



**HIGH COURT OF JUDICATURE FOR RAJASTHAN
AT JODHPUR**

S.B. Criminal Revision Petition No. 1080/2025
CNR: RJHC010761332025 | URN: CRLR / 2560U / 2025



-----Petitioner

Versus

1. State Of Rajasthan, Through PP
- 2.

-----Respondents

For Petitioner(s)	:	Mr. Prakash Banjara Mr. Neeraj Kumar Gurjar
For Respondent(s)	:	Mr. Prem Singh Panwar, PP

**HON'BLE MR. JUSTICE KULDEEP MATHUR
ORDER**

11/08/2026

1. By way of the present criminal revision petition, the petitioner has assailed the order dated 17.07.2025 passed by the learned Additional Sessions Judge, Bhilwara District Bhilwara in Sessions Case No.118/2019, whereby charges for the offences punishable under Sections 376, 270 and 120-B of the Indian Penal Code have been framed against the petitioner.
2. Heard learned counsel for the petitioner, learned Public Prosecutor and perused the material available on record, including the impugned order and the charge-sheet.
3. Upon a perusal of the case file, this Court finds that the prosecutrix, who had earlier obtained divorce from her previous husband in the year 2014, came in contact with the petitioner in April, 2015 pursuant to an advertisement given for her



remarriage. The petitioner represented himself to be divorced and, thereafter, marriage between the parties was agreed to be solemnized on 18.07.2015 at Devnarayan Temple, Mahua, District Bhilwara. On the said date, the prosecutrix reached the place of marriage along with her family members. The petitioner, along with co-accused , and others, reached there later and, according to the prosecution, represented that owing to family disputes they could not make arrangements for the marriage. The petitioner thereafter put a garland and mangalsutra around the neck of the prosecutrix and represented that the marriage would subsequently be solemnized in accordance with law and registered.

4. This Court further finds that the prosecutrix was thereafter taken to Bhilwara and, when she refused to establish physical relations until a proper marriage was solemnized, the petitioner subsequently insisted upon having physical relations with her and, on her refusal, allegedly subjected her to sexual intercourse against her will. It is further alleged that the prosecutrix was kept confined, subjected to repeated sexual intercourse and was thereafter taken back to her parental home when she became pregnant. She gave birth to a male child on 06.06.2016, whose birth certificate mentions the petitioner as the father. The prosecution further alleges involvement of co-accused

in the alleged criminal conspiracy.

5. On the basis of the report lodged by the prosecutrix, an FIR No.04/2017 came to be registered for the offences under Sections 420 and 376 IPC. Upon completion of investigation, the investigating agency submitted charge-sheet against the



petitioner and the co-accused for the offences punishable under Sections 376, 270 and 120-B IPC. The learned trial Court, upon consideration of the material available on record, framed the aforesaid charges vide order dated 17.07.2025.

6. In the opinion of this Court, at the stage of framing of charge, the Court is not required to conduct a meticulous appreciation of the evidence or undertake a detailed examination of the veracity of the witnesses. The Court is required to examine whether the material placed on record discloses the essential ingredients of the alleged offence and whether the same gives rise to a ground for presuming that the accused has committed the offence. However, where the foundational ingredients of the offence are absent on the admitted or undisputed material available on record, the accused cannot be subjected to a trial for an offence which is not legally attracted.

7. In the present case, the prosecutrix herself has consistently stated that the petitioner had married her by putting a garland and mangalsutra around her neck on 18.07.2015, though she subsequently alleged that the marriage was not solemnized in accordance with the requisite formalities and that the petitioner had represented that the marriage would subsequently be performed and registered. Significantly, the material on record also includes the birth certificate of the child born to the prosecutrix on 06.06.2016, wherein the petitioner has been shown as the father.

8. The allegations of the prosecutrix, even if taken at their face value for the purpose of considering the charge, therefore indicate that the alleged acts of sexual intercourse were committed during



the period when the relationship between the parties was being asserted and treated as that of husband and wife. The prosecution material itself does not disclose that the petitioner was a stranger to the prosecutrix at the relevant time; rather, the entire prosecution case proceeds on the assertion that the petitioner had entered into a marriage with her.

9. Section 376 IPC, as it stood at the relevant time, contained Exception 2 to Section 375 IPC, which excluded from the ambit of rape sexual intercourse or sexual acts by a man with his own wife, the wife not being under fifteen years of age. The material available on record does not indicate that the prosecutrix was below the prescribed age. Consequently, in view of the subsisting marital relationship between the parties at the relevant point of time, the offence punishable under Section 376 IPC cannot be *prima facie* attracted against the petitioner.

10. As regards the remaining offences, the material collected during investigation *prima facie* discloses the necessary ingredients for proceeding against the petitioner. The investigation records that the petitioner was found to be HIV positive and was undergoing treatment for the same, and that the concerned institution dealing with HIV patients had informed the Investigating Officer regarding his HIV status and the fact that he had discontinued the prescribed ART medication. The charge-sheet further refers to the material collected during investigation in this regard, including the medical examination of the petitioner, his HIV test and the medical and other documents obtained during investigation. The statements of the prosecutrix and the other witnesses, coupled with the aforesaid medical and documentary



material, therefore provide *prima facie* material requiring the petitioner to face trial for the offences under Sections 270 and 120-B IPC. At this stage, this Court is not required to determine the ultimate truthfulness of the allegations or the evidentiary worth of each individual piece of material. Whether the prosecution would ultimately be able to establish the requisite ingredients of the aforesaid offences beyond reasonable doubt is a matter to be examined after the evidence is led before the learned trial Court.

11. Consequently, the present criminal revision petition is partly allowed. The order dated 17.07.2025 passed by the learned Additional Sessions Judge, Bhilwara District Bhilwara in Sessions Case No.118/2019 is quashed and set aside to the extent whereby charge under Section 376 IPC has been framed against the petitioner. The petitioner stands discharged for the offence punishable under Section 376 IPC. However, the charges framed against the petitioner under Sections 270 and 120-B IPC shall remain undisturbed, and the learned trial Court shall proceed with the trial in respect of the said offences in accordance with law.

12. All pending application(s), if any, also stand disposed of.

13. It is, however, made clear that the observations made hereinabove are for limited purposes of adjudication of the present revision petition and the learned trial court shall not get prejudiced from the same.

(KULDEEP MATHUR),J

5/Divya Raj Jasmatiya

