

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

CR.R. No. 382 of 2020

Tulsi Ram Patel, S/o. Chhedilal Patel, aged about 50 years, R/o. Village Amora, P.S. Jarhagaon, District Mungeli Chhattisgarh.

---- Applicant

Versus

1. State of Chhattisgarh, Through : S.H.O., P.S. Masturi, District Bilaspur Chhattisgarh.
2. Ramesh Dhuri, S/o. Lachhiram Dhuri, aged about 22 years, R/o. Village Navagaon (Amora), District Mungeli Chhattisgarh.

-----Respondents

For Applicant	: Mr. Akhtar Hussain, Advocate
For Respondent	: Mr. Devendra Pratap Singh, Dy.A.G.

Hon'ble Shri Justice Rajendra Chandra Singh Samant

Order On Board

04/01/2021

1. This criminal revision has been brought against the order dated 27.12.2019, passed by the learned Additional Sessions Judge/ FTC/Special Court, Bilaspur, District – Bilaspur (C.G.), dismissing the application filed by the applicant under Section 227, 228 of Cr.P.C. praying for discharge of the applicant from the prosecution under Section 354 of the Indian Penal Code and Section 8 of Protection of Children from Sexual Offences Act, 2012.
2. It is submitted by the learned counsel for the applicant that there is prima-facie no case against this applicant, for framing of charges against him under Section 363/34, 354/34 of the Indian Penal Code

and Section 7/8 of Protection of Children from Sexual Offences Act. The date of incident is 17.09.2018 and it is on the same day, the victim of the case filed a written complaint in the police station, in which, she has mentioned that she was abducted and outraged by two unknown persons. The victim has developed and improved her statement, which has been recorded later on 29.09.2018, naming the applicant as one of the person as participant in the said commission of offence. The arrest memo of the applicant itself mentions that the applicant is a disabled person having disability of both of his leg. Therefore, the prosecutrix has come up with improbable and impossible story. The reasons for false implications of the applicant is this that the applicant and the family of the victim are related to each other and they have dispute regarding property, therefore, the prosecution does not stand against this applicant and there is no case against him, hence, his application for discharge should have been allowed by the trial Court. The impugned order is erroneous and needs to be interfered with.

3. Learned State counsel opposes the petition and the submission made in this respect by the applicant's counsel. It is submitted that according to the material present in the charge-sheet filed against this applicant, there is prima-facie case present for framing of charges as mentioned here-in-above. Hence, the revision petition is without any substance, which may be dismissed.
4. I have heard the learned counsel for the parties and perused the documents placed on record.

5. In the present case, the charge was framed against the applicant on 03.12.2018, which has not been assailed in the present revision petition. The application under Section 227/228 of Cr.P.C. was filed on 24.12.2019, which has been decided by the impugned order by rejecting the same, hence the case is this that the application praying for discharge of the applicant has been filed subsequent to the date on which the order was passed for framing charges against the applicant.
6. The offences charged against the applicant are under the Indian Penal Code and under Protection of Children from Sexual Offences Act. Section 31 of the POCSO Act provides that Code of Criminal Procedure shall be applicable to a proceeding before the Special Court. Section 28 (1) of POCSO Act further provides that the State Government shall in consultation with the Chief Justice of High Court designate a Court of Sessions to be a Special Court to try the offences under the Act. Therefore, designated Special Court happens to be a Sessions Court, hence, in the matter of framing charges Chapter -18 of Cr.P.C. shall be followed.
7. In Section 226 of Cr.P.C., the prosecutor is responsible for opening the case. Subsequent to this, under Section 227 of Cr.P.C., the Court after consideration on the facts of the case and the submission made from the accused side and the prosecution side, if considers that there is no sufficient ground for proceeding against the applicant, then accused shall be discharged. Section 228 of Cr.P.C. provides that in case, the Judge of Sessions Court does not find that accused is entitled for discharge, then Judge shall proceed

for framing charges accordingly.

8. The stage of proceeding in sessions/criminal case is in accordance with the ascending order of the provisions of Cr.P.C. in Chapter-18, therefore, it is very clear that the stage on which the Court can consider to discharge the accused under Section 227 of Cr.P.C., comes before the stage of framing charge under Section 228 of Cr.P.C. Therefore, in this case the stage for making prayer for discharge of the accused had already passed and charges were framed against the applicant in accordance with the procedure under Section 228 of Cr.P.C., subsequent to which, the application under Section 227 and 228 of Cr.P.C. was not at all maintainable and it could not have been heard and decided by the Court below.
9. The reasons for rejection of the application filed by the applicant under Section 227 and 228 of Cr.P.C. is mentioned in the impugned order that the application has been brought at the stage of evidence after framing of charge, therefore, the application is without any substance. There is no reason to disagree with the reasons mentioned in the impugned order, simply for the reason that the procedure in trial under the provisions of Cr.P.C. can not go in the reverse direction.
10. Also considered on the other submissions made by the counsel for the applicant, although written complaint does not mention the name of the applicant, but his name is reflected in the statement of the victim under Section 161 and 164 of Cr.P.C. Whether this statement is believable or not, that can be decided only in the trial and such statement can not be discredited and thrown away on any

preliminary stage. Regarding rest of the submission about the improbability of the prosecution against the present applicant, regarding possibility of implication of the applicant on the ground of enmity with the complainant side are grounds of defence, which can not be entertained at any earlier stage, unless the same is established by the accused in trial by bringing evidence in that respect. Therefore, this ground raised in this revision petition can not be entertained.

11. After discussions made herein above and the observations made, it is found that the present revision petition is without any substance, therefore, the same is dismissed accordingly.

Sd/-
(Rajendra Chandra Singh Samant)
Judge