

(2015) 04 MP CK 0086

In the Madhya Pradesh High Court

Case No : Criminal Revision No. 2377 of 2014

Ramesh Parmar

APPELLANT

Vs

State of M.P.

RESPONDENT

Date of Decision : 24-04-2015

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 216, 227, 228, 397, 401
Penal Code, 1860 (IPC) — Section 376 (c) (a), 376(2), 376(2)(b), 376(c)(a)

Citation : (2015) 04 MP CK 0086

Hon'ble Judges : Rajendra Mahajan, J

Bench : Single Bench

Advocate : Pranay Gupta, Learned Counsel, for the Appellant; Vijay Kumar Pandey, Learned Panel Lawyer, Advocates for the Respondent

Final Decision : Dismissed

Judgement

Rajendra Mahajan, J.—Applicant has preferred this criminal revision under Section 397 read with 401 of the Cr.P.C. being aggrieved by an order dated 17.10.14 passed by the First Additional Sessions Judge, Sidhi in Sessions Trial No. 228/2014 State of M.P. Vs. Ramesh Parmar, whereby, the applicant is charged with the offence punishable under Section 376(2) of the I.P.C.

2. Brief facts necessary for adjudication of this revision are given below:-

2.1 On the basis of a written report of the prosecutrix, the Police Station Amiliya, District Sidhi registered an FIR on 05/04/2014 at crime No. 156/2014 against the applicant under Section 376(2)(b) of the I.P.C. In her report, the prosecutrix has alleged that in the year 2009 she was posted as warden of the Tribal Girls Hostel Sinhawal District Sidhi. At that time, the applicant was posted as Nayab Tehsildar in the Tehsil Office Sinhawal. In the month of November 2009, the applicant inspected the aforesaid hostel in her absence. In the course of inspection, he reprimanded the members of her subordinate staff and he sent a message through them to her to meet him in his office with records of the hostel. Thereupon, she met him in his office with the records. He rebuked her publicly

saying that he cannot inspect the records in a short time. He asked her to meet him at his residence with the records, where he would inspect them. He also threatened her saying that if he wrote an official report against her, she would lose her government job. On the self same day, at about 4 p.m., she reached the residence of the applicant. In his office bungalow, the applicant started inspecting the records. Five minutes later, the applicant closed the door of his office bungalow saying that if the door remained open the goats would come inside. A little while later, he caught hold of her hands and told her that if she opposed his sexual advances, she would lose her job upon his adverse report. Thereafter, he had forcibly sexual intercourse with her. After this incident, he used to commit rape upon her by putting her in the fear of losing the job. Not only that, he used to demand costly items as gifts from her. In August 2012, he was transferred to Tehsil Office Kusmi, District Sidhi. He got her transferred to Kusmi as warden of Tribal Girls Hostel, where he would commit rape upon her against her wishes. In September, 2013, he has been transferred to Tehsil Office Shamgarh, District-Mandsaur. Thereafter, she has decided to take legal action against him for having sexually exploited her.

2.2 Upon completion of investigation, the Police Amiliya filed charge-sheet against the applicant under Section 376(2)(b) of the IPC.

2.3 Having heard arguments canvassed on behalf of the parties and material on record, the trial Court passed the order dated 17.10.14, which is impugned herein, holding that the applicant has prima facie committed an offence punishable u/S 376(2) of the I.P.C..

3. The learned counsel for the applicant has submitted that if the contents of the FIR are accepted at their face value, then the offence under Section 376(2) of the I.P.C. is not made out as it is a case of consensual sex. Therefore, the trial Court ought to have discharged the applicant under the provisions of 227 of the Cr.P.C. He, further, submitted that if the charge is read then it appears that the trial Court framed the charge under Section 376(2)(b) of the I.P.C., but in the charge the trial Court only mentioned Section 376(2) of the I.P.C. omitting clause (b). The offence under Section 376(2)(b) of the I.P.C. is not made out as the prosecutrix was never in the custody of the applicant. In support of the aforesaid submissions, the learned counsel relied upon the law laid down in the case of Omkar Prasad Verma Vs. State of Madhya Pradesh (2007 STPL (LE) 38038 SC) and Sajjan Kumar Vs. Central Bureau of Investigation (2010 STPL (LE) 44258 SC). Upon these submissions, he prayed for quashing of the impugned order and discharge of the applicant of the charge.

4. Per contra, the learned Panel Lawyer has submitted that the contents of the FIR and the case diary statement of the prosecutrix would reveal that the applicant had sexually exploited the prosecutrix during the period between November, 2009 to September, 2013 having been in a position of authority by virtue of his supervisory position over the official functions of the prosecutrix. He, further, submitted that the applicant would sexually exploit the prosecutrix by

putting her into fear of losing her government job in case he would write an adverse report against her in exercise of his authority. Therefore, the applicant has prima facie committed an offence punishable u/S 376 (c) (a) of the I.P.C., which has been in force w.e.f. 03.02.13. Thus, the trial Court ought to have framed charge against the applicant under the aforesaid Section. Thus, the trial Court has erred by not framing the aforesaid charge against the applicant. But, on this ground, the applicant cannot be discharged as the case is at the stage of trial and the trial Court has power u/S 216 of the Cr.P.C. to alter or add the charges.

5. I have considered the rival submissions and perused the impugned order, the charge-sheet of the case and the material available on record.

6. In *Sajjan Kumar Vs. C.B.I. (Supra)*, the Supreme Court has culled out the following principles on the considerations of its earlier authorities with regard to scope of Section 227 and 228 of the Cr.P.C.:-

(i) While considering the question of framing the charges under Section 227 of the Cr.P.C. the Judge has the undoubted power to sift and weigh the evidence for the limited purpose of finding out whether or not a prima facie case against the accused has been made out. The test to determine prima facie case would depend upon the facts of each case.

(ii) Where the materials placed before the Court disclose grave suspicion against the accused which has not been properly explained, the Court will be fully justified in framing a charge and proceeding with the trial.

(iii) The Court cannot act merely as a Post Office or a mouthpiece of the prosecution but has to consider the broad probabilities of the case, the total effect of the evidence and the documents produced before the Court, any basic infirmities etc. However, at this stage, there cannot be a roving enquiry into the pros and cons of the matter and weigh the evidence as if he was conducting a trial.

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

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

(vi) At the stage of Sections 227 and 228 of the Cr.P.C. the Court is required to evaluate the material and documents on record with a view to find out if the facts emerging therefrom taken at their face value discloses the existence of all the ingredients constituting the alleged offence. For this limited purpose, sift the evidence as it cannot be expected even at that initial stage to accept all that the

prosecution states as gospel truth even if it is opposed to common sense or the broad probabilities of the case.

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

7. In the case of Amit Kumar Vs. Ramesh Chandra (2012) 9 SCC the Supreme Court has held thus in para 17 and 19 with regard to the framing of charge or discharge:-

Para. 17:

Framing of a charge is an exercise of jurisdiction by the trial court in terms of Section 228 Cr.P.C., unless the accused is discharged under Section 227 Cr.P.C. under both Sections 227 and 228 Cr.P.C., the court is required to consider the "record of the case" and the documents submitted therewith and, after hearing the parties, may either discharge the accused or where it appears to the court and in its opinion there is ground for presuming that the accused has committed an offence, it shall frame the charge. Once the facts and ingredients of the section concerned exists, then the court would be right in presuming that there is ground to proceed against the accused and frame the charge accordingly. This presumption is not a presumption of law as such. The satisfaction of the court in relation to the existence of constituents of an offence and the facts leading to that offence is a sine qua non for exercise of such jurisdiction. It may even be weaker than a prima facie case.

(Underlined by me)

Para 19:

At the initial stage of framing of a charge, the court is concerned not with proof but with a strong suspicion that the accused has committed an offence, which, if put to trial, could prove him guilty. All that the court has to see is that the material on record and the facts would be compatible with the innocence of the accused or not. The final test of guilt is not to be applied at that stage.

8. In the light of aforesaid propositions of law, this Court has perused conjointly the F.I.R., the case diary statement of the prosecutrix and come to the conclusion that the applicant has prima facie committed an offence punishable under Section 376(c)(a) of the I.P.C. However, the trial Court has erred by not framing the charge of the aforesaid Section against the applicant. Upon the perusal of the contents of the charge, it is crystal clear that the trial Court has framed the charge against the applicant keeping in mind the ingredients of the aforesaid Section, but by over-sight, the trial Court has committed the error. However, this error committed will not be a ground to discharge the applicant under the provisions of Section 227 of the Cr.P.C. because the case is at the stage of the trial and the trial Court has power u/S 216 of the Cr.P.C. to alter or add the

charge. The view of this Court is fortified by the law laid down by the Supreme Court in the case of *Hasanbhai Valibhai Qureshi Vs. State of Gujarat and Others*, AIR 2004 SC 2078 : (2004) CriLJ 2018 : (2004) 4 JT 305 : (2004) 4 SCALE 174 : (2004) 5 SCC 347 : (2004) 3 SCR 762 : (2004) 2 UJ 1027 : (2004) AIRSCW 2063 : (2004) 3 Supreme 71 which is given below:-

Therefore, if during trial, the trial Court on a consideration of broad probabilities of the case based upon total effect of the evidence and documents produced is satisfied that any addition or alteration of the charge is necessary, it is free to do so, and there can be no legal Bar to appropriately act as the exigencies of the case warrant or necessitate.

9. The law laid down in the case of *Omkar Prasad Verma (Supra)* is not applicable in the instant case as the facts of the above citation are entirely different from those of the present case.

10. In the light of the above discussion, this Court arrives at the conclusion that the applicant has *prima facie* committed an offence of sexual intercourse not amounting to the offence of rape punishable u/S 376(c)(a) of the I.P.C. and cannot be discharged u/S 227 of the Cr.P.C. on the ground that the trial Court has committed an error by not framing the aforesaid charge because the case is still at the stage of the trial and the trial Court may exercise the provisions of Section 216 of the Cr.P.C. to rectify its error as pointed out. With the aforesaid observations, this revision is dismissed.

11. A copy of this order be sent without delay to the trial Court for information.