



# THE HIGH COURT OF SIKKIM : GANGTOK

(Criminal Revisional Jurisdiction)

## O R D E R (ORAL)

**S.B. CrI.Rev.P. No.01 of 2014**

1. Smt. Tika Maya Chettri @ Jaya Sumbrui,  
W/o Shri Bimal Kumar Sumbrui,  
R/o Bhuta, Chaibasa,  
Jharkhand.

2. Shri Bimal Kumar Sumbrui,  
S/o Shri B. Sumbrui,  
R/o Bhuta, Chaibasa,  
Jharkhand.

... **Petitioners**

versus

State of Sikkim

... **Respondent**

### CORAM

**HON'BLE MR. JUSTICE S. P. WANGDI, JUDGE**

DATE OF ORDER : 13-03-2014

For Petitioners : Mr. Jorgay Namka, Advocate  
with Ms. Pema Bhutia and Mr.  
Jigdal Gyatso Chankapa,  
Advocates.

For State-Respondent : Mr. Karma Thinlay, Additional  
Public Prosecutor with Mrs.  
Pollin Rai, Assistant Public  
Prosecutor.

**Wangdi, J.**

By filing the present Criminal Revision Petition,  
the Petitioners seek to quash the Order dated 19-12-2013



passed by the Learned Judge, Fast Track Court, South and West Sikkim at Namchi by which charges were framed against them under various provisions of the Indian Penal Code, 1860 (in short “IPC”).

2. Mr. Jorgay Namka, Learned Counsel, appearing on behalf of the Petitioners, submits that against the Petitioner No.2 charge under Sections 376-D, 342/34 IPC has been framed and under Sections 109/376-D, 342/34 IPC against the Petitioner No.1. It is his submission that no cases under these provisions have been made out against the Petitioners on a bare perusal of the evidence on record. The Learned Counsel referred to and sought to stress upon the statement of the victim recorded under Section 164 of the Code of Criminal Procedure, 1908 (in short “Cr.P.C.”) wherein she is said to have stated it was the Petitioners who had permitted her to leave for her home and was sent by them in the company of one Ashok Adibasi, a co-accused who is presently absconding. Under these circumstances no offences could have been made out against the Petitioners under Sections 342/34 IPC. In so far as the charge under Section 376-D against Petitioner No.1, wife of the Petitioner No.2 is concerned, it



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was contended that from the very definition of 'rape' as contained in Section 375 IPC it could not have been committed by a woman.

**3.** Since it was referred to and heavily relied upon in support of this Petition by the Learned Counsel, the statement of the victim girl recorded under Section 164 Cr.P.C. has been carefully scrutinized and upon doing so, I find that, contrary to what has been submitted on behalf of the Petitioners, it reflects a sordid story of the victim girl having been subjected to treatment of the worst kind. The evidence unfolds the story of how she had been misled in leaving her home to a far off strange place in the house of the Petitioner No.2 where she was confined and repeatedly raped not only by the Petitioner No.2 but also by others until she was taken back and left in front of the house of her aunt at Martam, West Sikkim.

**4.** It is an admitted position that apart from this, there are other evidence both oral and documentary to support the prosecution case. The submission in so far the Petitioner No.1 is concerned, also appears to be erroneous as the charge framed against the Petitioner



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No.1 apart from Sections 342/34 IPC, is one under Sections 109/376-D, i.e., abetment in the commission of gang rape.

5. At the stage of charge, a Court has only to consider as to whether from the evidence on record a *prima facie* case is made out to frame charges against an accused person. The object of framing a charge is to give the accused full notice of the offences charged against him. No doubt it is also trite that care has to be taken to ensure that there are sufficient materials to make out an offence before framing a charge against an accused lest he should be subjected to the trauma of going through avoidable trial.

6. In the present case, as has been already discussed, the very document relied upon by the Petitioners to support this Petition reflects sufficient materials for framing the charges against the Petitioners contained in the impugned Order of the Learned Fast Track Court.

7. This, of course, is subject to what will transpire after the prosecution has led its evidence and also by the



Petitioners, if they so chose to do. Because, it is only after that stage that it is open for the parties to analysis the evidence. At this stage, it will be fraught with risk to interfere considering the gravity of the offences charged against the Petitioners and the *prima facie* material appearing on the records.

**8.** Upon perusal of the entire case records, the evidence and the impugned Order and, upon hearing the respective Counsel for the parties, I am of the view that the materials available are sufficient to constitute, *prima facie*, the offences for which charges have been framed against the Petitioners and find no reason to interfere with the impugned Order.

**9.** In the result, the application stands rejected. However, it is made clear that the observations made herein shall not be construed as expression of this Court on the merits of the case.

**10.** The Petitioners shall appear before the Learned Judge, Fast Track Court, South and West Sikkim at Namchi on or before 28-03-2014.



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**11.** Let a copy of this Order along with the original records be transmitted forthwith to the Learned Fast Track Court, South and West Sikkim at Namchi for compliance.

Sd/-  
( **S. P. Wangdi** )  
**Judge**  
13-03-2013