

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**Reserved on 14-9-2021****Delivered on 30-9-2021****Cr.R. No. 378/2021**

Ramsay Singh Baghel, son of Kirtan Singh Baghel, aged about 43 years, resident of Ward No. 12, Bhatgaon, PS Bhatgaon, Distt. Baloda Bazar- Bhatapara (CG)

----Applicant**Versus**

State of Chhattisgarh through the Station House Officer, PS Bhatgaon, Distt. Baloda Bazar- Bhatapara (CG)

----Non-applicant

 For Applicant : Mr. Raghvendra Pradhan, Adv.
 For respondent : Mr. V.K. Agrawal, Panel Lawyer.

Hon'ble Shri Justice N.K. Chandravanshi
CAV Order

1. This criminal revision has been preferred by the applicant against order dated 6-2-2021 passed in Sessions Case No. 38/2020 by the 1st Addl. Sessions Judge (FTC), Baloda Bazar (CG) by which charges have been framed against the applicant under Sections 376 and 506-II of the Indian Penal Code, 1860 (in short 'I.P.C.').

2. Brief facts of the case are that prosecutrix lodged report on 9-3-2020 against the applicant alleging that a case for domestic violence against her husband is going on in the court of Bhatgaon, where she met with the applicant. The applicant is an advocate. On the pretext of marriage, he lived with the prosecutrix in a rented house for 10 months and made physical relation, subsequently, the applicant refused to marry her. The applicant threatened her family members that the prosecutrix is compelling him for marriage, which is not good and he can kill her with her children. Police of PS Bhatgaon, Distt. Baloda Bazar investigated the matter and filed charge sheet against the applicant under Sections 376 and 506 of the IPC. Thereafter, vide impugned order, learned trial Court framed aforesaid charges against the applicant. Hence, this revision.

3. Learned counsel for the applicant submits that as per the charge sheet, prosecutrix is an adult lady of about 32 years, she is working as Asstt. Teacher. Not only she is a married lady having two children also, but the applicant is also married man. They were allegedly having physical relation for 10 months, but both of them were well known to the fact that their marriage with each other is not possible, because both of them have their spouses. Aforesaid fact shows that prosecutrix was involved in physical relation with the applicant on her freewill. Aforesaid fact also shows that question of misconception of fact does not arise in this case, because, since beginning of their relation, both of them were well versed about marriage of each other and also having children. He next submits that prosecutrix is well educated and adult lady, therefore, it cannot be supposed that for 10 months, she was under influence of pretext of marriage and as such, she was under misconception of fact and therefore, her consent was taken under misconception of aforesaid fact. In this regard, learned counsel for the applicant placed reliance of decision of Hon'ble Supreme Court in **Uday Verma -v- State of Karnataka** [AIR 2003 SC 1639]. He also submits that if entire documents and story projected by the prosecution is taken to be true without rebuttal, then also, the applicant cannot be convicted for aforesaid charges. Therefore, he prays for setting aside the impugned order and discharging the applicant from aforesaid charges.

4. Per contra, learned State counsel submits that record shows that the applicant has taken consent of prosecutrix deceiving her that he has divorced his wife, therefore, he will marry her, even they have executed affidavit regarding their marriage, but as per statement of the prosecutrix, the applicant has torn his affidavit, whereas, the xerox copy of affidavit executed by the prosecutrix has been filed by the applicant himself with the copy of charge sheet in this revision. These facts show that applicant took consent of prosecutrix by misconception of fact. He also submits that the ground raised by the applicant as to whether their marriage was possible or not, whether consent of prosecutrix was free consent or

not, etc. are clearly disputed questions of fact, genuineness of same can only be tested at the stage of trial and not at the stage of charge. He also submits that necessary ingredients are there on record for framing alleged charges, therefore, the impugned order does not call for any interference by this Court. Learned counsel for the State placed reliance in the decision of Hon'ble Supreme Court in **State of MP -v- S.B. Johari and others** reported in [2000(2) SCC 57], in which it has been held that *'it is settled law that at the stage of framing the charge, the court has to prima facie consider whether there is sufficient ground for proceeding against the accused. The court is not required to appreciate the evidence and arrive at the conclusion that the materials produced are sufficient or not for convicting the accused. If the court is satisfied that a prima facie case is made out for proceeding further then a charge has to be framed.'* In **Tej Bir -v- State of Haryana** [(2011) 11 SCC 556], Hon'ble Apex Court approved its earlier decision in **S.B. Johari** (supra).

5. I have heard learned counsel for both the parties, perused the copy of charge sheet filed by the applicant and the impugned order.

6. A perusal of copy of charge sheet including documents appended with it shows that prosecutrix is about 32 years of age and a married lady, also having 2 children and she is working as teacher, it is also clear that applicant is also a married man and has children. The FIR lodged by the prosecutrix and her statements recorded under Sections 164 and 161 of the Cr.P.C., show that many disputes / cases are pending between her and her husband, and in these circumstances, she met with the applicant, who is an advocate, in Bhatgaon court. She has also alleged that the applicant asked her that he will include her in his community and also help in court work. These facts show that applicant took her in confidence showing his position. In FIR and also in both the statements, prosecutrix has stated that the applicant had given her assurance to marry her, in the statement recorded under Section 164 of the Cr.P.C., she has specifically stated that the applicant had

told her that he had divorced his wife Hema and he lived separately, therefore, she had married with him by executing affidavit. She has also stated this fact in her statement recorded under Section 161 of the Cr.P.C. that he has divorced his first wife long back. These facts show that applicant kept her in misconception that he had divorced his first wife and on the basis of this information given by the applicant, she agreed to live with him and also to make physical relation. Although, they lived for 10 months together, therefore, it is matter of evidence as to upto how much period she was under misconception of aforesaid fact, which can be ascertained after evidence. In **Uday Verma's** case (supra), the observation given by Hon'ble Supreme Court is after full trial of the case, but the present case is at the stage of charge/trial, therefore, it is not applicable in this case.

7. It is well settled law that at the stage of framing of charge the trial Court is not to examine and assess in detail the materials placed on record by the prosecution nor it is for the court to consider the sufficiency of the materials to establish the offence alleged against the accused persons. At this stage of charge the court is to examine the materials only with a view to be satisfied that *a prima facie* case of commission of offence alleged has been made out against the accused person. The accused can only rely on the materials which are produced by the prosecution at this stage. No doubt grave suspicion or strong suspicion available on the record could be explained away by the accused but if it is not properly explained and the judge considers that accused might have committed offence and there is sufficient ground for proceedings against him, then framing of charges against the accused is justified.

8. In the matter of **M.E. Shivalingamurthy v. Central Bureau of Investigation, Bengaluru** [(2020) 2 SCC 768] Hon'ble Supreme Court considering the issue of framing of charge has held that :-

“17. This is an area covered by a large body of case law. We refer to a recent judgment which has referred to the earlier

decisions, viz., **P. Vijayan v. State of Kerala** and another (2010) 2 SCC 398 and discern the following principles:

17.1. If two views are possible and one of them gives rise to suspicion only as distinguished from grave suspicion, the Trial Judge would be empowered to discharge the accused.

17.2 The Trial Judge is not a mere Post Office to frame the charge at the instance of the prosecution.

17.3 The Judge has merely to sift the evidence in order to find out whether or not there is sufficient ground for proceeding. Evidence would consist of the statements recorded by the Police or the documents produced before the Court.

17.4 If the evidence, which the Prosecutor proposes to adduce to prove the guilt of the accused, even if fully accepted before it is challenged in cross-examination or rebutted by the defence evidence, if any, “cannot show that the accused committed offence, then, there will be no sufficient ground for proceeding with the trial”.

17.5 It is open to the accused to explain away the materials giving rise to the grave suspicion.

17.6 The court has to consider the broad probabilities, the total effect of the evidence and the documents produced before the court, any basic infirmities appearing in the case and so on. This, however, would not entitle the court to make a roving inquiry into the pros and cons.

17.7. At the time of framing of the charges, the probative value of the material on record cannot be gone into, and the material brought on record by the prosecution, has to be accepted as true.

17.8. There must exist some materials for entertaining the strong suspicion which can form the basis for drawing up a charge and refusing to discharge the accused.”

9. In the present case, although as per record, the applicant and prosecutrix both are married and adult persons having children, but as has been mentioned above that, the record shows that prosecutrix was ready to live and made physical relation with applicant because, the applicant had told her that he has divorced his first wife and he is living separately. These facts show that her consent taken by the applicant was under the pretext of aforesaid

misconception of fact. Other facts i.e. whether they had legally divorced their spouses or not, whether consent given by prosecutrix is free consent or not, are disputed questions of fact and its genuineness can only be tested after the evidence at the stage of trial. Before that, it cannot be ascertained conclusively at this stage of charge that consent given by the prosecutrix was free consent.

10. On the basis of aforesaid discussion and considering that observation made by the Hon'ble Supreme Court in the matters of **M.E. Shivalingamurthy** (supra), **S.B. Johari** (supra), I do not find any infirmity or illegality in the impugned order framing aforesaid charges against the applicant.

11. It is made clear that the trial Court shall proceed with the trial in accordance with law and decide the same without being influenced by any observation made by this Court in this order.

12. Accordingly, the revision fails and is dismissed.

Sd/-
N.K. Chandravanshi
Judge