

Criminal Revision No.1236/2011

27.07.2011

Shri Jai Singh Rajput, counsel for the applicant.

Shri G.S. Thakur, Panel Lawyer for the respondent/State.

Heard on admission.

The applicant has challenged the order dated 1.7.2011 passed by 1st Additional Sessions Judge, Sagar in S.T. No.375/11 by which the charges for the offences punishable under Sections 450, 376(1) and 506-II of IPC were framed.

Learned counsel for the applicant submits that FIR has been lodged with the delay of 8½ months when the prosecutrix was found pregnant. The prosecutrix has delivered a female child and by DNA report dated 11.4.2011, it is very much clear that the applicant was not biological father of that child delivered by the prosecutrix and, therefore, no offence is made out. No charges of such offences could be framed against the applicant.

Learned Panel Lawyer for the State opposes the application. He submits that only DNA report is not a document to distinguish the testimony of the prosecutrix. By delay of FIR, it cannot be said that the prosecutrix is not telling a truth. It is possible that due to some relation of the prosecutrix with some other person, child could be born but the allegations of rape etc were made by the prosecutrix against the applicant and at present, the testimony of the prosecutrix cannot be examined, therefore, order passed by the trial Court seems to be legal.

For framing of charges, it would be clear that if the evidence is considered as it is, then conviction must be directed for some offences and if it is so then the charges for

such offences shall be framed. At present, if DNA report with statement of the prosecutrix is considered as it is, then due to testimony of the prosecutrix that there was intercourse done by the applicant for the several times, the applicant will be convicted for the offences punishable under Sections 376, 450 and 506-II of IPC. Under such circumstances, it cannot be said that the order dated 1.7.2011 passed by the trial Court is without any basis or perverse.

Under such circumstances, no interference can be made by this Court in the impugned order by way of revision. Consequently, the revision filed by the applicant is hereby dismissed at motion stage.

(N.K. GUPTA)
JUDGE

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