

CRR-1696-2019 (O&M)
Date of Decision: 10.11.2022

State of Punjab and anotherRespondents

Present: Mr. Manu Loona, Advocate, for the petitioners.
Mr. Sandeep Kumar, Deputy Advocate General, Punjab.
Mr. J.S. Mahal, Advocate, for respondent No.2.

The present revision has been filed by the petitioner assailing the order dated 04.07.2019, passed by the learned Additional Sessions Judge, Hoshiarpur, whereby, application under Section 239 Cr.P.C. to discharge the petitioners from the case, has been declined.

As per the facts of the case, the present FIR was lodged by the prosecutrix herself (name concealed) alleging therein that she was 23 years of age and was doing IELTS at Vetter Setter Institute, Hoshiarpur. In the year 2012-13, she was doing English speaking course, where she came into contact with Jaspreet Singh @ Jimmy. They both got acquainted with each other and became good friends. She visited the village of Jaspreet Singh @ Jimmy many times and his parents assured that they would get Jaspreet Singh @ Jimmy married to her. On the pretext of marriage, many times Jaspreet Singh @ Jimmy forcibly made physical relationship with her. She stopped him from doing so, however, he kept on promising her to marry. Request was made to take legal action against the culprit. On the basis of the same, the FIR was lodged and investigation commenced for the offence.

under Section 376 IPC. On the completion of the investigation, the Investigating Agency filed challan under Section 173 Cr.P.C., wherein, offence under Section 376 IPC read with Section 120-B IPC was found mentioned to be committed by the accused Jaspreet Singh @ Jimmy and his parents i.e. the present petitioners, namely, Gurmeet Singh and Raj Kumari wife of Gurmeet Singh. Both the petitioners filed application under Section 239 Cr.P.C. praying for discharge, however, the trial Court declined the same vide order dated 04.07.2019. Aggrieved by the same, the petitioners have approached this Court by way of filing the present revision petition.

Learned counsel for the petitioners has vehemently contended that the petitioners are the parents of Jaspreet Singh @ Jimmy. He submits that from the bare reading of the allegations in the FIR, it is apparent that both the prosecutrix and son of the petitioners, were of the age of the majority and both of them were competent to decide their future course. He submits that both were acquainted with each other and established consensual physical relationship with each other. He submits that there are general allegations in the FIR against the petitioners who are the parents of Jaspreet Singh @ Jimmy. He has submitted that thereafter in a deliberated manner the prosecutrix made supplementary statement on 04.02.2018 and on the very same day her statement under Section 164 Cr.P.C. was also recorded, where she made allegations regarding her abortion done, however, offence under Section 312 IPC was deleted and challan was presented for the offence under Section 376 IPC read with Section 120-B IPC. Learned counsel for the petitioners further submits that initially there were no allegations whatsoever against the petitioners for their complicity in the offence alleged. He submits that the prosecutrix and son of the petitioners

were in consensual physical relationship and the petitioners only being the parents of Jaspreet Singh @ Jimmy cannot be held vicariously liable for the alleged offence. He submits that both the prosecutrix and son of the petitioners decided to marry, however, as the same could not be materialized, the petitioners cannot be prosecuted for the offence under Section 376 IPC. He submits that as per the law settled by Hon'ble Supreme Court, son of the petitioners and the prosecutrix being of the age of the majority and having been entered into physical relationship consensually, the consent of the prosecutrix cannot be said to have been taken by misconception of fact and hence, the offence under Section 376 IPC is not made out. He further submits that the Investigating Agency deliberately recorded the supplementary statement of the prosecutrix after lodging the FIR only in order to implicate the petitioners in false and frivolous case. He submits that it is *prima facie* duty of the prosecution to collect evidence for proving the charges against the accused. He has submitted that except for making bald allegations against the petitioners, the prosecution has failed to adduce any material on record for establishing *prima facie* case against both the petitioners. He has submitted that the prosecution has failed to produce any evidence against the petitioner and hence, no charge could have been framed against the petitioners. He has prayed that as the prosecution has miserably failed in adducing any material for proving a *prima facie* case against the petitioners for the offence under Sections 376 IPC read with Section 120-B IPC, the impugned order dated 04.07.2019 deserves to be quashed and the petitioners are entitled to be discharged from the present case.

Learned counsel for the complainant has vehemently opposed

the submissions made by learned counsel for the petitioners. He has submitted that the prosecutrix has levelled specific allegations against the petitioners. He submits that the prosecutrix has specifically deposed that the son of the petitioners used to take her to his home and used to establish physical relationship with her in the presence of the petitioners. He also submits that in the statement recorded under Section 164 Cr.P.C., the prosecutrix has specifically alleged the complicity of the petitioners and hence, the charges were proved against the petitioners and therefore, the trial Court has rightly dismissed the application under Section 239 Cr.P.C. filed by the petitioners.

Learned State counsel has also opposed the submissions made by learned counsel for the petitioners and on instructions from ASI Ravinder Singh has submitted that the Investigating Agency duly investigated the case and presented the challan for the offence under Section 376 IPC read with Section 120-B IPC against all the three accused. He submits that at the stage of the discharging the accused, the Court could have sift the evidence to see whether the *prime facie* case was made out against the accused or not in view of the material collected during investigation. He submits that a *prima facie* case was made out against the petitioners and hence, the learned trial Court has rightly dismissed the application under Section 239 Cr.P.C. filed by them and has rightly framed charges for the offence under Section 376 IPC read with 120-B IPC.

Heard.

There is no gainsaying that both the prosecutrix and son of the petitioners were of the age of the majority and both of them were in consensual relationship and decided to marry each other. It is apparent from

the perusal of the record that the relationship of the prosecutrix and son of the petitioners were in the knowledge of the petitioners also. There were omnibus allegations against the petitioners in the FIR lodged. Thereafter, the Investigating Agency tried to enlarge the number of accused in a well afterthought manner. On 04.02.2018, the prosecutrix was produced before the learned Magistrate for recording statement under Section 164 Cr.P.C. and her supplementary statement was also recorded against the petitioners. Though at one stage, offence under Section 312 IPC was also added, however, during the investigation the same was deleted. The Police filed challan under Section 173 Cr.P.C. for the offence under Section 376 IPC read with Section 120-B IPC. A perusal of the record would show that both the petitioners were implicated in this case clandestinely in a very well deliberated manner. For the appreciation of the submissions made by both the sides, Section 239 Cr.P.C. is reproduced as under:-

“Section 239, CrPC **when accused shall be discharged** - If, upon considering the police report and the documents sent with it under Section 173 and making such examination, if any, of the accused as the Magistrate thinks necessary and after giving the prosecution and the accused an opportunity of being heard, the Magistrate considers the charge against the accused to be groundless, he shall discharge the accused, and record his reasons for so doing.”

This Court is supported by the decision of Hon'ble Supreme Court in Sajjan Kumar v. CBI (2010) 9 SCC 368, wherein while discussing the scope of Sections 227 and 228 Cr.P.C., the following principles were laid down:

“(i) The Judge while considering the question of framing the charges under Section 227 Cr.P.C. has the undoubted power to

sift and weigh the evidence for the limited purpose of finding out whether or not a prima facie case against the accused has been made out. The test to determine prima facie case would depend upon the facts of each case.

(ii) Where the materials placed before the court disclose grave suspicion against the accused which has not been properly explained, the court will be fully justified in framing a charge and proceeding with the trial.

(iii) The court cannot act merely as a post office or a mouthpiece of the prosecution but has to consider the broad probabilities of the case, the total effect of the evidence and the documents produced before the court, any basic infirmities, etc. However, at this stage, there cannot be a roving enquiry into the pros and cons of the matter and weigh the evidence as if he was conducting a trial.

(iv) If on the basis of the material on record, the court could form an opinion that the accused might have committed offence, it can frame the charge, though for conviction the conclusion is required to be proved beyond reasonable doubt that the accused has committed the offence.

(v) At the time of framing of the charges, the probative value of the material on record cannot be gone into but before framing a charge the court must apply its judicial mind on the material placed on record and must be satisfied that the commission of offence by the accused was possible.

(vi) At the stage of Sections 227 and 228, the court is required to evaluate the material and documents on record with a view to find out if the facts emerging therefrom taken at their face value disclose the existence of all the ingredients constituting the alleged offence. For this limited purpose, sift the evidence as it cannot be expected even at that initial stage to accept all that the prosecution states as gospel truth even if it is opposed to common sense or the broad probabilities of the case.

(vii) If two views are possible and one of them gives rise to

suspicion only, as distinguished from grave suspicion, the trial Judge will be empowered to discharge the accused and at this stage, he is not to see whether the trial will end in conviction or acquittal.”

Hon'ble Supreme Court in case of State through Deputy Superintendent of Police vs. R. Soundirarasu etc., 2022 LiveLaw (SC) 741 has held that the Court can only look into *prima facie* case and decide whether the prosecution case is groundless.

The Investigating Agency was to produce the material for establishing *prima facie* case against the accused, however, they have failed to produce the same to prove *prima facie* case under Section 376 IPC read with Section 120-B IPC against the present petitioners. Weighing the facts and circumstances of the case on the anvil of the law settled, the Court is of the opinion that the prosecution failed to produce any material, constituting any *prima facie* case against the petitioners. Consequently, the present petition is allowed and the impugned order dated 04.07.2019 is set aside and the petitioners are discharged from the offences, they were prosecuted under.

10.11.2022			(RAJESH BHARDWAJ)
sharmila			JUDGE
	Whether Speaking/Reasoned	:	Yes/No
	Whether Reportable	:	Yes/Nos