

IN THE HIGH COURT OF JHARKHAND AT RANCHI
Cr. Revision No. 209 of 2022

Kuldeep Kumar MahtoPetitioner

Versus

1. The State of Jharkhand.

2. Reeta KumariOpp. Parties

CORAM : HON'BLE MR. JUSTICE SUBHASH CHAND

For the Petitioner : Ms. Sonal Sodhani, Advocate

For the State : Mr. V.S.Sahay, A.P.P.

06/ 26.07.2022 This Cr. Revision is preferred against the order dated

27.01.2022 passed by the learned A.J.C.-VI-cum-Special Judge, FTC (CAW), Ranchi in S.T.No. 264 of 2020, arising out of Silli (Muri) P.S. Case No. 17 of 2020 whereby the learned trial court has rejected the application of the petitioner for discharge from the offence under Section 376 of I.P.C.

2. The learned Counsel for the petitioner has submitted that as per F.I.R. allegations the victim was in love affairs and in courtship of the petitioner. The relation between the two were consensual. No alleged offence of rape is made out from the evidence collected by the I.O. and the only allegation is that on pretext of marriage the petitioner has been sexually exploiting. In support of the contention, the learned Counsel for the petitioner has relied on the following case law:

- i. (2020) 10 SCC 108 (Maheshwar Tigga Vrs. State of Jharkhand)*
- ii. 2022 SCC Online SC 1032 (Shambhu Kharwar vrs. State of Uttar Pradesh & Anr.)*
- iii. (2019) 9 SCC 608 (Pramod Suryabhan Pawar vrs. State of Maharashtra & Anr.)*

3. The learned A.P.P. on behalf of the State opposed the contentions made by the learned Counsel for the petitioner and contended that from the F.I.R. allegations and also the evidence collected by the I.O. the charge under Section 376 of I.P.C. is made out against the petitioner. As such the impugned order passed by the court below does not bear any illegality or irregularity and the same deserves to be confirmed.

4. It is the settled law that the court below while framing the charge has to look into the evidence collected by the I.O. during the investigation. At the time of framing of charge the court cannot minutely scrutinize the evidence collected during investigation rather has to see whether the prima facie the offence is made out against the accused on the basis of the evidence collected by the I.O.

The Hon'ble Apex Court held in ***Palwinder Singh vrs. Balwinder singh (2008) 14 SCC 504:***

13. Having heard the learned counsel for the parties, we are of the opinion that the High Court committed a serious error in passing the impugned judgment insofar as it entered into the realm of appreciation of evidence at the stage of the framing of the charges itself. The jurisdiction of the learned Sessions Judge while exercising power under Section 227 of the Code of Criminal Procedure is limited. Charges can also be framed on the basis of strong suspicion. Marshalling and appreciation of evidence is not in the domain of the Court at that point of time. This aspect of the matter has been considered by this Court in State of Orissa v. Debendra Nath Padhi [(2005) 1 SCC 568 : 2005 SCC (Cri) 415] wherein it was held as under: (SCC p. 579, para 23)

“23. As a result of the aforesaid discussion, in our view, clearly the law is that at the time

of framing charge or taking cognizance the accused has no right to produce any material. Satish Mehra case [Satish Mehra v. Delhi Admn., (1996) 9 SCC 766 : 1996 SCC (Cri) 1104] holding that the trial court has powers to consider even materials which the accused may produce at the stage of Section 227 of the Code has not been correctly decided.”

The Hon’ble Apex Court held in **Sanghi Brothers (Indore) Pvt. Ltd. vrs. Sanjay Choudhary & Ors. (2008) 10 SCC 681:**

11. Sections 227, 239 and 245 deal with discharge from criminal charge. In State of Karnataka v. L. Muniswamy [(1977) 2 SCC 699 : 1977 SCC (Cri) 404] it was noted that at the stage of framing the charge the court has to apply its mind to the question whether or not there is any ground for presuming the commission of offence by the accused. (underlined [Ed. : Herein italicised.] for emphasis) The court has to see while considering the question of framing the charge as to whether the material brought on record could reasonably connect the accused with the trial. Nothing more is required to be inquired into. (See Stree Atyachar Virodhi Parishad v. Dilip Nathumal Chordia [(1989) 1 SCC 715 : 1989 SCC (Cri) 285] and State of W.B. v. Mohd. Khalid [(1995) 1 SCC 684 : 1995 SCC (Cri) 266] .)

The Hon’ble Apex Court also held in **Rukmini Narvekar vrs. Vijaya Satardekar & Ors. A.I.R.2009 SC 1013:**

38. In my view, therefore, there is no scope for the accused to produce any evidence in support of the submissions made on his behalf at the stage of framing of charge and only such materials as are indicated in Section 227 CrPC can be taken into consideration by the learned Magistrate at that stage. However, in a proceeding taken therefrom under Section

482 CrPC the court is free to consider material that may be produced on behalf of the accused to arrive at a decision whether the charge as framed could be maintained. This, in my view, appears to be the intention of the legislature in wording Sections 227 and 228 the way in which they have been worded and as explained in Debendra Nath Padhi case [(2005) 1 SCC 568 : 2005 SCC (Cri) 415] by the larger Bench therein to which the very same question had been referred

The Hon'ble Apex Court held in **Central Bureau of Investigation vrs. Mukesh Pravinchandra Shroff & Ors (2010) 3 SCC Cr. 315:**

“The appreciation of evidence, at the stage of discharge is impermissible what is required is to be seen is whether there are sufficient grounds to proceed against accused.”

5. It is also the settled law that while framing the charge even if there is a grave suspicion for commission of any offence the charge may be framed against the same.

6. In view of these settled propositions of law by the Hon'ble Court in regard to framing the charge it will be proper to go through the case diary in which the I.O. has recorded the statement of the witnesses and also collected the other documentary evidence.

7. From the perusal of the F.I.R., it is found that victim herself lodged the F.I.R. on 01.03.2020 against the accused Kuldeep Kumar Mahto wherein the allegations are made that in the year 2018 Kuldeep Kumar Mahto resident of village Mardu came in her contact for the first time. Thereafter the accused asked her to love and also began to stalk her. He also began to create pressure upon her to get married. On 21.09.2018 at 8

O'clock in the night he called her to come behind her house. She accordingly reached there at the indicated time and the accused again on the pretext of marrying her forcibly raped her. Thereafter he assured her to marry with her. After this occurrence she several times insisted to marry with her to the accused but he refused for the same. From the year 2018 to the year 2019 he continuously sexually exploited her and the accused Kuldeep Kumar Mahto and his sister and mother also came to her house and both hurled abuse and also did Mart Pit with her. On the basis of the written information of the victim the case crime No. 17 of 2020 was registered with the Police Station concerned against the accused Kuldeep Kumar Mahto for the offence under Section 376 of I.P.C.

8. In para 5 of the case diary the restatement of the victim/informant was recorded in which she reiterated all the allegations which were made by her in the F.I.R.

9. In para 6 of the case diary the statement of Ganga Devi was recorded. This Ganga Devi is the mother of victim. She also corroborated the prosecution story and stated that her daughter has told her in regard to the occurrence.

10. In para 7 of the case diary statement of Gayatri Devi was recorded. She also corroborated the prosecution story. This Gayatri Devi also stated that the victim has narrated in regard to the statement to her. The same kind of statement is given by Nandan Mandal in para 8 of the case diary.

11. In para 40 of the case diary is the medical medical examination report of the victim.

12. As per F.I.R. allegations which was lodged by the victim herself and the same is also corroborated with the statement of victim and also with the statement of Ganga Devi, Gayatri Devi and Nandan Mandal as well. It is found that the petitioner for the first time came in contact of the victim in the year 2018 and it came in the statement of the witnesses that since inception he had proposed to marry with her. As such from the very beginning he got the consent of the victim on the pretext of marriage. After assuring the victim to marry he came in courtship of the victim and for the first time on 21.09.2018 he forcibly committed rape of victim. As such it cannot be accepted that the offence of 375 which is punishable of under section 376 of I.P.C. is not made out against the petitioner. So far as the case law upon which the learned Counsel for the petitioner has relied the benefit of the same cannot be given to the petitioner reason being in the case in hand since inception the consent was obtained after having assured the victim to marry with her and the rape which was committed for the first time on 21.09.2018 the physical relation was not consensual. Therefore, in view of the evidence collected by the I.O. the prima facie case is made out against the petitioner. The impugned order passed by the court-below does not bear any illegality or infirmity.

13. Accordingly, this Cr. Revision is dismissed and the impugned order passed by the court-below is confirmed.

14. It is made clear that any observation made herein shall not prejudice the prosecution case on merit.

(Subhash Chand, J.)

P.K.S./ A.F.R.