



CRM-M-32021-2024

-2-

there was no new evidence on the same set of allegations, earlier, the charges have been framed. He further submits that the learned Additional Sessions Judge, Rewari, has fallen into grave error by passing the impugned order dated 21.03.2024 (Annexure P-6) and, thereafter, the learned Sessions Judge, Rewari on a reference made by the learned trial Court, entrusted the trial of the case to Special Court hearing the cases pertaining to the POCSO Act and vide impugned order dated 09.04.2024 (Annexure P-8), charges have been framed against the petitioner under Section 6 of POCSO Act. The learned Special Court (POCSO Act) has not gone into the material placed before it rather framed the charges only on account of the case being transferred to it. It is further contended that since the evidence remains the same, the learned Special Court should have relied upon the final report and not framed the charges in a mechanical manner.

3. Having heard learned counsel for the petitioner and after perusal of the records, it transpires that the prosecutrix was examined as PW-3 and in her examination-in-chief, she has testified that her date of birth is 10.10.2000 and that she was raped by the petitioner on 08.10.2017. After being apprised of the rival submissions and going through the record, the learned Additional Sessions Judge, Rewari, on 21.03.2024 opined that *prima facie* the case is made out which is triable by the learned Special Court (POCSO Act). The learned Special Court (POCSO Act) exercised its power under Section 216 of Cr.P.C. and framed the charges against the petitioner under Section 6 of POCSO Act, Sections 354-D/506/376(2)(n) of IPC and Sections 66-E/67-B of the I.T. Act.

4. 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. The trial Court cannot consider the probable defence of the accused in the case at this stage.

5. 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, reiterated 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.
6. In view of the discussion above, the present petition stands dismissed.

(HARPREET SINGH BRAR)

JUDGE

13.08.2024

Neha

Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No