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CRR-4796-2023

IN THE HIGH COURT OF MADHYA PRADESH
AT JABALPUR

BEFORE

HON'BLE SHRI JUSTICE PRAMOD KUMAR AGRAWAL

CRIMINAL REVISION No. 4796 of 2023*PRASHANT GUPTA AND OTHERS**Versus**THE STATE OF MADHYA PRADESH AND OTHERS*

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Appearance:

Shri Pradeep Kumar Naveriya - Advocate for applicants.

Shri C.M. Tiwari - Government Advocate for respondent No.1/State.

None for respondent No.2.

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Reserved on : 21.11.2024

Pronounced on : 18.03.2025

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ORDER

The applicants/accused has filed this criminal revision under Section 397 read with Section 401 of Cr.P.C. against the order dated 22.08.2023 passed by the 10th Additional Sessions Judge, Bhopal in Sessions Trial No. 791/2022, whereby the charges under Section 376 r/w 34, 190 and 506-II of IPC have been framed against the applicants.

2. Brief facts of the case are that on 21.08.2022 prosecutrix lodged a report at Police Station Chhola Mandir, District Bhopal Dehat alleging that co-accused Abhishek Gupta (son of applicant No.2 and brother of applicant No.1) lived in her neighbourhood, therefore, she was acquaintance to him. On 12.04.2021 co-accused Abhishek Gupta came to her house and proposed



her for marriage to which she agreed. On 08.07.2021, prosecutrix went to the house of accused and gave her consent regarding marriage with Abhishek to his mother (applicant No.2) and his brother (applicant No.1). At that time, applicants forcibly sent the prosecutrix with co-accused Abhishek and closed the door of room where Abhishek made physical relation with prosecutrix. On 02.08.2021, in New Shikha Hotel, co-accused Abhishek and prosecutrix exchanged rings. Abhishek assured her for marriage and established physical relation with her. On the next day, prosecutrix went to applicants' house and informed them regarding the said incident then applicants told the prosecutrix that to make physical relations before marriage is now-a-days common and they again sent Abhishek and prosecutrix in a room and closed the door where Abhishek again made physical relation with prosecutrix. At that time, applicants were sitting outside the room. On 29.12.2021, mother of prosecutrix died due to cancer thereafter applicants denied to get married Abhishek with prosecutrix. Hence, prosecutrix lodged a report against the applicants and co-accused person at Police Station Chhola Mandir, District Bhopal Dehat under Sections 376, 376(2)(n), 190, 506-II and 34 of IPC. Statements of prosecutrix under Section 161 and 164 of Cr.P.C. have been recorded. After investigation, charge-sheet has been filed.

3. After committal of the case an application was filed under Section 227 of Cr.P.C. on behalf of applicants for discharging them from the case but the same was dismissed and the learned trial court framed the charges against the applicants under Section 376 r/w 34, 506-II and 190 of IPC which has been assailed in this revision application.



4. Learned counsel for the applicants submits that prosecutrix is well educated lady. She filed a written complaint before the police but in that complaint names of both the applicants were not mentioned. Main accused is Abhishek Gupta and he was in love relationship with prosecutrix and they exchanged rings with the consent of both the family members, therefore, no offence under Section 376 of IPC is made out against them. Name of present applicants was mentioned in the statements of prosecutrix recorded under Section 161 and 164 of Cr.P.C., therefore it appears that all the allegations made against the applicants are afterthought. In view of above, it is further submitted that learned trial Court has committed gross error to frame the charges against the applicants under Section 376 r/w 34, 506-II and 190 of IPC , therefore, charges framed are liable to be set aside. He has placed reliance upon the decision of Supreme Court in the case of *Mahesh Damu Khare Vs. The State of Maharashtra and another passed on 26.11.2024 in SLP (Crl.) No.4326/2018*.

5. Learned counsel for the State supported the impugned order and prays for rejection of this revision petition. It is further submitted by State that at the stage of framing of charges, only prima facie case is to be seen. Material on record discloses the offence for which charge-sheet has been filed against the accused persons. It is further submitted that there are specific allegation against the present applicants regarding abetment of rape and learned trial Court has correctly passed the order after considering the statements and documents available on record, therefore, the instant petition is nothing but a gross misuse of law and needs to be dismissed.



6. Heard learned counsel for parties and perused the record.

7. The wordings of Section 376 of IPC start with 'a man'. Hence, the intention of legislature is ample clear that only a man can commit rape within the meaning of Section 376 of IPC. Thus, there is no scope to incorporate commission of rape by woman under Section 376 of IPC. In case of *Omprakash Vs. State of Haryana reported in (2015) 2 SCC 84*, the Hon'ble Supreme Court has held that:-

“17. In the light of the above provisions of law, we have carefully gone through the record and considered the cases referred to above. We find that in the present case, there is positive evidence adduced by the prosecution that accused Chhoti has aided the commission of offence by asking the victim to go to her house to take “lassi” where accused Om Prakash and Kartar Singh bolted the room and subjected the victim to rape. From the record, it appears that for about an hour, the victim was not allowed to go out from the house where she was subjected to rape. It was the house of accused Chhoti and her husband where the incident is said to have taken place. As such, both the courts below have rightly concluded that it cannot be said that accused Chhoti has not abetted the crime in the manner suggested by the prosecution. We concur with the view taken by the courts below. Intentional aiding of the offence is covered by the third clause mentioned in Section 107 IPC.”

8. From the above mentioned aspect, it is clear that a woman though cannot commit rape, but can still be held liable for abetment under Section 109 of IPC. “abetment is separate and distinct offence than rape” and if the act abetted is committed in consequences of the abetment, then the person i.e. man or woman abeting such crime is liable to be punished under Section 109 of IPC. Thus, woman and man both can definitely be held liable for abetment to rape under Section 109 of IPC and can be punished accordingly.



9. On perusal of the statements of the prosecutrix recorded under Section 161 and 164 of Cr.P.C., *prima facie* it shows that an offence is made out against the applicants, and at this stage, this Court has to see whether *prima facie* case is made out or not.

10. Moreover, all that has to be looked into at the time of framing of the charge is that whether there was existence of prima-facie case as stated by the Counsel for the respondents and hence it would be profitable to rely on *State of Madhya Pradesh vs. S.B. Johari and others : 2000(2) MPLJ 322*, whereby the Court held thus:

"It is settled law that at the stage of framing the charge, the Court has to prima-facie consider whether there is sufficient ground for proceeding against the accused. The Court is not required to appreciate the evidence and arrive at the conclusion that the materials produced are sufficient or not, for convicting the accused. If the Court is satisfied that a prima-facie case is made out for proceeding further, then a charge has to be framed."

10.1 (Also see) *Umar Abdul Sakoor Sorathia vs. Intelligence Officer, Narcotic Control Bureau : 2000 (1) SCC 138 ; State of Maharashtra and other vs. Somnath Thapa and others: 1996 (4) SCC 659.*

11. The decision cited by learned counsel for applicants in the case of *Mahesh Damu Khare (supra)* does not help the applicants herein as the facts and circumstances of the present case is different from the said decision.

12. No doubt, in the FIR, names of present applicants are not mentioned but in the statements of the prosecutrix recorded under Section 161 and 164 of Cr.P.C., specific allegations have been leveled against the



applicants regarding abetment of committing rape by co-accused Abhishek with prosecutrix.

13. Hence, I find there is no infirmity in the order passed by the trial Court. In my opinion, looking to the allegations made in the statements under Section 161 and 164 of Cr.P.C. by the prosecutrix, *prima facie* it seems that the applicants committed an offence under 376 r/w 109, 506 and 190 of IPC.

14. In view of aforesaid discussion, the impugned order is modified to the extent that instead of charge under Section 376 r/w 34 of IPC, the trial Court is directed to frame the charge under Section 376 r/w 109 of IPC against the applicants, however, remaining part of the order shall remain intact.

15. With the aforesaid modification in the order dated 22.08.2023, the revision petition stands **disposed of**.

(PRAMOD KUMAR AGRAWAL)
JUDGE

Sateesh