

IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH

211

CRR-883-2022
Date of Decision: 22.04.2024

State of Haryana ...Petitioner

Versus

Rajiv Balhara ...Respondent

CORAM: HON'BLE MR. JUSTICE HARPREET SINGH BRAR

Present: Mr. Vikas Bhardwaj, AAG, Haryana.

HARPREET SINGH BRAR, J.(ORAL)

1. The prayer in the present revision petition is for setting aside the impugned order dated 16.03.2021 passed by learned Additional Sessions Judge-cum-Special Judge, Rohtak vide which the accused was discharged in the case stemming from FIR, bearing no. 413, dated 12.11.2018 under Sections 109, 376(2) (n), 406 and 506 of IPC registered at Police Station Old Sabji Mandi, Rohtak.
2. Briefly, the facts are that on 12.11.2018, the prosecutrix presented an application before the police regarding the movement of an earlier application on 05.10.2018 to the Superintendent of Police where in she alleged that she was raped at different places by the respondent – accused and that he also grabbed money from her. When she disclosed this to the father of the accused, he asserted that the relationship was consensual and directed the prosecutrix to leave the accused otherwise he would kill her.
3. Another complaint is said to have been filed by the prosecutrix on 24.08.2018 at the police station, however, the same was compromised between the parties and the accused promised to return all the money he took from the prosecutrix and also assured her that he will live with her and fulfill all his

responsibilities. As per the compromise effected cover the accused married the prosecutrix but he refused to return her money or to live with her. Further, the prosecutrix alleged that the accused sodomised her. Thus, on the allegations of repeated rape by the accused and of taking Rs.9 lakhs from the prosecutrix, the instant FIR was registered.

4. Learned State Counsel *inter alia* contends that the learned Special Court failed to consider that from the version of complaint moved by the prosecutrix for the registration of the FIR coupled with the statement made by the prosecutrix before the learned Magistrate under Section 164 of Cr.P.C., a *prima facie* case under Sections 109, 376(2)(n), 406, 506 of the IPC is made out against the accused. The legal position is well-settled that at the stage of framing of charge, the trial Court is not to examine and assess the materials placed on record by the prosecution in detail or whether they are sufficient to establish the offence as alleged against the accused person. At the stage of charge, the Court is to examine the material only with a view to be satisfied that *prima facie* an offence has been made out against the accused.

5. Learned State Counsel further avers that the accused clearly committed the offence of rape against the complainant as the accused had falsely promised to marry her and as such, it does not amount to a valid consent on the part of the prosecutrix. Moreover, a perusal of the compromise document, which is annexed with the Final Report bears the signatures of both the accused and his father, shows that the accused confessed to his guilt before the *Sarpanch*. The accused distinctly mentioned that he had sexual relations with the prosecutrix for 3 years which were established on the pretext of marriage. The accused also confessed to living with the prosecutrix as husband and wife.

6. I have heard the learned State counsel and have perused the case file

with his able assistance.

7. Under Section 239 of Cr.P.C., a remedy is provided to the accused to seek discharge of the alleged offence if he is found to be falsely involved out of malice and sufficient material is not available on record for the purpose of framing of charges. After completion of investigation, a report under Section 173 of Cr.P.C is filed and the accused has a right to seek his discharge before the commencement of the trial by taking a recourse to the provisions of Section 227 and 239 of Cr.P.C. If upon due consideration of the police report and all the documents attached with the final report under Section 173 Cr.P.C, the Sessions Court finds the charges leveled against the accused to be groundless, it shall discharge the accused by recording the reasons for doing so under Section 227 of Cr.P.C. A similar recourse is provided under Section 239 of Cr.P.C in trial of warrants case by Magistrates. The law on the issue with regard to the nature and degree of evaluation of the evidence presented by the investigating agency before the trial Court at the time of framing of charge is well settled. The trial Court at this stage is only to form a presumptive opinion with regard to the existence of the factual ingredients breaching the threshold of the offence alleged. At the stage of formation of opinion under Section 227, 239 and 240 of Cr.P.C, the trial Court is not required to weigh the probative value of the material brought on record in the golden scale or to presume the prosecution story as gospel truth. The nature and degree of evaluation at this stage is limited to determine whether a prima facie case exists depending upon the facts of each case and as such, there is no requirement to go deep into the probative value of material on record. The trial Court is only required to evaluate whether there is a ground for presuming that the accused has committed the offence. The adequacy and sufficiency of the evidence is not to be considered at this stage. The veracity of the evidence can only be evaluated during the trial. In view of the legal literature

and judgmental law on this issue, it could be safely concluded that at the stage of forming an opinion under Section 227, 239 and 240 of Cr.P.C, the learned trial Court is required to evaluate the material only with a purpose to ascertain whether the facts emerging from the record if taken at their face value disclose the existence of all the ingredients constituting the offence. The discharge of the accused is only permissible when the case set up by the investigating agency in the final report filed before the trial Court under 173 of Cr.P.C. has no basis or foundation.

8. The Hon'ble Supreme Court has in extenso laid down the principles for the purpose of framing of charges in **P.Vijayan Vs. State of Kerala (2010) SCC 398**. Recently, the Hon'ble Supreme Court examined the issue involved in the present case in **State through Deputy Superintendent of Police Vs. R.Soundirarasu etc. 2023 (2) RCR Criminal 206** where a two Judge Bench, speaking through Justice J.B. Pardiwala, concluded that the primary consideration at this stage of framing of charges is the test of existence of a prima facie case and the probative value of the material available on record is not to be gone into. The discharge of the accused under Section 239 of Cr.P.C is permissible only when the case set up by the prosecution after the completion of investigation is found to be '*groundless*'.

9. Adverting to the facts of the case, it transpires that the accused was in a live-in relationship with the prosecutrix. Subsequently, some disputes arose and as a result a compromise was effected between the parties under which they married each other and started living in a rented accommodation of one Bhoop Singh. Earlier, the prosecutrix had moved a complaint but once the compromise was effected, she withdrew it. However, with the passage of time, the accused started avoiding the prosecutrix and moved to Canada. Resultantly, she re-initiated criminal proceedings against him. It must be stated that criminal justice system must not be

misused in order to avenge a failed relationship. As a result, since the accused married the prosecutrix and before that they were in a consensual physical relationship, no ingredients for the offence of rape are made out. It would be apt to mention here that the prosecutrix retains the liberty to file a petition for divorce under Section 13 of the Hindu Marriage Act, 1955 on the grounds of cruelty and desertion. The learned trial Court has considered all the aspects in the right earnest and passed a well reasoned order in the light of the settled law discussed hereinabove. No ground is made out for interference by this Court.

10. Accordingly, the present petition is dismissed.
11. Pending miscellaneous application(s), if any, also stand disposed of.

(HARPREET SINGH BRAR)

JUDGE

22.04.2024

Ajay Goswami

Whether speaking/reasoned

Whether reportable

Yes/No

Yes/No