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HIGH COURT OF CHHATTISGARH, BILASPUR**Criminal Revision No. 559 of 2021**

- Dr. B.K. Banerjee, S/o Late Shri P.K. Banerjee (wrongly mention as D.K. Benerjee, in Annexure A/1), aged about 54 years, R/o Vidya Nagar, Mandi Road, District Gaurela Pendra Marvahi, (C.G.). Present Address Green Enclave, (wrongly mention as Ganesh Enclave, in Annexure A/1) Quarter No. C-1, Koni, P.S. Koni, Bilaspur, District Bilaspur (C.G.)

---- Applicant**Versus**

- State of C.G., Through the Police Station Koni, District Bilaspur (C.G.)

---- Respondent/Prosecution

For Applicant	:	Shri Prateek Sharma, Advocate
For State	:	Dr.(Ms.) Veena Nair, Deputy Advocate General
For Objector	:	Shri Parag Kotecha, Advocate

Hon'ble Shri Justice Gautam Chourdiya, J**Order on Board****16.11.2021**

1. This revision petition has been filed under Section 397/401 of Cr.P.C. against the order dated 27.07.2021 of framing of charge under Sections 354 (A), 354 (D) & 376 (2) (n) of IPC by the Additional Sessions Judge (FTC), Bilaspur (C.G.). By this revision petition, the petitioner is seeking quashment/setting aside the order framing charge dated 27.07.2021.
2. Learned counsel for the applicant submits that by the impugned order dated 27.07.2021 charges under Sections 354 (A), 354 (D) & 376 (2) (n) of IPC are framed against the applicant, without considering the facts and documents placed before it and without there being any allegation prima facie making out a case against him. Therefore, the charges framed against the applicant are not sustainable in law and the same are liable to be set aside.
3. On the other hand, learned counsel for the State as well as learned counsel for the objector opposes the contention made by learned counsel for the applicant.
4. Looking to the contents of the F.I.R., the complaint of the prosecutrix to the

Superintendent of Police, the statements of the witnesses as also the contents of the charge-sheet, the applicant who is a Doctor by profession allegedly made indecent advancement to the prosecutrix, who is also a Doctor working with the applicant, for sexual favour and also committed sexual intercourse with her against her will.

5. Section 376 (2) (e) & (n) reads as under:-

Section 376. Punishment for rape.-

(1) xxx xxx xxx

(2) Whoever.-

(e)/(ॐ)being on the management or on the staff of a hospital, commits rape on a woman in that hospital; or

(n)/(ॐ)commits rape repeatedly on the same woman,

6. In the present case, from the entire material including the complaint of the prosecutrix, F.I.R. and statements of the witnesses, there is no mention of repeated sexual intercourse by the applicant with the prosecutrix. Further, it is also not the case of the prosecution that the applicant committed rape with the prosecutrix in the hospital, rather according to the prosecutrix, the applicant committed rape with her in her rented accommodation. In this view of the matter, charge No. 3 framed by the trial Court is not in consonance with material available on record, the same is liable to be quashed and the matter deserves to be remitted back to the trial Court for re-framing the said charge in accordance with law.

7. In the result, the instant criminal revision is allowed in part and charge No.3 framed by the trial Court by impugned order dated 27.07.2021 is hereby set aside. The matter is remitted back to the trial Court for re-framing charge No. 3 on the basis of material available on record in accordance with law.

Sd/-

(Gautam Chourdiya)
Judge