the applicant forcefully had physical relation with her on numerous occasions despite her unwillingness. The prosecutrix was afraid of social consequences, subsequent to which the applicant took the prosecutrix to a temple, where he put vermilion in her head and promised that he will marry her. The applicant then kept stalling about the marriage and then prosecutrix came to know that the applicant is going to perform marriage with some other girl. It is further submitted that in the FIR that on 10.02.2016 the applicant asked the prosecutrix to visit her in Kondagaon, when the prosecutrix arrived there, the applicant again forcefully raped her without her willingness and consent and then threatened her, saying that no harm can come to him. The applicant also thrashed the prosecutrix. It is also alleged in the FIR that the applicant had prepared some obscene photos and videos on his mobile phone and on that basis he used to blackmail her and threaten her, that in case his demand is not met with, her obscene photographs will be made viral. She has stated that till the date of filing of FIR, she has paid about Rs.8.00 lakhs to the applicant because of this blackmail. Similar is the statement given by her in the statement under Section 161 of Cr.P.C.

7. The statement of the prosecutrix in the FIR and in the statement under Section 161 make clear allegation that physical relation that took place was not by her willingness or consent. The truth and veracity of this statement can not be judged at the stage of

framing charge as it has been held in **State of Bihar Vs. Ramesh Singh**, reported in **AIR 1977 SC 2018**, and in **Superintendent & Remembrancer of Legal Affairs Vs. Anil Kumar Bhunja**, reported in **(1979) 4 SCC 274** and in **R.S. Nayak Vs. A.R. Antule**, reported in **(1988) 2 SCC 602**. It has been further held that at the stage of framing charge even a very strong suspicion founded upon the material present in the charge-sheet would be sufficient ground for framing charge. Therefore, the statement of the prosecutrix about her unwillingness and forceful act of rape on the part of the applicant are subject to contest in the trial, hence, this Court is of the view that the learned trial Court has not committed any error in dismissing the application filed under Section 227 of Cr.P.C and framing charge against the applicant.

8. Hence, the present petition is devoid of any merit, which is dismissed accordingly.

Sd/-
(Rajendra Chandra Singh Samant)
Judge