

**213 IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

CRR-1267-2021

Date of decision: 15.04.2024

Suman

....Petitioner

Versus

State of Haryana and another

...Respondents

CORAM: HON'BLE MR. JUSTICE HARPREET SINGH BRAR

Present: Mr. Anshuman Dalal, Advocate
with Mr. Amit Kumar, Advocate
for the petitioner.

Mr. Vikas Bhardwaj, AAG, Haryana.

HARPREET SINGH BRAR, J.

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, Rohtak vide which respondent no. 2 was discharged from offences under Sections 376(2)(n), 109, 406, 506 of the IPC in FIR No. 413 dated 12.11.2018 registered under Sections 109, 376(2)(n), 406, 506 of the IPC at Police Station Old Sabji Mandi, Rohtak.

2. Briefly, the facts are that the petitioner had moved a complaint before S.P., Rohtak alleging that respondent no. 2 took her to different places and raped her on the pretext of marriage. She also alleged that respondent no. 2 had taken a sum of Rs. 9,00,000/- from her but till date the same has not been returned. The petitioner informed the father of respondent no. 2 regarding the

same but he threatened to kill her. The petitioner and respondent no. 2 arrived at a panchayati compromise (Annexure P-3) wherein he agreed to bear her responsibility in writing. Respondent no. 2 took the petitioner to a temple, pretended to marry her but he neither cohabitated with her nor returned her money.

3 Learned counsel for the petitioner *inter alia* contends that in pursuance of the petitioner's complaint, she was medico-legally examined wherein it was concluded that happening of sexual intercourse with her cannot be ruled out. During investigation, respondent no. 2 was arrested and suffered a disclosure statement wherein he admitted to the allegations levied on him. A perusal of the panchayati compromise would indicate that respondent no. 2 has categorically admitted to having done sexual intercourse with the petitioner on the pretext of taking her to Canada. The learned trial Court is merely required to ascertain whether a *prima facie* offence is made out against the accused or not. The learned trial Court has erred in discharging respondent no. 2 on an untenable ground that the possibility of conviction does not exist. The veracity of allegations cannot be a point of consideration at the time of framing of charges. He places reliance on the judgment rendered by the Hon'ble Supreme Court in ***Sanghi Brothers (Indore) Pvt. Ltd. v. Sanjay Choudhary and others (2008) 10 SCC 681.***

4. I have heard the leaned counsel for the petitioner and perused the record of the case with his able assistance.

5. 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 Sections 227, 239 and 240 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 Hon'ble Supreme Court has in extension laid down the principles for the purpose of framing of charges in **P. Vijayan Vs. State of Kerala (2010) 2 SCC 398**.

6. A two Judge Bench of the Hon'ble Supreme Court in **Union of India Vs. Prafulla K Samal (1979) 3 SCC 4** speaking through Justice S.M. Fazal Ali, has held as under:-

“10. Thus on consideration of the authorities mentioned above, the following principles emerge:

(1) That the Judge while considering the question of framing the charges under Section 227 of the Code 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:

(2) 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.

(3) The test to determine a prima facie case would naturally depend upon the facts of each case and it is difficult to lay down a rule of universal application. By and large however if two views are equally possible and the Judge is satisfied that the evidence produced before him while giving rise to some suspicion but not grave suspicion against the accused, he will be fully within his right to discharge the accused.

(4) That in exercising his jurisdiction under section 227 of the Code the Judge which under the present Code is a senior and experienced Judge cannot act merely as a Post Office or

a mouth-piece 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 appearing in the case and so on. This however does not mean that the Judge should make a roving enquiry into the pros and cons of the matter and weigh the evidence as if he was conducting a trial.”

7. While dealing with similar controversy, a two Judge Bench of the Hon’ble Supreme Court **Vishnu Kumar Shukla and another Vs. The State of Uttar Pradesh and another** in Criminal Appeal No.3618 of 2023 decided on 28.11.2023, speaking through Justice Ahsanuddin Amanullah, has held as under:-

*“19. In **Rumi Dhar v State of West Bengal, (2009) 6 SCC 364**, this Court held that the Judge concerned with an application under Section 239, CrPC has to ‘... go into the details of the allegations made against each of the accused persons so as to form an opinion as to whether any case at all has been made out or not as a strong suspicion in regard thereto shall subserve the requirements of law.’*

*20. In **State of Tamil Nadu v N Suresh Rajan, (2014) 11 SCC 709**, it was observed notwithstanding the difference in language of Sections 227 and 239, CrPC, the approach of the Court concerned is to be common under both provisions. The principles holding the field under Sections 227 and 228, CrPC are wellsettled, courtesy, inter alia, **State of Bihar v Ramesh Singh, (1977) 4 SCC 39**; **Union of India v Prafulla K Samal, (1979) 3 SCC 4**; **Stree Atyachar Virodhi Parishad v Dilip N Chordia, (1989) 1 SCC 715**; **Niranjan Singh Karam Singh Punjabi v Jitendra B Bijjaya, (1990) 4 SCC 76**; **Dilawar B Kurane v State of Maharashtra, (2002) 2 SCC 135**; **Chitresh K Chopra v State (Government of NCT of Delhi), (2009) 16 SCC 605**; **Amit Kapoor v Ramesh Chander, (2012) 9 SCC 460**; **Dinesh Tiwari v State of Uttar Pradesh, (2014) 13 SCC 137**; **Dipakbhai Jagdishchandra Patel v State of Gujarat, (2019) 16 SCC 547**; and **State (NCT of Delhi) v Shiv Charan Bansal, (2020) 2 SCC 290**. We need only refer to some, starting with **Prafulla K Samal (supra)**, where, after considering **Ramesh Singh (supra)**, **K P Raghavan v M H Abbas, AIR 1967 SC 740** and **Almohan Das v State of West Bengal, (1969) 2 SCR 520**, it was laid down as under:*

‘10. Thus, on a consideration of the authorities mentioned above, the following principles emerge:

(1) That the Judge while considering the question of framing the charges under Section 227 of the Code 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.

(2) 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.

(3) The test to determine a prima facie case would naturally depend upon the facts of each case and it is difficult to lay down a rule of universal application. By and large however if two views are equally possible and the Judge is satisfied that the evidence produced before him while giving rise to some suspicion but not grave suspicion against the accused, he will be fully within his right to discharge the accused.

(4) That in exercising his jurisdiction under Section 227 of the Code the Judge which under the present Code is a senior and experienced 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 appearing in the case and so on. This however does not mean that the Judge should make a roving enquiry into the pros and cons of the matter and weigh the evidence as if he was conducting a trial.(emphasis supplied)

21. In **Niranjan Singh Karam Singh Punjabi (supra)**, this Court was alive to reality, stating that ‘... it cannot be expected even at the 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.’ If a view gives rise to suspicion, as opposed to grave suspicion, the Court concerned is empowered to discharge the accused, as pointed out in **Sajjan Kumar v Central Bureau of Investigation, (2010) 9 SCC 368**. The Court, in **Dinesh Tiwari (supra)** had reasoned that if the Court concerned opines that there is ground to presume the accused has committed an offence, it is competent to frame a charge even if such offence is not mentioned in the Charge Sheet. As to what is ‘strong suspicion’, reference to **Dipakbhai Jagdishchandra Patel (supra)** is warranted, where it was explained that it is ‘... the suspicion which is premised on some material which commends itself to the court as sufficient to entertain the prima facie view that the accused has committed the offence.’”

8. Recently, the Hon’ble Supreme Court in **Shashikant Sharma and others Vs. State of Uttar Pradesh and another 2024(1) R.C.R.(Criminal) 67**

has held that if, from the admitted evidence of the prosecution, as reflected in the documents filed by the Investigating Officer in the report under Section 173 Cr.P.C., the necessary ingredients of an offence are not made out, then the Court is not obligated to frame charge for such offence against the accused. Further, reliance placed on ***Sanghi Brothers (Indore) Pvt. Ltd. (supra)*** is also misplaced as it is based on considerations that are distinguishable from the case at hand.

9. Adverting to the factual matrix of the present case, it transpires that the petitioner lived with respondent no. 2 even before solemnising marriage in view of the compromise. After marriage, the petitioner and respondent no. 2 started cohabitating in a rented accommodation of one Bhoop Singh. Without commenting on the legitimacy of the marriage, this Court is of the considered opinion that the petitioner was consensually cohabitating with respondent no. 2 and it was only due to a dispute that arose later in time that the FIR(supra) was registered. As such, this Court cannot allow the criminal justice system to be misused to avenge a failed relationship. In a similar case, a two Judge bench of the Hon'ble Supreme Court in **Shivankar v. State of Karnataka (2019) 18 SCC 204**, made the following observations:

“5. Though we are not here concerned with the question whether the appellant and the complainant-respondent No. 1 were, in fact, married, we have no doubt that they lived together like a married couple even according to the complainant.

6. In the facts and circumstances of the present case, it is difficult to sustain the charges levelled against the appellant who may have possibly, made a false promise of marriage to the complainant.”

10. In view of the discussion above and the guidelines issued by this Court in **Krishan @ Tiwari v. State of Haryana in CRR No. 3596 of 2018** decided on 29.02.2024, this Court is of the view that the learned counsel for the

petitioner has not been able to indicate any perversity in the impugned order dated 16.03.2021 passed by learned Additional Sessions Judge, Rohtak. Accordingly, the present petition is dismissed.

11. Pending miscellaneous application(s), if any, also stand disposed of.

(HARPREET SINGH BRAR)
JUDGE

15.04.2024
Neha

Whether speaking/reasoned : Yes/No
Whether reportable : Yes/No