

IN THE HIGH COURT OF PUNJAB & HARYANA, CHANDIGARH

CRR-1631 of 2021 (O&M)  
Date of decision : March 17, 2022

Manoj Kumar

..... Petitioner

Versus

State of U.T.

..... Respondents

CORAM: HON'BLE MR. JUSTICE PANKAJ JAIN

Present:- Mr.Manjit Singh, Advocate  
for the petitioner.

Mr. Rajeev Anand, APP.,U.T.,Chandigarh.

(Proceedings through V.C.)

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**Pankaj Jain, J (oral).**  
**CM No.9545 of 2022**

This is an application under Section 482 Cr.P.C for placing on record the charges framed by the trial court as Annexure P-3.

The application is allowed. Annexure P-3 is taken on record.

CRR-1631 of 2021 (O&M)

This is a revision petition filed against order dated 5.2.2021 passed by the trial court framing charges under Section 376(2)(n) IPC against the accused.

The present revision petition has borne out of FIR No.91 dated 30.3.2019 registered at the behest of the victim, who had stated as under:-

*“II. Sir, my husband had died two years ago. After his death about one year back one person namely Manoj Kumar came into my life in October 2016 he told me that he is a*

*divorcee and wants to marry with me. But I refused him. One day on the pretext of showing me his company he took me in car and moved around the company and he was drunk. He tried to misbehave with me forcefully but he failed and thereafter apologized from me. Next day he took me to his sister's house No.570, Sector 29 on the pretext to introduce me with his sister but nobody was there and he raped me there forcefully. I raised hue and cry and when I told him that I will tell everybody then he insisted me for marriage. Because of the circumstances I agreed being helpless and we got married in the nearby temple of Tribune Chowk. He made physical relation with me again and again and every time he apologized. Initially his behaviour was good towards me, thereafter he maintained distance with me. I came to know that when ever he told to me was a bundle of lies. We fight with each other in this context but he told that divorce is about to finalize, the court has granted six months time thereafter we will be separated and he will stay with me and younger (Chootu) may go with her mother. One more lady was in his life, who works in some company near to his company. I followed him and came to know that dispute with her regarding me. Then his wife has come near the company and truth has come to light. Next day I went to his company to meet him, then his wife with her sister in law along with two three boys assaulted me. I entered some one's house to save myself. The police was called and case was started in Section 14, Panchkula. Thereafter, case remains three-four months in Women Cell, in between he threaten me and also gave threats to me from others. Sir, my life and my children's life are in danger from him and his family. Sir he and his wife made offer for compromise and he also told me that now he cannot maintain relation with me because his wife knew everything and offer money to me. He apologized by telling lie to me. Sir, this man has crippled me physically and mentally. The SHO, Panchkula Women Cell on 17.04.2018 has told me to file this*

*case at Chandigarh. I am fighting for justice for months. Sir, please take strict action against this person.”*

After the investigation the police presented report under Section 173 Cr.P.C. and finding incriminating evidence against the petitioner the trial court framed charges against the accused. It is at this stage the application has been moved by the accused seeking discharge has been dismissed vide impugned order holding that:-

*“Heard and perused the final report u/s 173 Cr.P.C. At the stage of framing a charge the court is required to evaluate the material and documents on record with a view to finding out if the facts emerging therefrom, taken at their face value, disclosed the existence of all the ingredients constituting the alleged offence. What needs to be considered is whether there is a ground for presuming that the offence has been committed and not a ground for convicting the accused has been made out. At this stage, even strong suspicion founded on material which leads the court to form a presumptive opinion as to the existence of the factual ingredients constituting the offence alleged would justify the framing of charge against the accused in respect of the commission of that offence. Reliance in this regard can be placed upon **Sheoraj Singh Ahlawat and others Vs. State of Uttar Pradesh 2013 (1) CCC 503.**”*

Learned counsel for the petitioner has argued that as per the contents of FIR, prosecutrix is 47 years of age. She was well within the knowledge that the petitioner was already married. Thus, he claims that it is a case where the relationship between the parties was consensual and the victim was well aware of the consequences thereof. No offence under Section 376 (2) (n) is made out.

Per contra, Mr. Rajeev Anand, APP, U.T., Chandigarh has submitted that learned trial court while dismissing the application for

discharge of the applicant has passed a well reasoned order whereby the argument raised by the petitioner has been dealt with. The present revision petition deserves to be dismissed being devoid of merits.

Learned counsel for the U.T., Chandigarh has further brought the fact to the notice of this Court that out of 14 cited witnesses 5 have already been examined. The petitioner cannot be discharged at this advanced stage of the trial.

Having heard learned counsel for the parties, I find that at this stage of the framing of the charges, Court is required to see as to whether the evidence collected by the investigating agency taken on its face value can lead to conviction of accused. Defence of accused cannot be looked into.

Moreover the trial has already proceeded wherein more than 1/3<sup>rd</sup> of the cited witnesses already stand examined. From the bare reading of the FIR there is nothing on record to show that the ingredients of offence under Section 376 (2) (n) of the IPC are not made out from the bare reading of the FIR.

So far as the argument of the learned counsel for the petitioner that the victim was aware that the divorce has not yet been finalized shall belie the accusations of Section 376 IPC is devoid of any merit. It is trite law that where the prosecutrix, under a misconception of fact to the extent that the accused is likely to marry her, submits to the lust of the accused, such a fraudulent act cannot be said to be consensual. It is not denied that though the petitioner was married and divorce has not been finalized yet he promised the victim of marriage as per the contents of FIR. The plea with respect to non-finalization of divorce is a defence which cannot be taken

into consideration at this stage.

Without commenting on the merits of the case, I find this revision petition being devoid of any merit. The same is accordingly dismissed.

(PANKAJ JAIN)  
JUDGE

March 17, 2022  
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|---------------------------|-----|
| Whether speaking/reasoned | Yes |
| Whether Reportable        | No  |