
(1995) 02 BOM CK 0098

In the Bombay High Court

Case No : Criminal Revision Application No. 130 of 1994

Priya Sharan Maharaj alias Yadavendra Parashar and others APPELLANT
Vs

State of Maharashtra RESPONDENT

Date of Decision : 06-02-1995

Acts Referred:

Constitution of India, 1950 — Article 21

Criminal Procedure Code, 1973 (CrPC) — Section 157, 161, 173, 211, 212

Penal Code, 1860 (IPC) — Section 109, 114, 218, 34, 363

Citation : (1995) CriLJ 3683

Hon'ble Judges : B.U. Wahane, J

Bench : Single Bench

Advocate : Rajendra Singh, C. and Mr. Rizvy, for the Appellant; A.M. Gorde, Spl. P.P., for the Respondent

Judgement

This Judgment has been overruled by : State of Maharashtra Vs. Priya Sharan Maharaj and Others, AIR 1997 SC 2041 : (1997) CriLJ 2248 : (1997) 1 Crimes 275 : (1997) 4 JT 84 : (1997) 2 SCALE 687 : (1997) 4 SCC 393 : (1997) 2 SCR 933 : (1997) AIRSCW 1833 : (1997) 3 Supreme 73

1. Certain qualities of heart and mind excel men from others, because of their mesmerising effect on ordinary masses; reverence, high esteem, they are held elevate those mortal to honoured title of Saints. Saints like to see others happy because a saint is happy if he can make others happy.

Our past culture, tradition, religion, social habits have taught us to be friendly with fellow passengers in a bus or train and respect religious men, saint and Sadhus. Bus blind faith sometimes lands us in trouble. History is replete with deeds of Saints, recollections of which instills great solace and soccer to oppressed mankind; exceptions; however, mars the cosmic horizon of effulgence to one of reprehension and censure. Intermittently, media published stories under the captions viz. "Saint or Saitan", "From Sinner to Saint", "Sex fiend in Saffron" etc. Traversity of truth enacted thus dilutes the excellence and severely

damages moral fibre of the society of mankind in their civic grandeur .Thus blind faith sometimes lands us in trouble.

2. "Nari parmatma ka sabse bada jadu hai."

(Woman is one of an enigma in the creation of Almighty .

Women on the onset of civilisation and in the transient human compass ,gravitating from one end as utilitarian species of procreation and on the other end as nursing the incipient child to idealistic projection of power; talent in men and women, launching for successful culmination of held ideals in the civilisation, is a saga of great ethos in the history of civilisation, elevating women to reverence and regard with worshipful profusion in mother Durga and Mary in religious pantheon. Therefore, it is said,

"Yatranaryantu pujoyate, tatra ramante devataha"

(Where women are treated with reverence, there inhere the God with delight.)

Lack in either of them of the traits or profusion of lust alternatively casts degenerating shadow marring the otherwise calm and serene reverence to women.

A pretty female face, an alluring feminine figure with voluptuous curves was rendered as frequently then as now. "Frailty, thy name is woman" is spoken of sensual spell of women demobilising equanimity of even historic personages like sage Vishwamitra. On the face of tempting spell of enchantresses hardest sheath of high degree of equanimity of mind, not only of mortals are susceptible to passion but Gods seems to be hardly any better. Thus stated :

"Striya charitram purushasya bhagyam na dewoo janati krutoo manushyaha"

(Woman's character (Personal department) and man's fortune (favour by luck) are not even known to the God, what of men then".)

Transience of passion reflecting in such projection is hardly amenable to reasons and conditions of behaviour, thus obtained falls in the fringe twilight of logic of probabilities .

Ethos of moral uprightness is an ideal, excepted of both in men and women but degree of depravity ,debasement cannot be ruled out even in both irrespective of the status. Hence human nature and their disposition reflected in their behaviour as obtained through material on record in the instant case and arguments presented by the learned counsel of both sides needs circumspect view to draw inference.

2-A. The present revision application is against the order dt. 2nd May, 1994 passed by the 2nd Addl. Sessions Judge, Nagpur (presided over by Shri Q. J. Sheikh) in Sessions Trial No. 282 of 1992, rejecting the application filed by the applicants/accused for discharge. The applicant No. 2 Kripaluji Maharaj alias Shri Ramkripaluji Tripathi was charged for the offence punishable under S. 376 of the

Indian Penal Code (on five occasions) and other applicants were charged for the offences punishable under Ss. 109 and 114 read with S. 34 of the Indian Penal Code, for having abetted the applicant No. 2 in commission of the alleged rapes. The charges came to be framed by the 2nd Addl. Sessions Judge, Nagpur (Shri S. S. Sabne) on 8-11-1993 and the application for discharge came to be decided by the 2nd Addl. Sessions Judge, Nagpur (Shri Q. J. Sheikh) vide order dt. 2-5-1994.

Against the original order dt. 8-11-93 passed by 2nd Addl. S.J. (Shri Sabne), the applicants preferred Criminal Revision Application No. 189 of 1993 before this Court, which came to be rejected on 3-12-1993 with the following observation :

"Against the applicants, on 8-11-1993 the learned Additional Sessions Judge framed charges for offences punishable under Ss. 376, 109 and 114 read with S. 34 of the IPC. In the present application, purported to be under S. 397 read with S. 482 of the Cr.P.C., I heard Shri Rajendra Singh and Shri Mahesh Singh, the learned counsel for the petitioners. They mainly alleged that the charges as framed is derogatory to the mandate of S. 218 of the Code, as there was no prima facie material to frame the charges. However, it is reported that the applicants have not approached the learned Judge by filing a regular application in this behalf canvassing the grievance put forth. In view of this, I do not propose to entertain this revision application. The same is, therefore, rejected. However, the applicants are at liberty to approach the learned Judge for their grievances according to law."

In view of the aforesaid order passed by this Court, the applicants moved three applications before the trial Court. viz., Exh. 36 (annexure-B) dt. 30-11-1993 for modification of charges framed against the accused persons on 8-11-1993, exh. 37 (annexure-C) dt. 6-12-1993 for re-hearing on the point of discharge of the accused in view of the order passed by this Court dt. 3-12-1993, and exh. 40 (annexure-D) dt. 28-12-1993, for discharging the accused persons.

3. The brief facts giving rise to the present prosecution are that the applicant No. 2 Shri Kripaluji Maharaj is a person who has renounced the world and became a spiritual teacher. He has been treated by his disciples as incarnation of Lord Krishna. He moves from place to place. According to the applicant No. 2, he has devoted himself to the services of Almighty God and the society since last 50 to 55 years. He has thousands of followers in all over India to whom he propagates his thoughts for the betterment of the society. He used to visit several places all over India intermittently, delivering lectures on "Vedant Philosophy". According to him, normally once or twice in a year, he visits Nagpur city for several religious ceremonies. He has large Ashram in Brindawan as well as in Mrangarh in Uttar Pradesh, which is his home town. The applicant No. 1-Priya Sharan Maharaj is the Pracharak. The Ashram is also run by large number of disciples who work in honorary capacity. Several preachers are working in Nagpur area one of them was Niteen B. Pande, who was known as Nityanand, a resident of Dhantoli, Nagpur. Shri Purushottam Deshpande, resident of Dhantoli, Nagpur,

joined the cult of applicant No. 2 and became his disciple. After hearing the discourses of the applicant No. 2, Ku. Meera and Ku. Hema s/o Purushottam Deshpande were also attracted and both became disciples and pracharak of the philosophy of the applicant No. 2. Similarly, Shri Shyamsunder Pohankar, a resident of Dhantoli, Nagpur, was also the follower of the applicant No. 2. He sent his daughter Ku. Sulakshana Pohankar, aged 13 years to the Ashram of the applicant No. 2 Shri Kripaluji Maharaj.

4. On 10th May, 1994, Shri Purushottam Wasudeo Deshpande lodged report with the Police Station, Dhantoli, Nagpur, alleging that his two young daughters, namely Hema and Meera were kidnapped by the applicant No. 1 Priya Sharan Maharaj in connivance with one Sharvaridevi and Suhasini Narkhede. He further stated that his two daughters were attached for the last two years with the movements of Sanatan Dharma Shri Krishna Bhakti, under the auspicious of the applicant No. 1 i.e. Kripaluji Maharaj of Sadhna Bhawan Trust at village Managarh, District Pratapagarh (U.P.). On the basis of the report lodged by Shri Purushottam Deshpande, P.S.O., P.S. Dhantoli, Nagpur, registered an offence on 11-5-1991, punishable under Sections 363 and 366 of the Indian Penal Code, against the applicant No. 1 Shri Priya Sharan Maharaj, vide Crime No. 149/91. During the investigation, the statements of Hema and Meera came to be recorded. From the statements of these two girls, it is revealed that the applicant No. 2 Kripaluji Maharaj is highly immoral man so also greedy of money. Those who attended the discourses, used to be persuaded and prompted to bring their wives and daughters to attend the discourse of Kripaluji Maharaj. The applicant No. 2 has two female disciples or agents viz. Neelu Chourasia and Sarasvati Yadao, who used to entice the women and girls to attend the discourses as well as pursuing the women and girls to appear in a lonely place before the applicant No. 2. These two agents used to impress on the girls that the Maharaj is the incarnation of God. In the lonely place, according to Hema and Meera, Maharaj was most immoral and vulgar person who perforce used to commit sexual intercourse with the women and girls. Maharaj committed intercourse with them perforce. It was also impressed on their mind that it is nothing but a "Prasad" of God and they have been blessed accordingly. In spite of this, the girls continued to stay in the vicinity of the Ashram and thereby they had no other go than to succumb to the desire of the applicant No. 2. Therefore, according to these two girls named above, the applicant No. 2 Kripaluji Maharaj exploited the religious sentiments of the innocent girls in the name of God.

On the basis of the statements of Hema and Meera, the P.S.O., P.S. Dhantoli, Nagpur, altered the offence to Section 376 I.P.C. on 19-5-1991 in Crime No. 149/91.

5. During the investigation, statements of prosecutrix Ku. Sulakshana Pohankar, Ku. Meera and Ku. Hema Deshpande, and their parents, came to be recorded. The applicant No. 2 Kripaluji Maharaj and all the three prosecutrix were examined by the Medical Officer. After the investigation was complete, the

charge sheet came to be filed in the Court against the applicants.

6. According to the prosecution, the rape on the three prosecutrix was committed as follows :

- (1) September, 1986, on Ku. Hema.
- (2) Prior to 1987, on Ku. Meera d/o Purushottam Deshpande, aged 26 years;
- (3) On 16-1-1990, on Sulakshana Pohankar, aged 13 or 14 years;
- (4) On 14-4-1990, on Sulakshana Pohankar, aged 13 or 14 years;
- (5) In February, 1991, on Meera Deshapande.

7. Shri Gorde, the learned Special Prosecutor, raised a preliminary objection that the framing of charge being an interlocutory order, the present revision is not tenable as it is barred under the provision of section 397(2) of the Criminal Procedure Code. A reliance has been placed on the case of V.C. Shukla Vs. State through C.B.I., . Their Lordships in this case expressed that the order framing of charge is interlocutory and, therefore, appeal against the same is incompetent. In para 5, Their Lordships observed :

"It will be important to note that the words "interlocutory order" used in this sub-section relates, to various stages of the trial, namely, appeal, inquiry, trial or any other proceeding. The object seems to be to cut-down the delays in stages through which a criminal case passes before it culminates in an acquittal, discharge or conviction. So far as the Code of Criminal Procedure, 1973 is concerned, it has got a wide and diverse area of jurisdiction inasmuch as it regulates the procedure of trial not only of the large number of offences contained in the Indian Penal Code but also in other Acts and statutes which apply the Code of Criminal Procedure or which are statutes in pari materia the Code. Having regard, therefore, to the very large ambit and range of the Code, the expression "interlocutory order" would have to be given a broad meaning so as to achieve the object of the Act without disturbing or interfering with the fairness of the trial."

In the same para, Their Lordships observed :

"Appeal has been provided only against final orders and not against interlocutory orders. Instead of appeal, the Code of 1898 as also the Code of 1972 contained powers of revision which vested in the High Court to revise any order passed by a criminal Court It was well settled that the revisional jurisdiction possessed by the Sessions Judge and the High Court could be exercised only to examine the legality or propriety of the order impugned and more particularly the Courts were to interfere only if there was an error of law or procedure."

In para 7 on page 970, Their Lordships further observed :

"This Court took care to explain that in a situation with which the Judges were dealing in that particular case, it would not be proper to treat the order framing

charges as an interlocutory order pure and simple. Even though the order may be intermediate it could not be said to be final so as to bar the revisional jurisdiction of the High Court under S. 397(3) of the Code. We find ourselves in complete agreement with the exposition of the law by the learned Judges who decided the said case. We will deal with a broader and a wider aspect of the matter in a later part of our judgment when we deal with the scope and ambit of the Act. We might reiterate here even at the risk of repetition that the term "interlocutory order" used in the Code of Criminal Procedure has to be given a very liberal construction in favour of the accused in order to ensure complete fairness of the trial because the bar contained in S. 397(3) of the Code would apply to a variety of cases coming up before the Courts not only being offences under the Penal Code but under numerous Acts. If, therefore, the right of revision was to be barred, the provision containing the bar must be confined within the four corners of the spirit and the letter of the law. In other words, the revisional power of the High Court or the Sessions Judge could be attracted if the order was not purely interlocutory but intermediate or quasi final. The same, however, in our opinion, could not be said of the Special Courts Act which was meant to and criminals and the objective attained was quickest despatch and speediest disposal."

8. Repelling the submissions of Shri Gorde, it is submitted that the charge is not revisable, is not a correct proposition. Shri Rizwy, the learned counsel for the applicants, also placed reliance on the case of V.C. Shukla Vs. State through C.B.I., . In Shukla's case Special Court was constituted. The appeal was to Supreme Court and, therefore, the provisions of Section 397(2) of the Code of Criminal Procedure were not held applicable. The charges are not revisable in the case of special statute and not in respect of general provisions as laid down by the Lordships of the Supreme Court in the case of V. C. Shukla cited supra. A reliance has also been placed on the case of Madhu Limaye Vs. The State of Maharashtra, wherein Their Lordships observed that the bar u/s 397(2) will not operate to prevent the abuse of the process of the Court and/or to secure the ends of justice. The label of the petition filed by an aggrieved party is immaterial. The High Court can examine the matter in an appropriate case under its inherent powers. Their Lordships further observed :

"An order rejecting the plea of the accused on a point which, when accepted, will conclude the particular proceeding, will surely be not an interlocutory order within the meaning of Section 397(2). Amar Nath and Others Vs. State of Haryana and Another, , approved."

Further in para 13, Lordships observed :

"The impugned order in the instant case rejecting the application challenging the jurisdiction of the Court to proceed with the trial, even though it may not be final in one sense, is surely not interlocutory so as to attract the bar of sub-section (2) of Section 397."

In the case of Jarnail Singh Vs. State of Rajasthan, , referring the cases of V.C. Shukla Vs. State through C.B.I., and Madhu Limaye Vs. The State of Maharashtra, . The Full Bench of Rajasthan High Court held :

"An order framing charge is an order of moment. It deprives the liberty of a citizen and puts him to jeopardy of a trial. Such an order finally rejects the plea of the accused that he is entitled to discharge or that he is not liable to be tried. Such an order concludes the enquiry and the pre-trial proceedings against the accused. The order framing charge takes away a very valuable right of the accused. Hence an order framing charge is not an interlocutory order within the meaning of S. 397(2) and such an order is amenable to the supervisory jurisdiction of the Court of Session and the High Court u/S. 397(1), Cr.P.C."

Further in para 30, the Lordships observed :

"The provisions of S. 397, Cr.P.C. have to be considered in light of guarantee under Art. 21 of the Constitution. S. 397(1), Cr.P.C. provides for judicial review of orders of subordinate Courts by way of revision. S. 397(1) has been couched in the widest possible language. Provisions of S. 397(1) have to be construed liberally in favour of the citizen because it provides a protective and supervisory umbrella for reaching possible correctible injustice at the hands of sub-ordinate Courts. S. 397(2), Cr.P.C. is a fetter on this power and hence has to be confined to the letter and spirit of law. It was in this spirit that the various tests for formulating the true character of an order were modulated and power of supervision sought to be construed by these tests was widened and amplified by ascertaining a third class of orders, namely, intermediate orders, which are neither interlocutory nor final. Tested on the touchstone of Art. 21, S. 397(2), Cr.P.C. cannot be construed to include orders of moment, orders which take away of valuable right of the accused, though such orders may not conclude the entire controversy."

9. After giving conscious thoughts to the rival submissions of the counsel, according to me, there is no substance in the submissions of Shri Gorde, the learned Special Prosecutor. Under these circumstances, the present revision is maintainable.

10. Another preliminary objection raised by Shri Gorde, the learned Special Prosecutor, is to the effect that the application for discharge filed before the trial Court after framing the charge, is not tenable. Chapter VIII of Criminal Procedure Code, deals with trial before a Court of Session. According to the provisions of Section 226 of Cr.P.C., the prosecutor has to open the case for the prosecution by describing the charge brought against the accused and stating by what evidence he proposes to prove the guilt of the accused.

Section 227, Cr.P.C., deals with the discharge which reads as under :

"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 that there is not sufficient ground for proceeding against the accused, he shall discharge the accused and record his reasons for so doing."

Section 228, Cr.P.C. deals with the framing of charge. Considering the record and documents and hearing the accused, if the Judge is of the opinion that there is ground for presuming that the accused has committed an offence, he may frame charge against the accused.

Section 229, Cr.P.C. provides that after explaining the charge to the accused, if the accused pleads guilty, the Judge shall record the plea and may, in his discretion, convict him thereon.

Provisions of Section 230, Cr.P.C. says if the accused does not plead guilty and claims to be tried, the Judge shall fix the date for examination of witnesses.

Provisions of Section 231 Cr.P.C. deals with recording of the evidence for prosecution.

Provisions of Section 232 Cr.P.C. deals with the acquittal of the accused. It speaks that if after recording the evidence for the prosecution, examining the accused and hearing the prosecution and the defence on the point, the Judge considers that there is no evidence that the accused committed the offence, the Judge shall record an order of acquittal and that too before entering upon the defence by the accused.

11. After going through all these provisions of Criminal Procedure Code, according to learned Counsel for State, it is crystal clear that there is no provision to discharge the accused after the charge or charges are framed by the trial Court. After the charge is framed, the accused is entitled only for the acquittal and not for discharge. A reliance has been placed on the case of Ratilal Bhanji Mithani Vs. State of Maharashtra and Others, wherein in para 26 the Lordships observed :

"From the scheme of the provisions (i.e. the procedure for trial of warrant cases by Magistrate, given in Chapter XXI of the Code-Sections 252 to 258 of the Code) noticed above it is clear that in a warrant case instituted otherwise than on a police report "discharge" or "acquittal" of accused are distinct concepts applicable to different stages of the proceedings in Court. The legal effect and incidents of "discharge" and "acquittal" are also different. An order of discharge in a warrant case instituted on complaint, can be made only after the process has been issued and before the charge is framed. Section 253(1) shows that as a general rule there can be no order of discharge unless the evidence of all the prosecution witnesses has been taken and the Magistrate considers for reasons to be recorded, in the light of the evidence, that no case has been made out. Sub-sec. (2) which authorises the Magistrate to discharge the accused at any previous stage of the case if he considers the charge to be groundless, is an exception to that rule. A discharge without considering the evidence taken is

illegal. If a prima facie case is made out the Magistrate must proceed u/s 254 and frame charge against the accused. Section 254 shows that a charge can be framed if after taking evidence or at any previous stage, the Magistrate, thinks that there is ground for presuming that the accused has committed an offence triable as a warrant case."

Further in Para 27, Lordships observed :

"If after framing charges the Magistrate whimsically ,without appraising the evidence and without permitting the prosecution to produce all its evidence, "discharges" the accused, such an acquittal, without trial, even if clothed as "discharge," will be illegal. This is precisely what has happened in the instant case. Here, the Magistrate, by his order dated December 12, 1962, framed charges against Mithani and two others. Subsequently, when on the disposal of the Revision applications by Gokhale J. the record were received back, he arbitrarily deleted those charges and discharged the accused, without examining the "remaining witnesses" of the prosecution which he had in the order of framing charges said, "will be examined after the charge"."

In Para 26-A it is observed :

"Once a charge is framed, the Magistrate has no power u/s 227, or any other provision of the Code to cancel the charge, and reverse the proceedings to the stage of Section 253 and discharge the accused. The trial in a warrant case starts with the framing of charge; prior to it the proceedings are only an inquiry. After the framing of charge if the accused pleads not guilty, the Magistrate is required to proceed with the trial in the manner provided in Sections 254 to 258 to a logical end. Once a charge is framed in a warrant case, instituted either on complaint or a police report, the Magistrate has no power under the Code to discharge the accused, and thereafter, he can either acquit or convict the accused unless he decides to proceed under Sections 349 and 562 of the Code of 1892 (which correspond to Sections 325 and 360 of the Code of 1973)."

It is, thus, submitted by the learned Special Prosecutor for the State that while framing the charge, the Court has only to see that there is a prima facie case and if the statements taken on its face value coupled with other documents, makes out a probability of involvement of the accused. Once the charge is framed by the trial Court, High Court should not interfere by probing into sufficiency of grounds for conviction of the accused and ordering his discharge. A reliance has been placed on the case of Stree Atyachar Virodhi Parishad Vs. Dilip Nathumal Chordia and Another, . Before the Lordships, the case was of a bride-burning for dowry. The trial Court found a prima facie case and, therefore, framed charge against the accused. The High Court interfered and ordered for discharge. Their Lordships held as follows :

"Section 227, itself contains enough guidelines as to the scope of inquiry for the purpose of discharging an accused. It provides that "the judge shall discharge when he considers that there is no sufficient ground for proceeding against the

accused." The "ground" in the context is not a ground for conviction, but a ground for putting the accused on trial. It is in the trial, the guilt or the innocence of the accused will be determined and not at the time of framing of charge. The Court, therefore, need not undertake an elaborate inquiry in sifting and weighing the materials. Nor is it necessary to delve deep into various aspects. All that the Court has to consider is whether the evidentiary material on record, if generally accepted, would reasonably connect the accused with the crime."

Further it is observed :

"Section 227 which confers power to discharge an accused was designed to prevent harassment to an innocent person by the arduous trial or the ordeal of prosecution. The power has been entrusted to the Sessions Judge who brings to bear his knowledge and experience in criminal trials. If the Sessions Judge after hearing the parties frames a charge and also makes an order in support thereof, the law must be allowed to take its own course. Self-restraint on the part of the High Court should be the rule unless there is a glaring injustice staring the Court in the face."

Their Lordships also considered the case of Union of India (UOI) Vs. Prafulla Kumar Samal and Another, , as follows :

"In Union of India v. Prafulla Kumar Samal, Fazal Ali, J., summarised some of the principles : (SCR Pp. 234-35 : SCC p. 9 : SCC (Cri) pp. 613-14, Para 10) : (at p. 157-158 of Cri LJ)

(1) That the judge while considering the question of framing the charges u/s 227, of the Code 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 had been made out.

(2) 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.

(3) The test to determine a prime facie case would naturally depend upon the facts of each case and it is difficult to lay down a rule of universal application. By and large however 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 within his right to discharge the accused.

(4) That in exercising his jurisdiction u/s 227, of the Code the judge which under the present Code is a senior and experienced 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 appearing in the case and so on. This however does not mean that the judge should make a roving enquiry into

the pros and cons of the matter and weigh the evidence as if he was conducting a trial."

12. Shri Rajendra Singh, the learned senior counsel for the applicants/accused, vehemently submitted that the applicants were within their rights to approach the High Court under the provisions of Section 397(2) of the Cr.P.C. for quashing the charges framed against the applicants and therefore preferred the Criminal Revision Application No. 189 of 1993 which was rejected by this Court on 3-12-1994 granting liberty to the applicants to approach the learned trial Judge for their grievance as per law. The order passed by this Court is already reproduced in Para 2 above. In pursuance of the directions and liberty granted by this Court, three applications vide exhs. 36, 37 and 41 were filed. The learned trial Court (Shri Q. J. Sheikh) passed the impugned order on 2-5-1994 rejecting all the applications.

13. Similar situation was in the case of State of Maharashtra Vs. Dr. B.K. Subbarao and another, , wherein M. F. Saldanha, J., in para 8, referred the case decided by the Division Bench of this Court as under :

"A Division Bench of this Court in one of such proceedings, after the charges had been framed, directed the learned Sessions Judge before whom the matter was pending to reconsider the charges and Judge Patel on a reconsideration of the material before him dropped the charges u/s 3, of the Official Secrets Act and held that only a charge u/s 5, of the Official Secrets Act was maintainable."

In view of the directions given by this Court, the applications for modification of the charge and discharge were filed and, therefore, the submissions made by the learned counsel for the State being devoid of substance, are rejected.

14. Shri Rajendra Singh, Senior Counsel, for the applicants/accused, vehemently argued that charges framed against the applicants, are illegal and are in contravention of the Code of Criminal Procedure. According to the learned counsel, there is a violation of Section 218, of the Code of Criminal Procedure which requires that there shall be separate charge for every distinct offence and each charge shall be tried separately subject to the provisions of Sections 219, 220, 221 and 223 of the Code. It is further submitted that Section 219 of the Code permits an accused to be charged and tried for offences not exceeding three in number, provided these three offences are of the same kind and are alleged to have been committed within a space of 12 months from the first and the last. However, the charges framed being indiscriminate charges, are illegal and highly prejudicial to the applicants/accused. The learned senior counsel took me through the relevant provisions of Criminal Procedure Code, viz. Section 219, (corresponding old Section 234), Section 220, (corresponding old Section 235), Section 221, (corresponding old Section 236) and Section 222, (corresponding old Section 237).

15. Section 219, of the Code of Criminal Procedure reads as :

"(1) When a person is accused of more offences than one of the same kind committed within the space of twelve months from the first to the last of such offences, whether in respect of the same person or not, he may be charged with, and tried at one trial for, any number of them not exceeding three.

(2) Offences are of the same kind when they are punishable with the same amount of punishment under the same section of the Indian Penal Code (45 of 1860) or of any special or local law."

It is clear from the charges that they are framed for the commission of five offences of rape committed during the period from September, 1986 to February, 1991 on different prosecutrix. The alleged offences being committed at different places and on different prosecutrix, as also not within the space of 12 months period from the first to the last, it is in contravention of the provisions of Section 219, of the Code of Criminal Procedure, to join all the offences in one charge.

Section 220, of the Code of Criminal Procedure reads as follows :

"(1) If, in one series of acts so connected together as to form the same transaction, more offences than one are committed by the same person, he may be charged with, and tried at one trial for, every such offence.

(2) When a person charged with one or more offences of criminal breach of trust or dishonest misappropriation of property in sub-section (2) of Section 212, or in sub-section (1) of Section 219, is accused of committing, for the propose of facilitating or concealing the commission of that offence or those offences, one or more offences of falsification of accounts, he may be charged with, and tried at one trial for, every such offence.

(3) If the acts alleged constitute an offence falling within two or more separate definitions of any law in force for the time being by which offences are defined or punished, the person accused of them may be charged with, and tried at one trial for, each of such offences.

(4) If several acts, of which one or more than one would by itself or themselves constitute an offence, constitute when combined a different offence, the person accused of them may be charged with, and tried at one trial for the offence constituted by such acts when combined, and for any offence constituted by any one, or more, of such acts.

(5) Nothing contained in this section shall affect Section 71, of the Indian Penal Code (45 of 1860)."

Thus, this section permits one trial for several offences, if the alleged offences are committed by same person provided the acts form one series of acts so connected together as to form the same transaction. It is, therefore, argued that in the instant case, the offences though of the same nature, i.e. rape, but it being on different prosecutrix, at different places, and at different time said to form the same transaction, and, therefore, it cannot fall within the preview of

Section 220 of the Code.

Section 221, of the Code of Criminal Procedure has no application at all as it deals with entirely different matter. Similarly, the provisions of Section 223, of the Code are not applicable in this case, as the same deals with the clubbing of different accused persons in one trial.

16. On the basis of the provisions referred to above, Shri Rajendra Singh, the learned senior counsel for the applicants/accused, submitted that the charges have been framed in gross contravention of Sections 219 to 223 of the Code and, therefore, according to him, it would amount to denial of fair trial to the applicants, resulting in denial of justice. Regarding principles governing framing of charges, reliance has been placed on the following cases :

- (1) D.K. Chandra Vs. The State,
- (2) Aftab Ahmad Khan Vs. The State of Hyderabad,
- (3) Ghumand Singh v. State AIR 1955 Pep 43 : 1955 Cri LJ 560
- (4) C.N. Krishna Murthy Vs. Abdul Subban and Another,
- (5) M. Ramkrishna Menon Vs. Kerala State,
- (6) State of Karnataka Vs. M. Balakrishna,
- (7) Mynathil Mathai v. State of Kerala 1983 Crimes 429 : 1983 Cri LJ 25
- (8) Asaram Bhavandin Yadav Vs. State of Maharashtra,

There is no need to discuss all the cases referred to above. However, to clarify the legal position, few need to be considered.

In the case of D.K. Chandra Vs. The State, the accused was charged under S. 409, of the Indian Penal Code, for criminal breach of trust committed in respect of a sum of Rs. 2500/- on 12-4-1949 and in the alternative was charged under S. 420, Penal Code, for having cheated in respect of the same sum on the same day. He was also charged under S. 409, Penal Code, with having committed criminal breach of trust in respect of a sum of Rs. 900/- on 20-4-1949 and in the alternative with having cheated in respect of the same sum on the same day. The question was whether the joinder of these four charges at one trial was in accordance with law ? The Full Bench of this Court held :

"the joinder of four charges did not fall within any of the three exceptions laid down in S. 233 and, therefore, was contrary to law. Although the accused was charged with having committed only two acts, in respect of those two acts he was charged with having committed four offences, not of the same kind and, therefore, there was a clear contravention of S. 234(1). The two acts in respect of which the charges were framed being separate and distinct the joinder was also not justified under S. 235(1)."

In the case of Aftab Ahmad Khan Vs. The State of Hyderabad, , the Lordships observed as follows : (Para 9)

"Section 233, embodies the general law as to the joinder of charges and lays down a rule that for every distinct offence there should be a separate charge and every such charge should be tried separately."

In the case of Ghumand Singh v. State AIR 1955 Pep 43 : 1955 Cri LJ 560, it has been observed : (Para 5)

"Offences will be distinct if they fall under different Sections of the same penal enactment or under different enactments or when they are committed on different occasions or against different persons even though they may fall under the same section. The rule laid down in S. 233, Criminal P.C. of framing a separate charge for every "distinct offence" applies equally to cases in which the accused may be tried together for several offences under the provisions of Ss. 234 to 239."

In the case of C.N. Krishna Murthy Vs. Abdul Subban and Another, ,the accused was charged of falsification of accounts under S. 477-A, I.P.C. for misappropriating various sums within one month's period. Single charge of falsification of accounts to cover up defalcations by making false entries in various account books without mentioning particulars as to time and place of alleged offences is highly vague and does not comply with S. 233 and, therefore, it was held to be misjoinder of charges.

No doubt that in any case the defect could be cured u/s 464, of the Code of Criminal Procedure for the prevention of miscarriage of justice, if defect is of technical nature in the matter of framing charge. This aspect has been discussed in the case of Mynathil Mathai v. State of Kerala 1983 Crimes 429 : 1983 Cri LJ 25 as under :

"Held that no doubt, Section 464, provides a safety valve for the prevention of miscarriage of Justice which might otherwise result out of defects which are technical in nature in the matter of framing charge. It should not, however, be overlooked that the paramount consideration is the dispensation of justice, and nothing which would result in prejudice to the accused would or could be condoned by resort to Section 464, Criminal Procedure Code. This is an enabling provision to be invoked sparingly and in exceptional circumstances, not as a matter of course. It would be wrong to assume that Section 464, Criminal Procedure Code is meant to cover up every carelessness, omission or mistake on the part of the Judge in framing the charge. In this case, in terms of the charge, the accused was not asked to stand his trial on an allegation that he had committed robbery; he was only told that A 2 Babu had committed robbery in furtherance of the common intention of himself and A 2 Babu. It cannot, be therefore, be said that by the framing of the charge in this manner no prejudice was caused to the accused in his defence. We, therefore, accept the contention of Sri Scaria that the conviction and sentence passed by the learned Sessions

Judge against A-1 Sunny u/s 392, read with Section 34, Indian Penal Code is liable to be set aside."

17. Shri Gorde, the learned special prosecutor, controverting the submissions of the learned senior counsel for the applicants, referred to Sections 218, 219 and 220 of the Criminal Procedure Code. According to Shri Gorde, the learned counsel for the State, the applicant No. 2 is charged for committing the rape on three girls. The allegations being of rape committed on all three prosecutrix, the acts form one series of acts and so connected together as to form the same transaction and, therefore, joint trial is permissible. The learned counsel also relied on the case of Aftab Ahmad Khan Vs. The State of Hyderabad, wherein Their Lordships observed :

"The facts that the offence of extortion was committed at a different place and at a different time does not any the less make the act as one committed in the course of the same transaction."

What is meant by "same transaction," though not defined, has been explained by their Lordships of the Supreme Court in the case of State of Andhra Pradesh Vs. Cheemalapati Ganeswara Rao and Another, :

"What is meant by "same transaction" is not defined anywhere in the Code. Indeed, it would always be difficult to define precisely what the expression means. Whether a transaction can be regarded as the same would necessarily depend upon the particular facts of each case and it seems to us to be a difficult task to undertake a definition of that which the Legislature has deliberately left undefined. We have not come across a single decision of any Court which has embarked upon the difficult task of defining the expression. But it is generally thought that where there is proximity of time or place or unity of purpose and design or continuity of action in respect of a series of acts, it may be possible to infer that they form part of the same transaction. It is, however, not necessary that every one of these elements should co-exist for a transaction to be regarded as the same. But if several acts committed by a person show a unity of purpose or design that would be a strong circumstance to indicate that those acts form part of the same transaction. The connection between a series of acts seems to us to be an essential ingredient for those acts to constitute the same transaction and, therefore, the mere absence of the words "so connected together as to form" in Cls. (a), (c), (sic) and (d) of S. 239 would make little difference. Now, a transaction may consist of an isolated act or may consist of a series of acts. The series of acts which constitute a transaction must of necessity be connected with one another and if some of them stand out independently they would not form part of the same transaction but would constitute a different transaction or transactions. Therefore, even if the expression "same transaction" alone had been used in S. 235(1) it would have meant a transaction consisting either of a single act or of a series of connected acts."

18. Applicant No. 2 Kripaluji Maharaj is charged with the commission of five

offences of rape on Ku. Hema, Ku. Meera and Ku. Sulakshana Pohankar, at different places during the period from September, 1986 to February, 1991, Considering the period as stated by the prosecutrix, it cannot be said that there is a proximity of time or place or unity of purpose and design or continuity of action. Therefore, each offence will be a different offence. In view of the provisions of Section 219, of the Code of Criminal Procedure, three offences of the same nature or of the same kind if taken to be committed within a span of 12 months from the first and the last, only two offences alleged to have been committed by the applicant Nos. 2 Kripaluji Maharaj on 16-1-1990 and 14-4-1990 in respect of Ku. Sulakshana, can be tried together. The rape alleged to have been committed on Ku. Meera first prior to 1987 and subsequently in the month of February, 1991, cannot be said to be series or continuity of one action. Similarly, it is alleged that the applicant No. 2 Kripaluji Maharaj committed rape on Ku. Hema in September, 1986 and, therefore, these incidents cannot be roped or connected with the alleged sexual intercourse with the other prosecutrix. Therefore, there being no proximity of time, it cannot be construed as "same transaction."

Giving conscious thought to the submissions of the learned counsel of the parties, according to me, the charges clubbing all the five offences of rape in one, is nothing but illegality which will highly prejudice the trial.

19. Shri Rajendra Singh, senior counsel for the applicants vehemently submitted that even at the face value all the statements of the witnesses and documents placed on record, considering the infirmities and improbabilities, no material exists to indicate prima facie case or even to create suspicion against the accused requiring to frame charge for the offence of rape against the applicant No. 2 Kripaluji Maharaj and as also abetment or sharing the common intention against the other applicants/accused. Thus the learned trial Court has, according to the learned counsel, committed an error in framing charges against the accused.

In Century Spinning and Manufacturing Co. Ltd. and Others Vs. State of Maharashtra, , their Lordships said :

"Order framing the charges does substantially affect the persons and it is not possible to countenance the view that the Court must automatically frame the charge merely because the prosecution authorities, by relying on the documents referred to in Sec. 173, Cr.P.C. consider it proper to institute the case."

In the case of V.C. Shukla Vs. State through C.B.I., also this aspect was recognised. In the judgment at para 8 it is observed :

"There can be no doubt that the stage of framing charge is an important stage and the Court framing charge has to apply its mind judicially to the evidence or the material placed before it in order to make up its mind whether there are sufficient grounds for proceeding against the accused."

The Hon''ble Shri P. N. Singhal, J. in his dissenting judgment observed in Para 53 :

"The order for the framing of charge is also not an empty or routine formality. It is of a far-reaching nature, and it amounts to a decision that the accused is not entitled to discharge under S. 239, that there is, on the other hand, ground for presuming that he has committed an offence triable under chapter XIX and that he should be called upon to plead guilty to it and be convicted and sentenced on that plea, or face the trial. So an order for the framing of the charge is a serious matter for the accused for he is thereafter no longer a free man as he is put to trial according to the procedure."

The principles governing the framing of charges have been stated in the case of *Niranjan Singh Karam Singh Punjabi and Others Vs. Jitendra Bhimraj Bijja and others*, as under :

"It seems well settled that at the Ss. 227-228 stage i.e. state of framing the charge, 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."

In the case of *Asaram Bhavandin Yadav Vs. State of Maharashtra*, , His Lordship has elaborated the requirements of framing the charges as under :

"Chapter XVII of the Code of Criminal Procedure is quite explicit with regard to the principles relating to the constitution of a valid charge. Section 211 specifies the contents of charge generally, and lays down seven broad features that govern the basic structure of a valid charge viz., that the charge shall state the offence, the name or description of the offence or if the law does not specifically name the offence, so much of the definition as will give the accused notice of the charge with which he is charged, the law and the section of the law, the fact that the necessary legal conditions required by law to constitute the offence charged were fulfilled and further, that the charge shall be written in the language of the Court and that if the accused was previously convicted and is liable, by reason of such conviction, to enhanced punishment or to punishment of a different kind, the particulars of the previous offence. It is a further requirement as per Section 212, of the Code, that the particulars as to the time, place and person in respect of which the offence was committed be set out in a manner as reasonably sufficient to give notice to the accused of the matter with which he is charged. Furthermore, in those of the cases where the nature of the offence is such that the particulars mentioned aforesaid do not give the accused sufficient notice of the matter with which he is charged, it is necessary that the charge should contain such particulars of the manner in which the alleged offence was

committed. These are statutory pre-requisites which can neither be watered down nor by-passed because any defect in the charge would have serious repercussions on the validity of the trial. It is, however, true that u/s 216, of the Code, it is open to a Court to alter or add to any charge and the natural consequences followed, that if the accused is prejudiced by any such alteration, that the Court shall, if necessary, follow the procedure prescribed in Section 217, of the Code by recalling the witnesses.

In addition to these mandatory requirements, Section 218, of the Code very clearly specifies that there shall be a separate charge for every distinct offence with which a person is charged and that an accused shall be tried separately in respect of every such charge. Section 218, of the Code prescribes the situation in which three offences of the same kind within a year may be charged together, and Section 220, further prescribes that at one trial, an accused may be tried for more than one offence with the series of acts so connected together to form the same transaction."

It thus, means that while framing the charge, the Court has not to consider the evidence meticulously, but to sift the evidence to see whether the evidence is opposed to common sense or broad probabilities of the case.

20. Shri Gorde, the learned Special Prosecutor for the State, vehemently argued that while framing the charge, the Court has only to see from the evidence whether there is a probability of involvement of the accused. Framing of the charge is not the stage to evaluate and appreciate the evidence to make elaborate enquiry in establishing and weighing the evidence on record. Shri Gorde relied on the case of State of Bihar Vs. Ramesh Singh, . It is observed by the Lordships of the Supreme Court :

"Reading Ss. 227 and 228 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 S. 227 or S. 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."

20-A. Framing charge impinges upon the guarantee of protection of life and liberty enshrined in Article 21 of the Constitution of India. The Article mandates that no person shall be deprived of his life or personal liberty except according to the procedure established by law. "Procedure established by law" has been judicially construed as meaning a procedure which is reasonable, fair and just.

"Procedure established by law" cannot be whimsical, arbitrary or fanciful because all these are antitheses to fairness and justness. It deprives the liberty of a citizen and puts him to jeopardy of a trial. So an order of framing charge is a serious matter for the accused for he is thereafter no longer a free man. Therefore, duty cast on the Court framing charge that it has to apply its mind judicially to the evidence or material placed before it considering the infirmities and improbabilities if any, in order to make up its mind whether there are sufficient grounds for proceeding against the accused.

21. Both the learned counsel took me through the statements of all the witnesses and other documents placed on record along with the charge-sheet. Those are -

(1) Police Statement of Ku. Sulakshana minor girl, which came to be recorded on 25-5-1991.

(2) Statement of Shyamsundar Pohankar father of Sulakshana, recorded by Police u/s 161 Cr.P.C. on 16-5-1991.

(3) Statement of Hema alias Brij Gauri, daughter of Purushottam Deshpande, aged 24 years, recorded on 12-5-1991.

(4) Statement of Meera, daughter of Purushottam Deshpande, aged 27 years, recorded on 15-5-1991.

(5) The report lodged by Purushottam Deshpande at Dhantoli Police Station, Nagpur on 10-5-1991, wherein he has stated that his daughters have been kidnapped.

(6) Statement of Sunanda Purushottam Deshpande recorded on 15-5-1991.

(7) Statement of Nityanand alias Milind Vasantrao Pande, recorded on 11-5-1991.

Besides the aforesaid statements, the reports of medical examinations and other documents were also brought to my notice. According to the medical reports, Ku. Sulakshana was examined by doctor on 30-9-1991 whereas Ku. Meera and Ku. Hema were examined on 17-9-1991. Applicant No. 2 Kripaluji Maharaj was examined on 28-9-1991.

22. According to the learned Senior Counsel for the applicants, except the bare words of the prosecutrix, viz. Ku. Sulakshana, Ku. Meera and Ku. Hema there is no corroboration to support their contentions. There is no medical evidence to support the case of three prosecutrix regarding the rape. Secondly, none of the prosecutrix made any complaint against the applicant No. 2 Kripaluji Maharaj at any stage either to their parents, relation or any inmates of Ashram or disciples till their statements were recorded during the investigation. Thirdly, even in the report lodged by Purushottam Deshpande father of Ku. Hema and Ku. Meera, on 10-5-1991, on the basis of which the offence was registered initially under Sections 363 and 366 of I.P.C., there is no whisper alleging rape on his daughters.

23. The learned Senior Counsel further brought to my notice the other circumstances to demonstrate that the case is concocted one against the applicant No. 2 and his disciples, at the instance of Nityanand who was disrobed of his yellow robe of preacher and whose hairs were cut and was turned out of the Ashram. Though Nityanand informed Shyamsundar Pohankar (father of Sulakshana) on 10-2-1991 that his daughter had been raped, yet Shyamsundar Pohankar clerk working in Nagpur University, did not lodge any report against the applicant No. 2 regarding the rape.

24. After careful perusal of the statements of the prosecutrix, their parents and Nityanand, according to me, except the bare words of three prosecutrix, there is nothing on record to draw inference that the applicant No. 2 Kripaluji Maharaj had committed rape on all the three prosecutrix against their will. In his statement Nityanand stated that one Swati had seen the sexual intercourse with Ku. Sulakshana, however, there is no statement of said Swati on record.

25. According to the prosecution, Ku. Sulakshana was initially molested on 16-1-1990 and again on 14-4-1990, when she was hardly 13 years of age. It has been rightly stated by Shri Rajendra Singh, Senior Counsel for the applicants, that she being minor her hymen would have been internally turned in the coitus. She would bleed profusely and her garments would show tell-tale blood stains. According to her own statement, initially the applicant No. 2 committed sexual intercourse for 10 minutes and thereafter, he committed natural and unnatural coitus for about an hour. After withdrawal of the male organ, the white liquid came out of her private part. According to her, she felt great pain. The medical report dt/- 30-9-1991 shows that hymen found torn at 11 O'clock position. According to the doctor, no definite opinion was possible whether the patient had undergone intercourse.

The medical report in respect of the applicant No. 2 Kripaluji Maharaj shows that at the time of his examination i.e. on 29-9-1991, he was 69 years old. He is a patient of hyper-tension and taking regular treatment for the same. His penis was found well developed.

Under these circumstances, if the elderly grown up person having a well developed penis, committed sexual intercourse for such a long period as stated by Ku. Sulakshana, naturally she would have received injury and would have found difficulty in walking. At this stage, it needs to refer Modi's Text-book of Medical Jurisprudence and Toxicology, 20th Edition. On page 337, it is observed :

"In girls under fourteen years of age the vaginal orifice is usually so small that it will hardly allow the passage of the little finger through the hymen. As a result of complete sexual intercourse, the hymen is usually lacerated having one or more radiate tears, the edges of which are red, swollen and painful, and bleed on touching Frequent sexual intercourse and parturition completely destroy the hymen, which is represented by several small granular stages of tissue, called carunculous hymeneals or myrtiformes."

According to the statement of Ku. Sulakshana, her father came to fetch her and she went to her home with her father in the evening. But no abnormality was noticed either by her father or mother on both the occasions on 16-1-1990 and 14-4-1990 when she was alleged to have been subjected to molestation. Similarly, she did not disclose about the incidents to her parents. On enquiry being made by her father as to how she spent the day, she replied that she had been in the company of her girl friends. She continued to visit Maharaj. If Maharaj would have behaved in the manner painted by the prosecution, the young girl of tender age would have definitely and flatly declined to visit Maharaj again and would have avoided herself to go to MaharaJ.

26. The other two prosecutrix viz. Hema and Meera were matured and major when they left the shelter of their parents in the year 1986/1987 to join the applicant No. 2 Kripaluji Maharaj. According to their statements, their parents became disciples of the applicant No. 2 Kripaluji Maharaj in the year 1981 and Kripaluji Maharaj used to come to their house. Ku. Meera and Hema both are graduates Meera being B.Com, while Ku. Hema alias Brij Gauri B.A. According to them, they became the disciples of the applicant No. 2 Kripaluji Maharaj and also travelled from place to place to deliver lectures of the cult of Maharaj. According to the statement of Ku. Meera, while she was at Mangarh for about 8 days in the month of September, 1987, she was called to the room of Maharaj through Neelu Chaurasia, where Maharaj kissed, fondled and committed rape on her despite her protest and struggle. However, according to her statement only, she did not raise hue and cry. Again she became victim of rape in the month of February, 1991. According to Hema, the applicant No. 2 had committed rape on her in the month of September, 1986 in the house of one Chaurasia near Vijay Talkies, Nagpur.

From the statements of both the prosecutrix, it is aptly clear that even though both are real sisters, they did not disclose to each other about any indecent act or molestation. So also till their statements were recorded by the Police, on their own, they did not come forward to disclose the indecent acts committed by the Maharaj and expose him as devil in the garb of incarnation of God.

According to medical reports of prosecutrix Meera and Hema, hymen found torn, patulam irregular and easily admits two fingers. Further doctor opined that the clinical findings are inconclusive. However, there is a possibility that the intercourse was done. But not possible to opine when the intercourse was done.

27. The learned counsel further submitted that considering the statements of the prosecutrix and the medical reports, it is difficult to keep reliance on the bare statements of them without any corroboration. A reliance has been placed on the case of Ram Murti Vs. State of Haryana, , wherein it is observed :

"Keeping in view the medical evidence which shows that the prosecutrix had been used to sexual intercourse, in order to accept her statement that she was compelled, threatened or otherwise induced to go with the appellant, there should, in our opinion, be corroboration of some material particular from some

independent source and her bare statement cannot be considered sufficient to sustain the appellant's conviction."

It is further submitted that though the victim of rape is not considered as an accomplice, the evidence of the victim in rape case is to be treated almost like the evidence of an accomplice requiring corroboration, particularly in the cases of grown up and married women. A reliance has been placed on the case of Sheikh Zakir Vs. State of Bihar, . Their Lordships observed as under : (Para 9)

"Even though a victim of rape cannot be treated as an accomplice, the evidence of the victim in a rape case is to be treated almost like the evidence of an accomplice requiring corroboration. Hence there must be an indication in the course of the judgment that the Judge had this rule in his mind when he prepared the judgment and if in a given case the Judge finds that there is no need for such corroboration he should give reasons for dispensing with the necessity for such corroboration. But if a conviction is based on the evidence of a prosecutrix without any corroboration it will not be illegal on that sole ground. In the case of a grown-up and married woman it is always safe to insist on such corroboration. Wherever corroboration is necessary it should be from an independent source but it is not necessary that every part of the evidence of the victim should be confirmed in every detail by independent evidence. Such corroboration can be sought from either direct evidence or circumstantial evidence or from both."

A reliance has also been placed on the case of Bharwada Bhoginbhai Hirjibhai Vs. State of Gujarat, , wherein, in para 9, the circumstances have been incorporated in respect of the western society where a female may level false acquisition as regard sexual molestation. The factors quoted in para 9 are not relevant to India, made to the effect that Rarely a girl or woman in India make false allegations of sexual assault, on account of the factors elaborated in para 10.

In para 11, Their Lordships also laid down the ratio as follows :

"We are therefore of the opinion that if the evidence of the victim does not suffer from any basic infirmity, and the "probabilities-factor" does not render it unworthy of credence, as a general rule, there is no reason to insist on corroboration except from the medical evidence, where, having regard to the circumstances of the case, medical evidence can be expected to be forth coming."

A reliance has also been placed on the case of State Government, Madhya Pradesh v. Sheodayal Gurudayal AIR 1956 Nag 8 : 1956 Cri LJ 83. In para 6, Lordships held as follows :

"The test as to whether corroboration is necessary lies in the naturalness of the story deposed to by the prosecutrix. If there is any doubt as regards its genuineness, there is the need of caution, and therefore, of corroboration."

28. The learned Senior Counsel for the applicants, further submitted that in the instant case the entire story regarding the involvement of the applicants is based

on solitary or single witness i.e. each prosecutrix in respect of different offence at different time and place. Unless and until there is sterling testimony of a competent and honest person, no conviction can be based. A reliance has been placed on the case of Shivaji Sahabrao Bobade and Another Vs. State of Maharashtra, , Their Lordships observed as follows :

"In our view there is only one eye-witness, PW-5, Vilas. Even if the case against the accused hangs on the evidence of a single eye-witness it may be enough to sustain the conviction given on sterling testimony of a competent, honest man, although as a rule of prudence Courts call for corroboration. It is a platitude to say that witnesses have to be weighed and not counted since quality matters more than quantity in human affairs."

29. The learned counsel for the applicants strenuously argued that in the instant case there is unreasonable delay in lodging F.I.R. against the applicants and also levelling allegations of rape first time in statements u/s 161, Cr.P.C. The only explanation which could be gathered from the statement of the witnesses is that the applicant No. 2 directed them not to disclose to their parents or others, the act being "Prasad" of God and it be taken as blessings. According to the prosecution, even if they would have disclosed or narrated the devilish activities of Maharaj, none including their parents, would have believed them as everyone including themselves, were treating Kripaluji Maharaj as incarnation of God. No circumstance find place in any of the statements of the witnesses to change their faith and view. Thus even lay man of prudence will not accept such explanation. Delay in all respects considered as fatal to the prosecution.

30. Shri Gorde, the learned counsel for the State, countering the submissions of the learned Senior Counsel for the applicants, submitted that in each and every case of rape or molestation, corroboration is not an universal rule or a condition for judicial reliance because the fact and circumstances often vary from case to case, the crime situation and the myriad psychic factors, social conditions and people's life styles may fluctuate, and so, rules of prudence relevant in one fact-situation may be inept in another. Reliance is placed on the case of Rafiq Vs. State of U.P., . In the case, it was contended in absence of corroboration of the testimony of the prosecutrix that there was absence of injuries on the person of the women, though alleged that she was raped by appellant Rafiz and three others during the night of 22nd and 23rd August, 1971, and so the concurrent findings of conviction was unsustainable, tested on the touchstone of case-law, referring the case of Pratap Misra and Others Vs. State of Orissa, , Hon"ble Krishna Iyer, J. observed in para 5 as :

"Corroboration as a condition for judicial reliance on the testimony of prosecutrix is not a matter of law, but a guidance of prudence under given circumstances. Indeed, from place to place, from age to age, from varying life styles and behavioural complexes, inferences from a given set of facts, oral and circumstantial, may have to be drawn not with dead uniformity but realistic diversity test rigidity in the shape of rule of law in this area be introduced

through a new type of precedential tyranny. The same observation holds good regarding the presence or absence of injuries on the person of the aggressor or the aggrieved."

In the case of Krishan Lal Vs. State of Haryana, it was agitated that the evidence of the prosecutrix, without substantial corroboration, was inadequate to rest a conviction u/s 376, I.P.C. Hon"ble Mr. Krishna Iyer, J. while dismissing the special leave petition, in para 4 observed :

"We must bear in mind human psychology and behavioural probability when assessing the testimonial potency of the victim's version. What girl would foist a rape charge on a stranger unless a remarkable set of facts or clearest motives were made out ? The inherent bashfulness, the innocent naivete and the feminine tendency to conceal the outrage of masculine sexual aggression are factors which are relevant to improbably the hypothesis of false implication. The injury on the person of the victim, especially her private parts, has corroborative value. Her complaint to her parents and the presence of blood on her clothes are also testimony which warrants credence. More than all, it baffles belief in human nature that a girl sleeping with her mother and other children in the open will come by blood on her garments and injury in her private parts unless she has subjected to the torture of rape. And if rape has been committed, as counsel more or less conceded, why, of all persons in the world, should the victim hunt up the petitioner and point at him the accusing finger ? To forsake these vital consideration and go by obsolescent demands for substantial corroboration is to sacrifice commonsense in favour of an artificial concoction called "Judicial" probability. Indeed, the court loses its credibility if it rebels against realism. The law Court is not an unnatural world."

31. What is shocking is that in spite umpteen statutes, in India, victimisation of woman in rape and molestation of woman is an every day affair. Hardly a day passes without one reading in newspapers about this. Woman victims have also by and large accepted their situations as part of the life and learnt to live with criminal infraction their rights and indignities without protest. In spite of many beneficial legislations and judicial decisions to fortify protection of women rights, the status of half the population consisting of the female sex, is increasingly vulnerable to exploitation and discrimination. Whenever a person having position or influence in the society take liberty with such girls and commits sexual intercourse, such act of the accused could be termed as "custodial rape".

32. It will not be out of place to mention that woman has been given a position of pride in every religion. It has been rightly pointed out by the learned persons that women have been and will always be what the men make them. At this stage, it will not be out of place to reproduce a para from the book Female Criminals and Female Victims, edited by Leelamma Devasia and V. V. Devasia, The author said as under :

"Sexual victimization of women occupy a significant place in the penal statutes of

every country (Singhi, 1982), the most shocking crimes against human conscience and morality are sexual crimes against women (Kaur, 1982). Rape is one of the most damaging and heinous crimes. It is the most serious offence against the dignity and modesty of women. Rape is the only crime in which the victim feels more degraded and socially unacceptable. It has been often described as a deathless shame, or "Living death". It does not only victimize her, but it also leaves a lifelong stigma on the character and dignity of a woman causing her and her relatives of irreparable pain and agony. The mental torture is so deep that it hardly heals and if it heals at all, it takes a very long time to heal. The woman generally suffers in silence and endures in shame. The victim and her relatives take every possible care to conceal it, instead of exposing it and bringing the accused to book. In case of unmarried woman, her life becomes miserable and chances of marriage are ruined and she is treated as an outcaste. The married woman loses the love of her husband and her restoration in the family is jeopardised.

The rape brings humiliation not only to the woman concerned but to the entire family, therefore every attempt is made to avoid further exposure by not reporting to the law enforcement agency. It is for this reason that many cases of rape, particularly in the upper and upper middle classes are not reported to the police, as it is believed approaching to the criminal justice system, will make the matter a public one."

33. Considering the facts of the case, I am reminded of the words of Shakespeare, litterateur of eminence ,said as follows :

"Chastity is the jewel of women and every house bequeathed down from many ancestors."

It is rightly said that it was dinned into us that virginity is something which lady must keep at all costs. It will not be out of place to reproduce the observations of Their Lordships made in the case of State of Maharashtra Vs. Chandraprakash Kewalchand Jain, , referring the case of Bharwada Bhoginbhai Hirjibhai Vs. State of Gujarat, of the judgment in the case of State of Maharashtra Vs. Chandraprakash Kewalchand Jain, it is reproduced as under :

"In the Indian setting, refusal to act on the testimony of a victim of sexual assault in the absence of corroboration as a rule is adding insult to injury. Why should the evidence of the girl or the woman who complains of rape or sexual molestation be viewed with the aid of spectacles fitted with lenses tinged with doubt, disbelief or suspicion ? To do so is to justify the charge of male chauvinism in a male dominated society. We must analyse the argument in support of the need for corroboration and subject it to relentless and remorseless cross-examination. And we must do so with a logical, and not an opinionated, eye in the light of probabilities with our feet firmly planted on the soil of India and with our eyes focussed on the Indian horizon. We must not be swept off the feet by the approach made in the Western world which has its own social milieu,

its own social mores, its own permissive values, and its own code of life. Corroboration may be considered essential to establish a sexual offence in the backdrop of the social ecology of the Western world. It is wholly unnecessary to import the said concept on a turnkey basis and to translate it on the Indian soil regardless of the altogether different atmosphere, attitudes, more, responses of the Indian society, and its profile. The identities of the two worlds are different. The solution of problems cannot therefore be identical."

Proceeding further this Court said (Para 10) :

"Without the fear of making too wide a statement, or of overstating the case, it can be said that rarely will a girl or woman in India make false allegations of sexual assault The statement is generally true in the context of the urban as also rural society. It is also by and large true in the context of the sophisticated, not so sophisticated, and unsophisticated society. Only very rarely can one conceivably come across an exception or two and too possibly from amongst the urban elites. Because :

(1) A girl or a woman in the tradition bound non permissive Society of India would be extremely reluctant even to admit that any incident which is likely to reflect on her chastity had ever occurred. (2) She would be conscious of the danger of being ostracised by the Society or being looked down by the society including by her own family members, relatives, friends and neighbours. (3) She would have to brave the whole world. (4) She would face the risk of losing the love and respect of her own husband and near relatives, and of her matrimonial home and happiness being shattered. (5) If she is unmarried, she would apprehend that it would be difficult to secure an alliance with a suitable match from a respectable or an acceptable family. (6) It would almost inevitably and almost invariably result in mental torture and suffering to herself. (7) The fear of being taunted by others will always haunt her. (8) She would feel extremely embarrassed in relating the incident to others being overpowered by a feeling of shame on account of the upbringing in a tradition bound society where by and large sex is taboo. (9) The natural inclination would be to avoid giving publicity to the incident lest the family name and family honour is brought into controversy. (10) The parents of an unmarried girl as also the husband and members of the husband's family of a married woman would also more often than not, want to avoid publicity on account of the fear of social stigma on the family name and family honour. (11) The fear of the victim herself being considered to be promiscuous or in some way responsible for the incident regardless of her innocence. (12) The reluctance to face interrogation by the investigating agency, to face the Court, to face the cross-examination by counsel for the culprit, and the risk of being disbelieved, act as deterrent "

34. The learned Senior Counsel for the applicants, strenuously contended that considering the cumulative effect of all the statements or in totality, no suspicion what of grave suspicion, could be inferred against the applicant No. 2 Kripaluji Maharaj and his other disciples. There are no sufficient grounds to proceed

against the applicants. If the accusations are groundless, the accused deserve to be discharged, than curtailing their liberty and to face the rigours of the trial. Therefore, the trial Judge before framing the charges, has to evaluate and sift the evidence if it is found opposed to the common sense or the broad probabilities of the case. It does not mean that the evidence be meticulously appreciated. A reliance has been placed on the case of Niranjana Singh Karam Singh Punjabi and Others Vs. Jitendra Bhimraj Bijja and others, . In para 5, it has been observed that :

"Section 227, introduced for the first time in the New Code, confers a special power on the Judge to discharge an accused at the threshold if upon consideration of the record and documents he considers "that there is not sufficient ground" for proceeding against the accused. In other words his consideration of the record and document at that stage is for the limited purpose of ascertaining whether or not there exists sufficient grounds for proceeding with the trial against the accused. If he comes to the conclusion that there is sufficient ground to proceed, he will frame a charge u/s 228, if not he will discharge the accused. It must be remembered that this section was introduced in the Code to avoid waste of public time over cases which did not disclose a prima facie case and to save the accused from avoidable harassment and expenditure."

The Lordships have also given the various norms regarding the consideration of evidence at the time of framing the charge in para 6 as under :

"(1) That the Judge while considering the question of framing the charges u/s 227, of the Code 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.

(2) 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.

(3) The test to determine a prima facie case would naturally depend upon the facts of each case and it is difficult to lay down a rule of universal application. By and large however if two views are equally possible and the Judge is satisfied that the evidence adduced before him while giving rise to some suspicion but not grave suspicion against the accused he will be fully within his right to discharge the accused.

(4) That in exercising his jurisdiction u/s 227, of the Code of Judge which (sic) under the present Code is a senior and experienced Judge cannot act merely as a post office or a mouth-piece 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 appearing in the case and so on. This however does not mean that the Judge should make a roving enquiry into the pros and cons of the matter and weigh the evidence as if he was conducting

a trial".

A reliance has also been placed on the case of State of Karnataka Vs. L. Muniswamy and Others, , Their Lordships observed as follows :

"On the other hand, the decisions cited by learned counsel for the respondents in Vadilal Panchal Vs. Dattatraya Dulaji Ghadigaonker and Another, and Century Spinning and Manufacturing Co. Ltd. and Others Vs. State of Maharashtra, show that it is wrong to say that at the stage of framing charges the Court cannot apply its judicial mind to the consideration whether or not there is any ground for presuming the commission of the offence by the accused. As observed in the latter case, the order framing a charge affects a person's liberty substantially and therefore it is the duty of the Court to consider judicially whether the material warrants the framing of the charge. It cannot blindly accept the decision of the prosecution that the accused be asked to face a trial. In Vadilal Panchal's case Section 203, of the old Code was under consideration, which provided that the Magistrate could dismiss a complaint, if after considering certain matters mentioned in the section there was in his judgment no sufficient ground for proceeding with the case. To an extent S. 277, of the new Code contains an analogous power which is conferred on the Sessions Court. It was held by this Court, while considering the true scope of S. 203, of the old Code that the Magistrate was not bound to accept the result of an enquiry or investigations and that he must apply his judicial mind to the material on which he had to form his judgment. These decisions show that for the purpose of determining whether there is sufficient ground for proceeding against an accused the Court possesses a comparatively wider discretion in the exercise of which it can determine the question whether the material on the record, if unrebutted, is such on the basis of which a conviction can be said reasonably to be possible".

35. Considering the facts and circumstances as obtained in the instant case, I am reminded of the learned observation of their Lordships while discussing or reflecting on the criminal cases. In the case of The State of Punjab Vs. Jagir Singh, Baljit Singh and Karam Singh, , which is reproduced below :

"A criminal trial is not like a fairy tale wherein one is free to give flight to one's imagination and phantasy. It concerns itself with the question as to whether the accused arraigned at the trial is guilty of the crime with which he is charged. Crime is an event in real life and is the product of interplay of different human emotions. In arriving at the conclusion about the guilt of the accused charged with the commission of a crime, the Court has to judge the evidence by the yardstick of probabilities, its intrinsic worth and the animus of witnesses. Every case in the final analysis would have to depend upon its own facts. Although the benefit of every reasonable doubt should be given to the accused, the Courts should not at the same time reject evidence which is ex facie trustworthy on grounds which are fanciful or in the nature of conjectures."

36. Giving conscious thought to the rival submissions of the learned counsel for

the parties, it is abundantly clear that except the statements of prosecutrix, there is no evidence direct or indirectly to corroborate their testimonies. According to Ku. Sulakshana she was molested initially on 16-1-1990 and subsequently on 14-4-1990 however, there is no disclosure to anyone including her parents. Considering her age at the relevant time, no injuries were found as indicated by Modi. Similarly though Ku. Meera alleged that she was molested prior to 1987 and in February, 1991, instead of disclosing the nefarious activities of Maharaj continued to stay in the company of the applicant No. 2 Kripaluji Maharaj and his disciples. She not only continued her stay with them but moved from place to place to preach the tenets of the cult of Kripaluji Maharaj. Similarly, though it is alleged by Ku. Hema and she was molested in the month of September, 1986, she too continued to remain with Maharaj. Even it is not the case of the prosecution that these two sisters disclosed about the indecent activities of Kripaluji Maharaj amongst themselves. Meera and Hema both are graduates and Ku. Sulakshana was adolescent. It cannot be expected from such educated girls to continue to accompany the person who according to them, proved to be demon and to continue in his cult propagating his teachings. The conduct of all three girls not being in consonance with normal dispositions of prudent human-beings, corroboration thus, becomes a necessity or eminent. Taking broad view of the matter, particularly various infirmities and improbabilities, no man of prudence will give any importance to the story unfolded. It is, thus, clear that except the bare words of these three girls, there is no other evidence to corroborate their story. Anything said by victim at or about the time of occurrence, to their parents and/or others, would form part of res-gestae. Such conduct can be a corroborative piece of evidence of her/their evidence. In other words, subsequent conduct not only is relevant but important and material.

These three girls levelled allegations against the applicant No. 2 Kripaluji Maharaj after the lapse of considerable time i.e. after months and years and, therefore, the probability as depicted by the defence that it was at the instance of Nityanand, cannot be overruled. It needs mention that no report was lodged by either of the girls at any time. It is also clear from the record that Nityanand's statement which was recorded on 11-5-1991 i.e. on the day on which the F.I.R. was lodged by Purushottam Deshpande. Subsequently only the statements of all the three prosecutrix came to be recorded. Even in the F.I.R. there is no whisper that at any time, the applicant No. 2 had committed rape on any of the prosecutrix or on any other disciples.

So the evidence does not become reliable merely because it has been corroborated by a number of witnesses of the same brand. This aspect has been considered by the Lordships of the Supreme Court in the case of Muluwa and Others Vs. The State of Madhya Pradesh, , observing as under :

"The evidence of an infirm witness does not become reliable merely because it has been corroborated by a number of witnesses of the same brand; for,

evidence is to be weighed not counted."

37. The case relied upon by the Counsel for Rafiq Vs. State of U.P., is not applicable at all because the facts of that case and the case in hand are altogether different. In the case which was before their Lordships, the prosecutrix Draupadi was a middle aged Bal Sewika in village welfare organization. Rafiz and three others committed rape on her between the night of 22nd and 23rd August, 1971 while she was sleeping in a girls school. Next morning the victim related the incident to the Mukhiya Sewaka of the village. A report was made to the Police Station of August 23, 1971 at mid-day. Investigation followed. Although some of the witnesses, tell-tale fashion shifted their loyalty and betrayed the prosecution case, the trial Court entered a finding of guilt against the appellant, giving the benefit of doubt to the other three obscurely.

In the case in hand, no immediate disclosure to any one including parents and report to police. Therefore, the case cited supra is not of any assistance to prosecution.

Similarly, the other case of Krishan Lal Vs. State of Haryana, is also not applicable the facts being different.

It is true that a sexual offence is very easy to allege for a woman and very difficult to refute for the accused. Therefore, it is expected that immediately after the incident of molestation or rape, a report to the Police is lodged. The F.I.R. in a criminal case is an extremely vital and valuable piece of evidence. On account of delay, the report not only gets benefit of the advantage of spontaneity; but danger creeps in of the introduction of coloured version, exaggerated account or concocted story as result of deliberation and consultation. Delay in all respects like lodging of F.I.R., sending the copies of the F.I.R. to Magistrate u/s 157, Cr.P.C., disclosing incident immediately, recording statements u/s 161, Cr.P.C., in identification, examining the victim of rape or molestation by doctor etc. always considered fatal to the prosecution doubting the story put forth by the prosecution. In some case delay of few minutes or hours has been considered fatal. Some cases need to be mentioned :

(1) In a case of M. Mohmmmed v. State of Karnataka 1978 Cri LJ 17, because of the delayed report u/s 161, of the Cr.P.C. and there being no explanation, the prosecutrix was disbelieved.

(2) In the case of Mantu v. State of Orissa 1981 Cri LJ 37, there was a delay of 4 days in lodging the report after the incident. The conviction was not maintained.

(3) In the case of Hiranman Bawane Vs. State of Maharashtra, , there was a delay of about a day. This Court disbelieved the story of the prosecutrix and acquitted the accused. In the case before this Court, alleged incident of rape was committed on 1-12-1978 in the afternoon at about 12 noon in the house of the prosecutrix. The report to Rajura Police Station was lodged on the next day at

about 3 P.M. This Court held that even though there was sufficient time to lodge the report on the very day of the incident, no report was lodged and, therefore, the story was concocted. Similarly, there was no corroboration to the version of the prosecutrix that the incident was narrated either to the husband or immediately thereafter the husband narrated the incident to the Police Patil. The husband of the prosecutrix as well as the police Patil of village Chinchabodi were not examined by the prosecution.

In this case, there is unreasonable, inordinate or extra-ordinary delay in levelling allegations of Physical molestation or rape committed, by all the three prosecutrix against a saintly old man of 69 years of age who renounced the world and engrossed in spiritual world. The explanation as could be revealed from the statements of the prosecutrix that the disciples of Kripaluji Maharaj all the while stated that he is an incarnation of God and whatever happened with them, be taken as a "Prasad" or blessing of God and so not to disclose to any one, is difficult to digest as the chastity is the jewel of the Indian woman and no woman will consider the sexual intercourse against her will as "Prasad" or "blessing of God".

It also does not stand to reason that a saintly man who has thousand/millions of disciples all over Indian, direct his own disciple and in their presence will commit sexual intercourse with the pracharak of his cult. Though not in a similar situation but in some what identical manner, was before the Lordship in the case of Lawrence Kannandas Vs. The State of Maharashtra, depicted in para 29 as follows :

"Moreover, dwelling more upon the question relating to rape, it must be borne in mind that the story unfolded by the girl is intrinsically incredible. The accused is alleged to have taken the girl to the house of David who stays in one room with the six members of his family. There was hardly any room for the two additional guests to reside in the house. It is therefore inconceivable that the accused could have committed rape upon the girl in such a room in the presence of all others".

38. In the Indian milieu, sacrosanct traditions of chaste conduct restrains fair sex from the alleging inculpatory act; thereby compromising and inviting stigma to her character. Agonizing entreaties of a damsel in distress standing face to face with mortal danger of assault to her honor ;if disclosed and reported spontaneously stands fully vindicated, but conduct at variance to known behaviour is suspect to reason. The presumptive value of such conduct pales into probative insignificance.

Gravity of assault dictates spontaneous disclosure and to register the report with the authority. A disclosure and report though delayed if effected within reasonable time, however, needs supportable explanation, satisfying reason. Allegations wild and unfounded, incidentally belated if given weight would have disastrous propensities of mischief and attract dangerous consequences; seriously jeopardising honour of any citizen what of respectable and venerated

citizens held high in esteems by civilised human society. Equally honour of no member of human civilisation would be safe and secure if such wild allegations are upheld.

Considering the over all effect of the evidence collected by the prosecution, there is according to me, no ring of truth. No prudent man can dare to accept or believe the infirm and improbable evidence of the prosecutrix.

All these facts go to show that the girls evidently told lies and developed false story against the applicant No. 2 and his disciples.

39. Considering the infirmities and improbabilities in the case indicated in the preceding paras and considering the principles laid down by the Lordships the Supreme Court, according to me, the orders framing the charges against the applicants and rejecting the application for discharge, clearly indicates that the learned trial Judge did not do so with full and complete application of mind and due deliberation, considering various principles and guidelines indicated in several decisions some of which have been discussed above. For the reasons already alluded above, I find no difficulty in coming to the conclusion that while passing the order rejecting the application for discharge of the applicants/accused for the charges framed against them, the trial Judge has committed an error and, therefore, the order impugned is set aside. The applicant No. 2 thus, deserves to be discharged of the charges framed against him u/s 376, of the Indian Penal Code.

40. As the main offence falls to the ground, there is no material whatsoever against the other accused besides the accused No. 2 Kripaluji Maharaj regarding abetment or sharing common intention. Therefore, all the other accused also are discharged of the charges framed against them.

41. In the result, the instant revision application is allowed. The order framing the charges passed by the 3rd Asstt. Sessions Judge, Nagpur (Shri Sabne) and the order rejecting the application for discharge, passed by the 2nd Addl. Sessions Judge, Nagpur (Shri Q. J. Sheikh) are set aside. The applicants/accused are discharged from all the charges framed against them. Their bail bonds stand cancelled.

42. Revision allowed.