

C.R.

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MRS. JUSTICE SHIRCY V.

TUESDAY, THE 07TH DAY OF JULY 2020 / 16TH ASHADHA, 1942

Cr1.Rev.Pet.No.404 OF 2020

AGAINST THE ORDER IN CRL.M.P. NO. 195 OF 2020 IN SC 457/2019 OF  
SPECIAL COURT UNDER POCSO ACT, KOTTAYAM - IST ADDITIONAL  
SESSIONS JUDGE, KOTTAYAM

CRIME NO.746/2018 OF Kuravilangadu Police Station , Kottayam

REVISION PETITIONER:

BISHOP FRANCO MULAKKAL  
AGED 55 YEARS  
S/O.IPPUNNI,BISHOPS HOUSE,CIVIL LANE,  
JALANDHAR CITY-144001,PUNJAB STATE.

BY ADVS.  
SRI.ALEX JOSEPH  
SMT.NISHA K.PETER

RESPONDENTS:

1 STATE OF KERALA  
REPRESENTED BY THE PUBLIC PROSECUTOR,  
HIGH COURT OF KERALA,ERNAKULAM,PIN-682031.

OTHER PRESENT:

SMT. S AMBIKADEVI, SPL. PP - ATROCITIES AGAINST  
WOMEN AND CHILDREN

THIS CRIMINAL REVISION PETITION HAVING BEEN FINALLY HEARD  
ON 29-06-2020, THE COURT ON 07-07-2020 PASSED THE FOLLOWING:

**ORDER**

**Dated this the 7th day of July 2020**

A Bishop is a senior member of the Christian Clergy in charge of a Diocese. He is placed on a high pedestal and hold high esteem in the society as a whole.

2. A Nun is a member of a religious community of women living under the vows of chastity, obedience, loyalty etc. They devote their entire life doing services to the community as well to the society thereby dedicating themselves to the Divine Master.

3. Here, the petitioner is the accused in Crime No. 746 of 2018 of Kuravilangad Police Station registered for the offences punishable under Sections 342, 376 (2)(k), 376(2)(n), 376 C(a), 377 and 506(ii) of the Indian Penal Code. The victim (hereinafter referred to as 'the Sister') has put the Bishop (hereinafter referred to as 'the petitioner') in the dock of the court alleging that he has committed the most heinous and brutal offence of rape on her.

4. The allegations raised against this petitioner by the prosecution in brief are as follows:

The petitioner is the Bishop of the Roman Catholic Diocese of Jalandhar who is residing in Bishop House, Jalandhar city, Punjab State. The Sister is the Mother Superior

of St. Francis Mission Home at Kuravilangad (herein after referred to as 'Home') and she is the Head of the Congregation named as Missionaries of Jesus. She is in charge of the Home at Kuravilangad where she is residing along with some other Sisters. She joined the Diocese in the year 1999 and for the last 5 years she is acting as the Mother Superior of the Home. The petitioner used to visit Kerala occasionally and during his visit, he used to stay in the Guest Room bearing No.20 of the Home. On 5.05.2014 when he came to Kerala in connection with his official visit, he stayed in the Guest Room of the Home. When he reached there in the home at about 10 p.m he called the Sister to his room and asked her to iron his cassock. The Sister obeyed his direction and when she came to handover the same to the Guest Room, he asked her to bring the papers relating to the construction/renovation work of the kitchen being carried on in the Home. So, when the Sister came to his room again with all relevant papers in connection with the construction work, the petitioner suddenly locked the room from inside and caught hold of her and forcefully removed her undergarment ignoring her resistance and against her will inserted his finger into her vagina and attempted to thrust his sexual organ into her mouth. He then threatened her that if she discloses about the incident to anyone, she will have to face dire consequences. On the next day i.e. on 6.05.2014 he committed rape on her and thereafter repeatedly committed

rape on her in the night when he resided in the Home during his visits to Kerala. Thus on 11.07.2014, 5.01.2015, 15.01.2015, 22.04.2015, 22.05.2015, 27.07.2015, 21.08.2015, 5.11.2015, 17.01.2016, 29.04.2016 and on 23.09.2016 he committed rape after putting her under fear. The Sister had specifically alleged that she was sexually ravished by him and he repeated the serious crime on various days mentioned above, by misusing his official status, control, supremacy and dominance he was holding as the Bishop of the Diocese and threatened her that he will do away with her life if she divulge the same to anyone. Thereby he committed the offence of rape on her on various dates from 5.5.2014 to 23.9.2016; that is for a period of more than two years, putting her under death threats.

5. Process of criminal law was set into motion when the sister lodged a complaint on 27.06.2018 before the District Police Chief, Kottayam. On the basis of the complaint FIR was registered on 28.06.2018. The investigating agency conducted the investigation of the case and finally charge sheet was filed on 9.04.2019.

6. The petitioner has contended that he has been falsely implicated in the case by the Sister for having initiated action against her on some allegations raised by own cousin sister and sufficient ground is not there to proceed with the case and no offence is made out against him. Contending so, he had filed an application for his discharge under Section

227 of the Code of Criminal Procedure.

7. The learned Additional Sessions Judge-I, Kottayam, after hearing the matter elaborately, dismissed his plea for discharge as per an order dated 16<sup>th</sup> March, 2020. The said order is being challenged by the petitioner raising various grounds in this revision petition.

8. Heard Sri. Alex Joseph, the learned counsel for the petitioner and Smt.S. Ambika Devi, the learned Special Public Prosecutor for atrocities against women and children. Perused the documents placed on record.

9. Before venturing into the arguments made by the learned counsel on either side, it is useful and relevant to reiterate Section 227 of the Code of Criminal Procedure, which reads thus:

**"227.Discharge** -If, upon consideration of the record of the case and the documents submitted therewith and after hearing the submissions of the accused and the prosecution in this behalf ,the judge considers there is not sufficient ground for proceeding against the accused,he shall discharge the accused and record his reasons for so doing "

10. A reading of this provision makes it abundantly clear that a special and precious power is conferred on the Judge under Section 227 of the Code of Criminal Procedure to discharge an accused if records did not disclose sufficient materials to proceed with the trial of the case. Whether sufficient materials have been produced by prosecution to frame

charge against the accused to proceed with the trial of the case have to be evaluated on the basis of the available records by the court and if the judge is satisfied that sufficient materials are not on record, can discharge the accused. It is doubtless that such a provision is incorporated in the code to ensure that the court is satisfied that the accusation leveled against the accused is not frivolous and totally baseless. It is needless to mention that at this stage the court must be satisfied that prosecution is launched not on mere allegations or to vindicate personal vendetta. Whether a prima facie case is made out to proceed for trial has to be considered on the basis of the materials gathered by the prosecution with the relevant provision of law. In a criminal case of-course the prosecution must prove its case beyond reasonable doubt. Only prima facie satisfaction of the judge is required in exercising jurisdiction under Section 227 of the Code Of Criminal procedure. The language employed in Section 227 Cr.P.C. is wide. Even if the Judge, on going through the records, finds suspicion that there is no probability of committing an offence as alleged or happening of an incident as alleged by the prosecution which has not been seen properly explained, the Judge is fully justified in declining the request of the accused for discharge.

11. Sri. Alex Joseph, the learned counsel for the petitioner strenuously argued that the court below has not

considered the entire records filed along with the final report but, merely relied on the statement of the Sister (CW 1) and dismissed his application. Deeply aggrieved by the finding of the learned Additional Sessions Judge dated 16.03.2020 it is vehemently argued by the learned counsel for the petitioner that the petitioner is dragged to the court on frivolous complaint. It is further argued that apparently no prima facie case is available on records so as to frame charge and proceed against the petitioner. It is pointed out that apart from the contradictory statements of the sister (CW 1) no solid material is there to support the allegation of rape and the sequence of events would show his false implication. It is also submitted that due to the disciplinary proceedings initiated by the petitioner against the Sister, she has maliciously and falsely implicated him with an ulterior motive to wreak vengeance on him and cooked up this story just because of her personal grudge towards him, without any justification.

12. Smt. S. Ambika Devi, the learned Special Prosecutor with all vehemence refuted the submissions of the learned counsel for the petitioner and argued that this revision petition deserves to be rejected at the thrush-hold as the learned Additional Sessions Judge is fully justified in dismissing the petition for discharge. The learned Special Public Prosecutor further submitted that apart from the version of the Sister (CW 1), the statements of CWs 2 to 6 recorded

under Section 164 of Cr.P.C and numerous documents supporting the version of the sister and other inmates of the Home are available to reach a conclusion that there are sufficient grounds for proceeding against this petitioner. It is further submitted that the investigation is carried out in a fair manner and all relevant materials have been collected by prosecution and there are sufficient and valid grounds for proceeding against the petitioner.

13. The power of the Judge to discharge an accused recognized by law has been established by the Apex Court in a catena of decisions. Both sides relied on certain decisions of the Hon'ble Supreme Court to substantiate their rival contentions.

14. The learned counsel for the petitioner has relied on the decision reported in **Dilawar Balu Kurane v. State of Maharashtra ((2002) 2 SCC 135)**, wherein it was held as follows:

"12.....In exercising powers under Section 227 of the Code of Criminal Procedure, the settled position of law is that the Judge while considering the question of framing the charges under the said section 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; 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; by and large if two views are equally possible and the Judge is satisfied that the evidence produced before him while giving rise to some suspicion but not

grave suspicion against the accused, he will be fully justified to discharge the accused, and in exercising jurisdiction under Section 227 of the Code of Criminal Procedure, the Judge 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 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."

15. The learned counsel for the petitioner heavily relied on paras 19 and 20 in **Sajjan Kumar v. CBI ((2010) 9 SCC 368)** which read as under:

"19..... The presumption of the guilt of the accused which is to be drawn at the initial stage is only for the purpose of deciding prima facie whether the court should proceed with the trial or not. If the evidence which the prosecution proposes to adduce proves the guilt of the accused even if fully accepted before it is challenged in cross-examination or rebutted by the defence evidence, if any, cannot show that the accused committed the offence, then there will be no sufficient ground for proceeding with the trial."

20. .... It is also clear that in exercising jurisdiction under Section 227 Cr.P.C., the Magistrate 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."

16. Relying upon the above decisions as well certain other decisions (See **State of Karnataka v. M. Devendrappa ((2002) 3 SCC 89)** and **Gyan Singh v. State of Punjab ((2012) 10 SCC 303)**), the learned counsel for the petitioner has submitted that the court below has exceeded the jurisdiction under Section 227 of the Code Of Criminal Procedure and in fact

conducted a mini trial, against the settled provision of law.

17. The learned Special Public Prosecutor has relied on the decision reported in **State of Bihar v. Ramesh Singh**, ((1977) 4 SCC 39) to substantiate her contentions. In the said decision in para No.4, it was observed as follows:

" Under Section 226 of the Code while opening the case for the prosecution the Prosecutor has got to describe the charge against the accused and state by what evidence he proposes to prove the guilt of the accused. Thereafter comes at the initial stage the duty of the Court to consider the record of the case and the documents submitted therewith and to hear the submissions of the accused and the prosecution in that behalf. The Judge has to pass thereafter an order either under Section 227 or Section 228 of the Code. If "the Judge considers that there is no sufficient ground for proceeding against the accused, he shall discharge the accused and record his reasons for so doing", as enjoined by Section 227. If, on the other hand, "the Judge is of opinion that there is ground for presuming that the accused has committed an offence which- ...

.....(b) is exclusively triable by the Court, he shall frame in writing a charge against the accused", as provided in Section 228. Reading the two provisions together in juxtaposition, as they have got to be, it would be clear that at the beginning and the initial stage of the trial the truth, veracity and effect of the evidence which the Prosecutor proposes to adduce are not to be meticulously judged. Nor is any weight to be attached to the probable defence of the accused. It is not obligatory for the Judge at that stage of the trial to consider in any detail and weigh in a sensitive balance whether the facts, if proved, would be incompatible with the innocence of the accused or not. The standard of test and judgment which is to be finally applied before recording a finding regarding the guilt or otherwise of the accused is not exactly to be applied at the stage of deciding the matter

under Section 227 or Section 228 of the Code. At that stage the Court is not to see whether there is sufficient ground for conviction of the accused or whether the trial is sure to end in his conviction. Strong suspicion against the accused, if the matter remains in the region of suspicion, cannot take the place of proof of his guilt at the conclusion of the trial. But at the initial stage if there is a strong suspicion which leads the Court to think that there is ground for presuming that the accused has committed an offence then it is not open to the Court to say that there is no sufficient ground for proceeding against the accused.....''

18. The Prosecution has also relied on the decision in **Amit Kapoor v. Ramesh Chander and another** ((2012) 9 SCC 460), wherein it was held as follows:

"17. Framing of a charge is an exercise of jurisdiction by the trial court in terms of Section 228 of the Code, unless the accused is discharged under Section 227 of the Code. Under both these provisions, the court is required to consider the "record of the case" and documents submitted therewith and, after hearing the parties, may either discharge the accused or where it appears to the court and in its opinion there is ground for presuming that the accused has committed an offence, it shall frame the charge. Once the facts and ingredients of the section exists, then the court would be right in presuming that there is ground to proceed against the accused and frame the charge accordingly. This presumption is not a presumption of law as such. The satisfaction of the court in relation to the existence of constituents of an offence and the facts leading to that offence is a sine qua non for exercise of such jurisdiction. It may even be weaker than a prima facie case. There is a fine distinction between the language of Sections 227 and 228 of the Code. Section 227 is the expression of a definite opinion and judgment of the Court while Section 228 is tentative. Thus, to say that at the stage of framing of charge, the Court should form an opinion that the accused is

certainly guilty of committing an offence, is an approach which is impermissible in terms of Section 228 of the Code."

19. The learned special prosecutor would also draw the attention of this court to the decision of the Apex Court in **Bhawna Bai v. Ghanshyam ((2020) 2 SCC 217)** wherein it is observed in paragraph 14 and 16 as follows:

"14. Chapter XVIII Cr.PC deals with "Trial before a Court of Session". As per Section 226 Cr.PC., the Public Prosecutor is required to open the case before the Sessions Court by describing the charge brought against the accused and stating by what evidence, he proposes to prove the guilt of the accused.

16. After referring to Amit Kapoor, in *Dinesh Tiwari v. State of U.P.*, the Supreme Court held that for framing charge under Section 228 Cr.P.C., the Judge is not required to record detailed reasons as to why such charge is framed. On perusal of record and hearing of parties, if the Judge is of the opinion that there is sufficient ground for presuming that the accused has committed the offence triable by the Court of Session, he shall frame the charge against the accused for such offence."

20. The Apex Court in **Union of India v. Prafulla Kumar Samal ((1979) 3 SCC 4)** has held in para 7 that ;

"7.....The words 'not sufficient ground for proceeding against the accused' clearly show that the Judge is not a mere post office to frame the charge at the behest of the prosecution, but has to exercise his judicial mind to the facts of the case in order to determine whether a case for trial has been made out by the prosecution. In assessing this fact, it is not necessary for the court to enter into the pros and cons of the matter or into a weighing and balancing of evidence and probabilities which is really his function after the trial starts. At the stage of Section 227, the Judge has merely to sift the evidence in order to find out

whether or not there is sufficient ground for proceeding against the accused. The sufficiency of ground would take within its fold the nature of the evidence recorded by the police or the documents produced before the court which ex facie disclose that there are suspicious circumstances against the accused so as to frame a charge against him."

21. In **Central Bureau Of Investigation v. K. Narayana Rao, ((2012) 9 SCC 512)**, the Apex Court held in para 15 as follows:

"15..... It is also settled law that while exercising jurisdiction under Section 227 of the Code, the Magistrate 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. This provision was introduced in the Code to avoid wastage of public time and to save the accused from unavoidable harassment and expenditure."

22. In **Sajjan Kumar v. CBI** (supra), the Apex Court had enunciated the law in the manner as reproduced here under :

**"Exercise of jurisdiction under Sections 227 and 228 CrPC**

21. On consideration of the authorities about the scope of Sections 227 and 228 of the Code, the following principles emerge:

(i) The Judge while considering the question of framing the charges under Section 227 CrPC 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 Sections 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."

23. Taking note of the law laid down in the aforesaid decisions, and the relevant provision of the Cr.P.C., I have considered the rival arguments and materials on record. It is significant to note that pursuant to the complaint of the sister on 27.06.2018 the FIR was registered on 28.06.2018 though the alleged incidents were on different dates ranging from 5.05.2014 to 23.09.2016. As referred above, the Prosecution version is that the petitioner had committed sexual assault including rape, on the Sister against her consent on 13 different dates while he resided in Guest Room No.20 attached to the Home. In the FIS itself she had narrated about the ordeal she suffered from the petitioner, the Head of the Diocese under threats. Further in her statement recorded under Section 164 Cr.P.C. she has narrated how the petitioner committed rape on her on various dates, (referred above) with minute details and the criminal activities indulged by him against her misusing his official capacity and exploiting her hapless condition, before the Judicial First Class Magistrate, who was entrusted to record her statement. At the outset it is to be noted that the petitioner contended that he is not the Supreme Head of the Diocese to have fiduciary relationship with the sister, but prima facie, it is revealed from the records produced by the prosecution that St. Francis Mission Home is functioning under the petitioner who is the Bishop of Jalandhar Diocese, Punjab.

The Sister was the Mother Superior of the Home, from the month of July 2013. In the FI Statement it has been specifically stated that the petitioner used to visit Kerala to attend programs connected with the Diocese and on 5.05.2014 he came to participate the ordination ceremony conducted at Chalakudy and after the ceremony he reached the Home by 10 p.m in the night and stayed there. The first sexual assault which amounts to rape committed by the petitioner was on 5.5.2014. The next day also he committed rape on her against her consent as per her FI Statement as well her statement recorded under Section 164 Cr.P.C. before the Magistrate. She also stated that she was subjected to rape by the petitioner on 13 different days when he came to stay in the home during his official visits. According to her before lodging the complaint to the police she made complaints to the Nuncio who is the head of Latin rite, holding a post immediately below the Pope of Vathican. She further stated that when she expressed strong protest to him on his further visits and stay in the Home she was removed from her post as retaliation and at his instance tried to implicate her family members also in false cases. Then without waiting for the action from Vathican she lodged the complaint before the police. In all her statements she has submitted that she was subjected to rape by the petitioner under death threats and she was even subjected to carnal intercourse against the order of nature on various dates. She had stated

the ordeal undergone by her specifically with dates in her statements. On a perusal of her FI statement, further statement including the statement recorded under Section 164 Cr.P.C., it is prima facie seen that she had narrated the incidents in detail. During the relevant time some renovation work was going on in the Home with the permission of the petitioner. On 05.05.2014, when he visited the Home, she was firstly asked to iron his cassock and when she came to his room to hand over the same, he asked for the papers kept in connection with the work she effected in the Home. So, at about 10.45 when she reached the room with the relevant papers he all on a sudden locked the room and caught hold of her and sexually assaulted her and threatened her with dire consequences if she divulge it to anyone. But on the next day, the first holy communion of the son of her sister was fixed to be conducted under the auspices of the petitioner and she accompanied him and participated it with heavy heart as it was a function in her family and it was not possible for her to abstain from it mainly for the reason that her sister is a widow. In the night he stayed in Home and then also he committed rape on her. Thereafter when he came to the Home during his visits on various days (mentioned earlier) she was brutally raped by him. On a perusal of her FI statement, Section 161 statement and Section 164 statement, it could be seen that there is specific allegation of rape against the petitioner. In fact in her

statement recorded under Section 164 Cr.P.C the incidents were seen narrated by her with minute details.

24. Chapter XVI of the Indian Penal Code deals with '**Sexual Offences**'.

Section 375 of IPC defines Rape as

"A man is said to commit "rape" if he-

(a) penetrates his penis, to any extent, into the vagina, mouth, urethra or anus of a woman or makes her to so with him or any other person' or

(b) inserts, to any extent, any object or a part of the body, not being the penis, into the vagina, the urethra or anus of a woman or makes her to do so with him or any other person; or

(c) manipulates any part of the body of a woman so as to cause penetration into the vagina, urethra, anus or any part of body of such woman or makes her to do so with him or any other person; or

(d) applies his mouth to the vagina, anus, urethra of a woman or makes her to do so with him or any other person, under the circumstances falling under any of the following seven descriptions.

First- Against her will

Secondly-Without her consent

Thirdly-With her consent, when her consent has been obtained by putting her or any person in whom she is interested, in fear of death or of hurt.

Fourthly- .....

Fifthly- .....

Sixthly- .....

Seventhly-....."

**"376. Punishment for rape**

(1) Whoever, except in the cases provided for in subsection (2), commits rape, shall be punished with rigorous imprisonment of either description for a term which shall not be less than ten years, but which may extend to imprisonment

for life, and shall also be liable to fine.

(2)Whoever,-

- (a) .....
- (b) .....
- (c) .....
- (d) .....
- (e) .....
- (f) .....
- (g) .....
- (h) .....
- (i) .....
- (j) .....

(k) being in a position of control or dominance over a woman, commits rape on such woman, or

(l) .....

(m) .....

(n) commits rape repeatedly on the same woman,

shall be punished with rigorous imprisonment for a term which shall not be less than ten years, but which may extend to imprisonment for life, which shall mean imprisonment for the remainder of that person's natural life, and shall also be liable to fine."

**"376C. Sexual intercourse by a person in authority**

Whoever, being-

(a) in a position of authority or in a fiduciary relationship; or

(b) .....

(c) .....

(d) .....

abuses such position or fiduciary relationship to induce or seduce any woman either in his custody or under his charge or present in the premises to have sexual intercourse with him, such sexual intercourse not amounting to the offence of rape, shall be punished with rigorous imprisonment of either description for a term which shall not be less than five years, but which may extend to ten years, and shall also be liable to fine.

Explanation 1 : In this section "sexual intercourse" shall mean any of the acts mentioned in clauses (a) to (d) of section 375."

25. The Apex Court in **Rafiq v State of U.P.** (AIR 1981 SC 969) has stated that 'when a woman is ravished what is inflicted is not merely physical injury but the deep sense of some deathless shame'

26. In **Shri Bodhisattwa Gautam v Miss Subhra Chakraborty** (AIR 1996 SC 922), the Apex Court observed that 'Rape is thus not only a crime against the person of a woman (victim), it is a crime against the entire society. It destroys the entire psychology of a woman and pushes her into deep emotional crises. It is only by her sheer will power that she rehabilitates herself in the society which, on coming to know of the rape looks down upon her in derision and contempt. Rape is, therefore, the most hated crime. It is a crime against basic human rights and is also violative of the victim's most cherished of the Fundamental Right to life in Article 21'

27. Here, noticeably CW 3, CW 4 and CW 5 are Nuns of the same congregation. They have also given statements including Section 164 statements before the Magistrate and submitted that it was told to them by the Sister (CW1) that she was subjected to rape by the petitioner on various dates. (some of them joined this Home at a later stage) Of-course statement under Section 164 Cr.P.C is not substantive piece of evidence, but to evaluate the matter at this stage it has got importance. It is the duty of the trial court to assess whether their testimonies are believable or worthy of credence. Their statements is to the

effect that as the sister was found very much worried and mood off whenever on hearing the news of the visit of the petitioner, they enquired the reason for the same. Then she disclosed the reason for her worries and tension. CW 2 is also a Nun who is engaged with the work of counseling among the Sisters and she used to visit this Home. She too deposed in her Section 164 statement that CW 1 is a person known to her right from 2011 onwards and during her visit to this particular home in the year 2015, while having a casual talk with the Sister she told that she was sexually assaulted and harassed by the petitioner. She has further stated about the predicament, the Sister is facing because of the sexual assault and harassment by the Bishop who is holding supreme power and domain in the community. Though it was really painful, she consoled her and asked her to overcome the trauma by offering more prayers and thus to muster courage to face the ordeal, is her statement to the prosecution. Of course, it is not seen from the statements of these witnesses cited by the prosecution that every incident of sexual assault by the petitioner towards the Sister were narrated by her in detail to them, but it was told by her that he had committed rape on her repeatedly. According to them they shared her agony with great concern and consoled her.

28. Thus when the records indicate that prima facie materials are available to show that the Sister was subjected to

sexual assault including rape from the hands of the superior authority who is the Bishop of the Diocese, it is not possible to infer that this Bishop/petitioner was falsely implicated by the Mother Superior of the Home functioning under him, on mere enmity as contended by him. The prosecution has produced the chronicle/ record maintained in the Home indicating his stay in the Home on the relevant dates during his visits.

29. On the other hand the learned counsel for the petitioner is relying on a letter produced by the prosecution alleged to have been issued by the cousin sister of the Sister, which would show that the petitioner had questioned the deeds of this Sister regarding an issue involved between them and as a part of the disciplinary proceedings she was removed from the present post of Mothership and reverted as an ordinary Nun and that provoked her to implicate him in a false case. But it is something which would require a careful, independent assessment and evaluation by examining witnesses before the court.

30. The delay in registration of FIR is also projected as a ground to support and substantiate the argument that an incredible prosecution story was placed on record, which would entitle the petitioner to get an order of discharge. According to the learned counsel if the facts emerging from the prosecution records are taken at their face value it will not disclose a case as it is opposed to common sense. It is most

significant to note that the victim is a Nun. A Nun leads an ascetic life. She may not be able to disclose the ordeal she faced from the hands of the petitioner like an ordinary woman and lodge a complaint to the police then and there. The mindset of a nun leading a divine life may be different. When she points her finger to the head of the congregation she will have to think of it many times. Moreover, it is revealed from the records itself that her own Sister and cousin sister are also Nuns and one of them is residing in a convent at Jalandhar. The petitioner is a person having high domain over the entire Nuns in the congregation and he is holding a powerful and influential position. The records would prima facie indicate that his supreme position had made the Sister to suffer the mental agony and trauma she had faced from the hands of the petitioner silently and when the trauma and harassment had become intolerable, she decided to lodge the complaint. In her 164 statement she had stated that she had even decided to offer her resignation and put an end to her ascetic life but she was discouraged by her own sister and the other sisters/Nuns (CW2 to 6) residing along with her and they informed her that if she resigns from the congregation, they will also join her. The records further reveal that she also entertained a fear and anguish that the petitioner may endanger her family members as he had threatened her with dire consequences and that was also a reason for the delay to set law in motion. Whether her

case is a concocted and not believable one, is matter to be decided in trial. Whether the ingredients of rape is there in the case has to be decided by the trial judge by assessing and evaluating the evidence as a whole. So, prima facie the delay in lodging the complaint and registration of the FIR after two years of the alleged incidents against the petitioner cannot be taken as a ground to conclude that there exists no ground to proceed against the petitioner.

31. Sri. Alex Joseph, the learned counsel for the petitioner again stressed on the point that the statements of the sister including her statement recorded under Section 164 Cr.P.C. are full of contradictions and that itself would show that he was falsely implicated in the case. It was also argued that in fact the Sister was having some unholy relationship with the husband of her cousin and when the petitioner came to know about the same, he had taken action against her and that provoked her to implicate him in this false case. So, according to him, sufficient materials are not available to frame charge against him for rape or for any kind of sexual harassment. Like that the allegation that she was threatened with dire consequences if she disclose anything to anyone are exaggerated stories just to cover up the allegation raised against her by her own cousin and she had never raised grievance before any person at any stage. It was also argued by the learned counsel for the petitioner that many relevant records

have not been placed by the prosecution and there are very serious infirmities in the investigation conducted and the contradictory statements and infirmities in investigation are sufficient to show that he was falsely implicated.

32. But on the other hand according to Smt.S. Ambika Devi, the learned Special Public Prosecutor, sufficient materials are available on record to proceed with the case and in fact the records disclose the existence of all the ingredients to constitute the alleged offences and thereby the discharge sought for by the petitioner without trial of the case can not be entertained at any cost.

33. The learned special public prosecutor also points out that the materials placed by the prosecution would prima facie shows that on all days mentioned by the Sister, this petitioner resided in the Guest Room of the Home. The entries in the chronicle maintained in the Home, recorded on day to day basis would prima facie reveals that the petitioner resided in the Guest Room attached to the Home on the relevant dates. So visits of the petitioner is clearly recorded in document. The trial Court has to carefully scrutinize all these relevant factors along with the other significant facts and circumstances in the case to find out the truthfulness and veracity of the allegation or otherwise.

34. A Nun is definitely not an ordinary woman. They lead a religious and ascetic life and they have many rules and

regulations to follow scrupulously. The position and the status of a Nun in our society who devote their whole life to the service of Almighty is definitely quite different and unique. Such a woman might have so many restrictions and hesitation and it will be difficult to disclose the evil activities to which she was subjected to, openly as an ordinary lady who is facing a similar trauma. The precarious situation of the Sister has to be taken into account prima facie to find that whether there are grounds for the delay in lodging a criminal complaint against her superior officer that too the Bishop who is the supreme authority of the congregation. The trial court is supposed to evaluate the evidence before the court on hearing the Sister, the victim as well the other witnesses cited by the prosecution. The entire circumstances have to be evaluated meticulously and whether the evidence adduced by the victim/Sister is reliable or not is a question to be decided by the court below after trial. The trial of a sessions case cannot be scuttled on the ground of contradictions in the statements of the victim. It is the bounden duty of the trial court to test the veracity of the witnesses and appreciate the valuable evidence by undergoing the process of scanning of the same with minute details and to consider the case on its own merits. When there are sufficient materials before the court to show a prima facie case to proceed against the petitioner, definitely he is not entitled for a discharge. A

reading of the section makes it amply clear that when there is sufficient ground for proceeding against the accused, he shall not be discharged at the threshold. Of course, Section 227 in the Cr.P.C. is seen incorporated so as to avoid wastage of the valuable time of the court and also to avoid an innocent person being tried before a court of law in the absence of sufficient materials. But when there are materials on record, a discharge cannot be allowed on the ground of certain contradictions or variation in the FIS or in the 164 statement recorded by the Magistrate. The key words of Section 227 are "not sufficient ground for proceeding". So only if prima facie no grounds exist to proceed with the case, a court is justified in discharging an accused. So in short, if only glaring circumstances are there to infer that sufficient materials have not been placed by the prosecution so as to proceed against an accused, he is entitled for a discharge without a trial of the case. Minor contradictions in the statement of the star witness, variation in the statement of the other witnesses cited by the prosecution or other glaring circumstances to have a mere suspicion of the prosecution case are not at all genuine ground to conclude that there are 'not sufficient grounds to proceeding' against the accused. So also the character and the antecedents of the victim are not at all a ground to doubt the prosecution case so as to hold that the accused is entitled for a discharge. When materials prima facie show that the accused

had committed the alleged offences, it is doubtless that he is not entitled for a discharge under Section 227 of the Code of Criminal Procedure. Like that if there is proper explanation regarding the delay in lodging the complaint there is no justification to look into the prosecution case with suspicious eyes, totally ignoring the dignity of the woman. Rape is the most revolting, cruel and hated crime to a woman. It is equally important that an innocent man should not be tried on an allegation of such a heinous crime. It is well settled that guilt or innocence of an accused is not determined at the time of framing of charge, only existence of a prima facie case is enough. Judge is not required to state or record reasons for framing charge, but should apply the judicial mind. Therefore, the various aspects involved in the case including the matter whether, it is probable that a person commits rape repeatedly on an elderly woman as alleged by the prosecution etc have to be meticulously evaluated by the trial court but not at this stage. It is doubtless that it is possible only after going through the process of trial of the case. So, also the position and status of the petitioner and the victim as well the fact that the petitioner is in a fiduciary capacity and had domain over the victim etc have also to be considered by the court after going through a full fledged trial. The peculiar circumstances of each case, the precarious situation of the victim, the dominating or commanding position of the offender

etc could be evaluated and appreciated independently only in trial. If such a case is thrown out at the threshold it will give a wrong message to the right thinking people in the society.

35. On a perusal of the entire records available before me, I am fully convinced that the court below has verified the records in the correct perspective and rendered a considered order as contemplated under Section 227 of the Code of Criminal Procedure and thereby concluded that sufficient materials are available on record to proceed against the petitioner. Therefore, I find absolutely no justifiable ground to interdict or interfere with the decision rendered by the court below. The order under challenge is only to be confirmed.

36. In view of the above discussions, I find that the grounds raised by the petitioner in this revision petition are not tenable and hence rejected.

37. Before parting with the case, I hereby clarify that the observations made are only for the purpose of disposal of this revision petition.

Dismissed as not admitted.

**sd/-**

**SHIRCY V.**

**JUDGE**

**sb**