

IN THE HIGH COURT FOR THE STATES OF PUNJAB AND
HARYANA AT CHANDIGARH

CRR No. 1697 of 2023 (O&M)
Pronounced on: 15th April, 2024

Jagraj Singh ...Petitioner

Versus

State of Punjab ...Respondent

CORAM: HON'BLE MRS. JUSTICE MANISHA BATRA

Present:- Mr. T. S. Grewal, Advocate
for the petitioner.

Ms. Ruchika Sabherwal, Sr. DAG, Punjab.

MANISHA BATRA, J.

1. The instant revision petition has been filed by the petitioner against the order dated 13.07.2023, passed by the Court of learned Additional Sessions Judge, Sangrur in Sessions Case bearing No. 25 of 2023, titled as *State vs. Jagraj Singh*, arising out of FIR No. 237 dated 03.11.2022, registered under Sections 354-A and 506 of the Indian Penal Code, 1860 (*for short 'IPC'*) and Section 8 of the Protection of Children from Sexual Offences Act, 2012 (*for short 'POCSO Act'*) at Police Station City Sangrur, whereby charges under Sections 354-A, 376 and 506 of IPC read with Sections 4 and 8 of the POCSO Act were ordered to be framed as against the petitioner.

2. Brief facts relevant for the purpose of disposal of the present petition are that the aforementioned FIR had been registered on the basis of the statement recorded by the complainant 'H' (*name withheld*) alleging therein that the victim, who was his daughter, studying in 11th Class, had been

making complaints of having abdominal pain for the last 2-3 days. On making probe, she disclosed that on 28.10.2022, she was made by the petitioner, who was her physical teacher, to sit in his car on the pretext of making some important conversation with her. He had taken her to some fields and had forced himself upon her and after taking her mobile phone and extending threats to her had dropped her near the bus stand on the same day. Initially, a case under Section 376 and 506 of IPC and Section 6 of the POCSO Act was registered. Investigation proceedings were initiated. During investigation, offences under Section 376 of IPC and Section 6 of POCSO Act were deleted and challan was presented under Section 354-A, 506 of IPC and Section 8 of POCSO Act. It is also revealed that charges under the aforementioned Sections had been framed as against the petitioner. However, on 30.05.2023, a supplementary challan was presented against the petitioner. Then, after hearing the parties, learned trial Court passed the impugned order dated 13.07.2023, for framing additional charges under Section 376 of IPC and Section 4 of POCSO Act against the petitioner.

3. It is argued by learned counsel for the petitioner that the impugned order is not sustainable in the eyes of law as it is suffering from serious infirmities and illegalities. While passing the impugned order for framing charges under Section 376 of IPC and Section 4 of POCSO Act, the learned trial Court ignored the fact that there was delay of six days of reporting the matter to the police; that the statement of the prosecutrix as recorded under Section 164 of Cr.P.C. was contradictory from the allegations in the FIR; that no semen was detected on vaginal swabs and cervical swabs of the victim and there was no medical evidence of her being subjected to

rape; that the clothing of the victim handed over by the doctor to the Investigating Officer was not matching with the clothing wherein the semen of the petitioner was allegedly detected and as per medico legal report there was no evidence of any act of sexual intercourse or sexual abuse. With these broad submissions, it is argued that the impugned order is liable to be quashed.

4. *Per contra*, it is argued by learned State counsel that as per the report of FSL/DNA, the human semen detected on the salwar and shirt of the victim matched with the blood profiling sample of the petitioner and that is why a supplementary challan had been filed as against the petitioner thereby challaning the petitioner for commission of aforementioned offences in addition to the offences for which he had already been challaned and charge sheeted and no error whatsoever had been committed by learned trial Court while passing the impugned order for framing charges under the aforementioned Sections. It is further argued by him that even otherwise an order framing charges does not call for any interference and accordingly, it is urged by him that the petition is liable to be dismissed.

5. I have heard learned counsel for the petitioner as well as learned State counsel at considerable length and have gone through the record carefully.

6. It is revealed from the record that the FIR was initially lodged under Section 376 of IPC and Section 6 of POCSO Act as against the present petitioner. During the course of investigation, these offences were deleted and offences under Sections 354-A and 506 of IPC read with Section 8 of POCSO Act were added and challan was also presented under these Sections. Charges

were also framed under the aforementioned Sections by the trial Court. However, in the supplementary report filed under Section 173(8) of Cr.P.C., the petitioner was sought to be challaned under Section 376 of IPC and Section 4 of POCSO Act. This report had been filed on the basis of forensic DNA report received during trial as per which human semen and male DNA was detected on the salwar and kameej of the victim which matched with the DNA alleles in the DNA profile generated from the blood sample of the petitioner. After filing of the supplementary challan report, the learned trial Court had heard arguments on the point of framing additional charges as against the petitioner and while describing the aforementioned facts in detail, had come to a conclusion that a *prima facie* case for commission of offences punishable under Sections as mentioned in the supplementary challan had been made out as well and therefore, the impugned order had been passed by learned trial Court for framing charges against the petitioner under the aforementioned Sections as well as the Sections for which had already been mentioned in the first challan report.

7. It may be mentioned here that the Court is competent to make addition/alternation in charges at any stage of the trial in exercise of powers granted to do under Section 216 of Cr.P.C. and for that purpose, even filing of a challan or supplementary challan is not required. It is the Court that has to find out as to whether the material produced by the prosecution is sufficient for it to proceed further and frame charge against the accused under a particular Section or not? It is well settled proposition of law that at the stage of framing of charge, the Court has to consider the material with a view to find out if there is a ground for presuming that the accused has committed the

offence or that there is no sufficient ground for proceeding against him and not for the purpose of arriving at the conclusion that it is not likely to lead to conviction. Reference in this context can be made to an authoritative pronouncement of Apex Court cited as '*Hardeep Singh Vs. State of Punjab (2014) 3 SCC 92*' wherein it was observed that at the stage of Sections 227 and 228, 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 disclose the existence of all the ingredients constituting the alleged offence. The Court may, 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. Therefore, at the stage of framing of the charge, the Court has to consider the material with a view to find out if there is ground for presuming that the accused has committed the offence or that there is no sufficient ground for proceeding against him and not for the purpose of arriving at the conclusion that it is not likely to lead to a conviction. Reliance can also be placed upon the '*Union of India Vs. Prafulla Kumar Samal (1979) 3 SCC 4*', wherein the Hon'ble Supreme Court had observed that while considering the question of framing the charges, the Court may weigh the evidence for the limited purpose of finding out whether or not a prima facie case against the accused has been made out and whether the material placed before the Court discloses grave suspicion against the accused which has not been properly explained. In such an eventuality, the Court is justified in framing the charges and proceeding with the trial. The Court has to consider the broad probabilities of the case, the total effect of the evidence and the documents

produced before the Court but should not make a roving enquiry into the pros and cons of the matter and weigh the evidence as if he was conducting a trial. Reliance is further placed upon '*Asian Resurfacing Vs. CBI (2018) 16 SCC*', wherein the Hon'ble Supreme Court observed that though there was no bar to consider a challenge against an order of framing charge in exceptional situation, for correcting a patent error of lack of jurisdiction, exercises\ of such jurisdiction has to be limited in rarest of rare cases.

8. On applying the ratio of law as laid down in the above cited authorities to the facts and circumstances of the present case, it is observed that though there is no bar to the jurisdiction of this Court to consider a challenge against an order framing charges but such exercise has to be limited to rare of rarest cases and in exceptional situation for correcting a patent error or lack of jurisdiction, whereas, no such circumstance has been made out in this case. Rather, it is apparent that the petitioner had been booked for commission of offence punishable under Section 376 of IPC as well as Section 6 of POCSO Act which is even graver in nature than Section 4 of POCSO Act at the time of lodging of FIR itself and it was only during the course of investigation that these offences were deleted. It is only on the basis of evidence to be produced on record that trial Court will come to conclusion that whether a case for commission of the additional offences has been made out or not? However, since the material produced on record by the prosecution at this stage is *prima facie* sufficient to say that apart from the charges previously framed against the petitioner, a case for framing charges under Section 376 of IPC and Section 6 of POCSO Act is made out, therefore, in my considered opinion, no error had been committed by learned trial Court by

passing the impugned order. Accordingly, finding no merit in the petition, the same is ordered to be dismissed.

15th April, 2024

Parveen Sharma

Whether speaking/reasoned

Whether reportable

(MANISHA BATRA)

JUDGE

Yes

Yes