

Case :- CRIMINAL REVISION No. - 1066 of 2022

Revisionist :- Chaman Mangla

Opposite Party :- State of U.P. and Another

Counsel for Revisionist :- Somya Chaturvedi, Gopal Swarup Chaturvedi (Senior Adv.)

Counsel for Opposite Party :- G.A., Harsh Vardhan Deshwar

Hon'ble Shekhar Kumar Yadav, J.

1. Heard Mr Gopal Swarup Chaturvedi, learned Senior Counsel assisted by Ms Somya Chaturvedi, learned counsel for the revisionist, Mr Harsh Vardhan Deshwar, learned counsel for the opposite party no. 2 and Mr L. M. Singh, learned AGA for the State and perused the record.

2. This Criminal Revision is directed against the order dated 15.02.2022 passed by learned Addl. District and Sessions Judge, FTC-I Mathura, whereby the application for discharge under Sections 498-A, 504, 506, 376 IPC and Section 3/4 of Dowry Prohibition Act moved by the revisionist u/s 227 Cr.P.C. in Sessions Case No. 287 of 2021 (State Vs Chaman Mangla) arising out of Case Crime No. 771 of 2020, has been rejected.

3. Initially an FIR vide Case Crime No. 771 of 2020 was registered against the revisionist and his father and mother by the complainant/opposite party no. 2 on 08.11.2020, under Sections 498-A, 504, 506, 376 IPC and Section ¾ of Dowry Prohibition Act.

4. Prosecution story as narrated in the FIR is that the revisionist was to open a cloth-showroom and thereafter he would marry the complainant within a year of opening of showroom. Revisionist is said to have called the complainant at his residence and introduced her with his parents. Seeing her,

his parents also said that they liked her and as soon as the showroom is opened they would marry complainant with his son (revisionist). It is further averred that revisionist always called the complainant at his residence in presence of his parents and used to treat the complainant as his wife and had also made sexual relationship on that pretext; and when two years had elapsed, neither the showroom was opened nor the revisionist solemnized marriage with complainant, thereafter, the complainant is said to have asked the parents of the revisionist to get their marriage solemnized upon which the parents of the revisionist said that opposite party no. 2 used to visit their house as their daughter-in-law and soon they would get the marriage of opposite party no. 2 solemnized with revisionist. It is further averred that in the month of October, complainant again asked the revisionist and his parents to solemnize the marriage as the revisionist is harassing her mentally and physically for almost two years and in case the marriage is not solemnized within a month, the complainant would take legal action against them. It is further alleged that thereafter, parents of the revisionist demanded Rs. 25 Lacs for marriage and also said that if the parents of the complainant is able to meet the demand of revisionist, they would get their marriage solemnized, failing which the marriage would not be finalized. It is further alleged that when the complainant asked the parents of the revisionist that the revisionist is making physical relationship with her for the last two years, thereupon she was abused in filthy words, threatened and also driven out.

5. After registration of the FIR, Investigating Officer recorded the statement of complainant and other material witnesses under Section 161 Cr.P.C. and the victim was also medically examined at CHC Kosi Kalan, District Mathura on 8.11.2020

from where she was referred to District Women Hospital, Mathura, where the complainant/victim has refused for her internal medial examination.

6. The statement of the victim under Section 164 Cr. P. C. was also recorded before the Magistrate. The extract of statement is as under:-

“पीड़िता ने सशपथ बयान किया कि मेरी उम्र 22 वर्ष है। मैं बी0ए0 कर रही हूँ। मैं चमन पुत्र चेताराम को पिछले दो साल से जानती हूँ। मैं जहाँ ट्यूसन पढ़ाने जाती थी, वहीं चमन मुझे रास्ते में मिलता था। चमन और मैं दोनों फेसबुक पर दोस्त बने। हमारे बीच में बातचीत हुई और बाद में घर आना जाना शुरू हो गया। चमन के घर उसके पिता चेताराम व माता शोभना थी। चमन उनकी उपस्थिति में मुझे घर लाता था। वो लोग मुझसे खाने की फरमाईश करते थे जो वो कहते थे, मैं बनाती थी। चमन के माता पिता को भी मैं पसंद थी। और वो अपने बेटे की शादी मुझसे करवाने को राजी थी। चमन के मां बाप मुझसे कहते थे कि जैसे ही चमन का शोरूम खुलेगा, हम तुम दोनों की शादी करवा देंगे। इस आड़ में चमन मुझसे कई बार शारीरिक संबंध बनाये। कई बार होटल व फ्लैट में लेकर गया। दो वर्ष बीत जाने के बाद जब न शोरूम खुला और न शादी की बात आगे बढ़ी तो मैंने चमन के माता पिता से बात की। तो चमन के माता पिता बोले कि अपने घर वालों से बोलो की 25 लाख का इंतजाम कर लें। हमारे बेटे के लिए अच्छे रिश्ते आ रहे हैं। तब मैंने उनको बताया कि मैं गरीब घर से हूँ पिताजी जीवित नहीं है हम 3-4 लाख ही खर्च कर सकते हैं तो सके मां बाप ने शादी करने से मना कर दिया। मुझे रंडी जैसे शब्दों से संबोधित किया। मैंने अपने भाइ कृष्णा को जब ये बात बताई तो वह भी चमन के माता पिता के पास रिश्ता लेकर गया तो उन्होंने कोई जवाब नहीं दिया जब मैंने चमन को एक दिन बाद काल किया तो उसने मुझे अपनी दुकान पर बुलाया और मुझे बदनाम करने की धमकी देने लगा। उसके पास मेरी कुछ फोटोज हैं जिसे वायरल करने की धमकी देने लगा। इसके अलावा चमन ने मुझे कुछ नशीली गोली देकर कहने लगा इन्हें खा ले और मर जा मगर मुझे भूल जा। मैंने वो नशीली गोलियां घर आकर खा ली जिससे मैं बेहोश हो गई। मैंने अगले दिन अपने भाई व मां के साथ पुलिस में रिपोर्ट दर्ज करवायी। चमन और उसके पिता चेताराम व माता शोभना ने मेरे साथ मानसिक व शारीरिक प्रताड़ना की है मैं चाहती हू कि चमन को या तो सजा मिले या फिर मुझसे शादी करे।”

7. After concluding the investigation, the Investigating Officer submitted the charge sheet on 25.11.2020 only against the revisionist under Sections 498-A, 504, 506, 376 IPC and Section 3/4 of D. P. Act, upon which cognizance was taken by the court below vide order dated 23.12.2020. Thereafter, revisionist is said to have moved an application for discharge on 7.9.2021, which was objected by the complainant/opposite

party no. 2 by filing her objection on 30.09.2021. The court below after taking into account the entire material available on record rejected the discharge application filed by the revisionist vide impugned order dated 15.2.2022 and fixed the next date for framing of charge against the revisionist under Section 376, 504, 506 IPC and Section 4 of the D.P. Act. It is this order which is subject matter of challenge before this Court.

8. It is contended by learned counsel for the revisionist that the trial court has rejected the discharge application without considering the fact that the victim is major and allegation of physical relation between the revisionist and O.P. No. 2 was a consensual physical relationship, therefore, no offence under Section 376 IPC is made out. It is further contended by learned counsel for the revisionist that the impugned order has been passed without considering the material on record and while passing the order impugned court below has not applied its judicial mind. He further submits that the impugned order rejecting the application for discharge is wholly illegal, capricious and against weight of evidence on record. It is further submitted that there are several contradictions between the version of the FIR and the statements of the informant said to have been recorded under Section 161 and 164 Cr.P.C. and the order has been passed illegally in a routine manner and without application of judicial mind, and therefore, the same is liable to be quashed.

9. On the other hand, learned counsel appearing for Opposite Party No. 2 as well as learned A.G.A. appearing for the State submitted that record reveals that the revisionist had established physical relationship with the complainant on false promise of marriage and when he refused to marry present

prosecution has been initiated against the revisionist. Material available on record reveals that O.P. No.2/complainant had entered into physical relationship with the revisionist on misconception of fact and the said consent cannot be considered as a voluntary consent under Section 90 of the Indian Penal Code; that presumption can be drawn under Section 114 A of the Indian Evidence Act that the revisionist had sexual intercourse on false assurance of marriage and the charge sheet has rightly been submitted under Sections 376 IPC along with other sections of IPC.

10. The principles for framing of charge and discharge under Sections 227, 228 and 239 Cr.P.C. have been summarized by the Hon'ble Apex Court in its judgment, **State Vs S. Selvi, (2018) 13 SCC 455** wherein it has been held that if on the basis of material on record, the Court prima facie forms an opinion that the accused may have committed the offence, it can frame charges. At the time of framing of charge, the Court is required to proceed on presumption that the material produced by the prosecution is true. At that stage, the Court is not expected to go deep into the matter and hold that the material produced does not warrant conviction.

11. In **Sajjan Kumar Vs CBI, (2010) 9 SCC 368**, Hon'ble Apex Court on consideration of the various decisions about the scope of Section 227 and 228, laid down the following principles:

"(I) The Judge while considering the question of framing the charges under Section 227 Cr.P.C. 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. The test to determine prima facie case would depend upon the facts of each case.

(ii) 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.

(iii) The 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, etc. However, at this stage, there cannot be a roving enquiry into the pros and cons of the matter and weigh the evidence as if he was conducting a trial.

(iv) If on the basis of the material on record, the court could form an opinion that the accused might have committed offence, it can frame the charge, though for conviction the conclusion is required to be proved beyond reasonable doubt that the accused has committed the offence.

(v) At the time of framing of the charges, the probative value of the material on record cannot be gone into but before framing a charge the court must apply its judicial mind on the material placed on record and must be satisfied that the commission of offence by the accused was possible.

(vi) At the stage of Section 227 and 228, the court is required to evaluate the material and documents on record with a view to find out if the facts emerging therefrom taken at their face value disclose the existence of all the ingredients constituting the alleged offence. 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.

(vii) If two views are possible and one of them gives rise to suspicion only, as distinguished from grave suspicion, the trial Judge will be empowered to discharge the accused and at this stage, he is not to

see whether the trial will end in conviction or acquittal."

12. Hon'ble the Apex Court in the case of **Tarun Jit Tejpal Vs State of Goa and other: 2019 SCC OnLine SC 1053** has taken note of case law in detail while explaining the powers under Section 227/228 Cr.P.C. and reiterated the principle as enumerated in State Vs Selvi (supra) and Sajjan Kumar versus C.B.I., (2010) 9 SCC 368. In para 32 it has been held as under:-

"32. Applying the law laid down by this Court in the aforesaid decisions and considering the scope of enquiry at the stage of framing of the charge under Section 227/228 Cr.P.C., we are of the opinion that the submissions made by the learned Counsel appearing on behalf of the appellant on merits, at this stage, are not required to be considered. Whatever submissions are made by the learned Counsel appearing on behalf of the appellant are on merits are required to be dealt with and considered at an appropriate stage during the course of the trial. Some of the submissions may be considered to be the defence of the accused. Some of the submissions made by the learned Counsel appearing on behalf of the appellant on the conduct of the victim/prosecutrix are required to be dealt with and considered at an appropriate stage during the trial. The same are not required to be considered at this stage of framing of the charge. On considering the material on record, we are of the opinion that there is more than a prima facie case against the accused for which he is required to be tried. There is sufficient ample material against the accused and therefore the learned Trial Court has rightly framed the charge against the accused and the same is rightly confirmed by the High Court. No interference of this Court is called for."

13. Indisputably, it is open to this Court to quash the charges framed by the trial court and discharge the accused revisionist but the same cannot be done by weighing the correctness, sufficiency of the evidence. The principle to be adopted in such cases should be that if the entire evidence produced by the prosecution is to be believed would it constitute the offence or not. It is only at the stage of the trial that truthfulness, sufficiency and acceptability of the evidence can be adjudged. Therefore, it will not be proper to truncate or snip the proceeding at the stage of framing of charges against the revisionist when perusal of the statement of victim said to have been recorded under Section 161 & 164 Cr.P.C. clearly reveals that the revisionist made sexual intercourse with the complainant for a continuous period of two years on false pretext of marriage.

14. Thus, in view of the law as has been explained in several decisions and, the fact that the trial Court having considered the record of the case and evidence brought by the prosecution has formed an opinion prima facie of involvement of the revisionist in commission of offence, the court below has rightly dismissed the argument for discharge of revisionist. There is no illegality, perversity or impropriety in the impugned order. There is no jurisdictional error in the impugned order. The revision is not sustainable and is hereby dismissed.

Office is directed to certify the copy of this order to the court below through learned Sessions Judge, concerned.

Order Date :- 26.04.2022

RavindraKSingh

(Justice Shkehar Kumar Yadav)