

**IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA**

Cr.MMO No. 554 of 2018  
Reserved on 17.8.2020  
Date of Decision: 31. 8.2020

**Suresh Chand and Ors.**

**.....Petitioners**

**Versus**

**State of H.P. and Ors.**

**. ....Respondents.**

---

**Coram**

**Hon'ble Mr. Justice Sandeep Sharma, Judge.**

**Whether approved for reporting<sup>1</sup>? Yes.**

**For the petitioners:**

Mr. Sanjeev Kuthiala, Senior Advocate, with Ms. Anaida Kuthiala, Advocate.

**For the respondents:**

Mr. Sudhir Bhatnagar, Additional Advocate General, for the respondent-State.

Mr. K.D. Sood, Senior Advocate with Mr. Sukrit Sood, Advocate, for respondents No. 2 and 3.

---

**Sandeep Sharma, J.**

By way of instant petition filed under Section 482 Cr.PC, prayer has been made on behalf of the petitioners for quashing of FIR No. 91 of 2014 dated 15.4.2014, registered at PS Nurpur, District Kangra, HP, under Sections 376-D and 109 of IPC, order dated 12.11.2018, passed by the learned Additional Sessions Judge-1, Kangra, at Dharamshala, whereby he proceeded to frame charges under Section 376-D of IPC against petitioners No.1 and 3 namely Suresh Chand Kapila and Sumesh Kapila and under Section 109 IPC against petitioner No.2 namely Smt.

---

Whether reporters of the Local papers are allowed to see the judgment?

Sudershana Devi and consequent criminal proceedings i.e. pending before the court below.

**2.** Precisely, facts of the case, which led to lodging of FIR sought to be quashed in the instant proceedings, are that on 15.4.2014, respondent No.2 Kuldeep Chand (herein after referred to as "the complainant"), who is brother of petitioner No.1, brother in law of petitioner No.2 and uncle (Chachu) of petitioner No.3, got his statement recorded under Section 154 Cr.PC at Police Station Nurpur, District Kangra, stating therein that in the intervening night of 13/14.4.2014, while he was sleeping in his house along with his family members and had put lock on the door, his daughter-respondent No.2 (herein after referred to as the victim-prosecutrix), came and asked for key of the door so that she could shoo away the dogs barking outside. The complainant alleged that since he is a heart patient and had taken medicine, he gave her the keys, but after five minutes, he found that victim-prosecutrix was not on her bed. He stated that when victim-prosecutrix did not answer his calls, he woke up his son. He alleged that at 3:00 AM, in the night, his son Shivam went towards Bazaar to find her, but he came back without knowing her whereabouts. He stated that again, on the next day, at 6:00 AM, he sent his son towards the Khud to ascertain the whereabouts of his daughter (victim-prosecutrix), but she was not found. At 8/9:00 AM, he disclosed the entire incident to Baldev Singh Sandhu and at 6:40 PM, registered the missing report of victim-prosecutrix at the Police Station and told to the police that

he has suspicion that his younger brother namely Suresh Chand, his wife Sudershana Devi and son Sumesh i.e. petitioners herein, may have made his daughter run away. On inquiry, allegedly petitioner No.1 though initially refused to identify his niece (victim-prosecutrix) when he was shown photographs by the police, but after 5-7 minutes disclosed to the police that victim-prosecutrix is sleeping on the first floor of his house. Police in the presence of respectable members of the society found the victim-prosecutrix in the first floor of the house of the petitioners in drowsy condition. After having seen victim-prosecutrix, complainant alleged that petitioner No.3 Sumesh Kumar, has committed rape on his daughter after administering her drugs. Police after having recorded the statement of respondent No.2-victim-prosecutrix and her brother under Section 161 Cr.PC also got the statement of victim-prosecutrix recorded under Section 164 Cr.PC before JMJC and thereafter FIR sought to be quashed in the instant proceedings came to be lodged against the petitioners under Sections 376 and 120 B of IPC.

**3.** After completion of investigation, police presented challan in the competent court of law, perusal whereof reveals that during investigation, no case was found to have been committed by the petitioners under Sections 376 and 120-B of the IPC and as such, those were deleted, however, in challan prepared on the basis of investigation, police alleged that the accused have committed offence punishable under Sections 376-D and 109 of IPC.

4. Having taken note of the material annexed with aforesaid challan, learned Additional Sessions Judge-1 Kangra at Dharamshala, HP, vide order dated 12.11.2018 proceeded to frame charges against petitioner No.1 and 3 under Section 376-D of IPC and under Section 109 of IPC against petitioner No.2. In the aforesaid background, petitioners have approached this Court in the instant proceedings, praying therein for quashment of FIR, order dated 12.1.2018, whereby charges under Sections 376-D and 109 IPC have been framed against them by the learned Additional Sessions Judge-I Kangra at Dharamshala as well as consequent proceedings pending in the court below.

5. I have heard the learned counsel for the parties and gone through the records of the case.

6. Before ascertaining the genuineness and correctness of the submissions and counter submissions having been made by the learned counsel for the parties vis-à-vis prayer made in the instant petition, this Court deems it necessary to discuss/elaborate the scope and competence of this Court to quash the criminal proceedings while exercising power under Section 482 of Cr.PC.

7. A three-Judge Bench of the Hon'ble Apex Court in case titled ***State of Karnataka vs. L. Muniswamy and others, 1977 (2) SCC 699***, held that High Court while exercising power under Section 482 Cr.PC is entitled to quash the proceedings, if it comes to the conclusion that allowing the

proceeding to continue would be an abuse of the process of the Court or that the ends of justice require that the proceeding ought to be quashed.

8. Subsequently, in case titled ***State of Haryana and others vs. Bhajan Lal and others, 1992 Supp (1) SCC 335***, the Hon'ble Apex Court while elaborately discussing the scope and competence of High Court to quash criminal proceedings under Section 482 Cr.PC laid down certain principles governing the jurisdiction of High Court to exercise its power. After passing of aforesaid judgment, issue with regard to exercise of power under Section 482 Cr.PC, again came to be considered by the Hon'ble Apex Court in case bearing Criminal Appeal No.577 of 2017 (arising out of SLP (CrL.) No. 287 of 2017) titled ***Vineet Kumar and Ors. v. State of U.P. and Anr.***, wherein it has been held that saving of the High Court's inherent powers, both in civil and criminal matters, is designed to achieve a salutary public purpose i.e. court proceedings ought not to be permitted to degenerate into a weapon of harassment or persecution.

9. The Hon'ble Apex Court in ***Prashant Bharti v. State (NCT of Delhi), (2013) 9 SCC 293***, relying upon its earlier judgment titled as ***Rajiv Thapar and Ors v. Madan Lal Kapoor, (2013) 3 SCC 330***, reiterated that High Court has inherent powers under Section 482 Cr.PC., to quash the proceedings against an accused, at the stage of issuing process, or at the stage of committal, or even at the stage of framing of charge, but such power must always be used with caution, care and circumspection. In the aforesaid judgment, the Hon'ble Apex Court concluded that while

exercising its inherent jurisdiction under Section 482 of the Cr.P.C., Court exercising such power must be fully satisfied that the material produced by the accused is such, that would lead to the conclusion, that his/their defence is based on sound, reasonable, and indubitable facts and the material adduced on record itself overrule the veracity of the allegations contained in the accusations levelled by the prosecution/complainant. Besides above, the Hon'ble Apex Court further held that material relied upon by the accused should be such, as would persuade a reasonable person to dismiss and condemn the actual basis of the accusations as false. In such a situation, the judicial conscience of the High Court would persuade it to exercise its power under Section 482 of the Cr.P.C. to quash such criminal proceedings, for that would prevent abuse of process of the court, and secure the ends of justice. In the aforesaid judgment titled as **Prashant Bharti v. State (NCT of Delhi)**, (2013) 9 SCC 293, the Hon'ble Apex Court has held as under:-

***“22. The proposition of law, pertaining to quashing of criminal proceedings, initiated against an accused by a High Court under Section 482 of the Code of Criminal Procedure (hereinafter referred to as “the Cr.P.C.”) has been dealt with by this Court in Rajiv Thapar & Ors. vs. Madan Lal Kapoor wherein this Court inter alia held as under: (2013) 3 SCC 330, paras 29-30)***

***29. The issue being examined in the instant case is the jurisdiction of the High Court under Section 482 of the Cr.P.C., if it chooses to quash the initiation of the prosecution against an accused, at the stage of issuing process, or at the stage of committal, or even at the stage of framing of charges. These are all stages before the commencement of the actual trial. The same parameters would naturally be available for later stages as well. The power vested***

in the High Court under Section 482 of the Cr.P.C., at the stages referred to hereinabove, would have far reaching consequences, inasmuch as, it would negate the prosecution's/complainant's case without allowing the prosecution/complainant to lead evidence. Such a determination must always be rendered with caution, care and circumspection. To invoke its inherent jurisdiction under Section 482 of the Cr.P.C. the High Court has to be fully satisfied, that the material produced by the accused is such, that would lead to the conclusion, that his/their defence is based on sound, reasonable, and indubitable facts; the material produced is such, as would rule out and displace the assertions contained in the charges levelled against the accused; and the material produced is such, as would clearly reject and overrule the veracity of the allegations contained in the accusations levelled by the prosecution/complainant. It should be sufficient to rule out, reject and discard the accusations levelled by the prosecution/complainant, without the necessity of recording any evidence. For this the material relied upon by the defence should not have been refuted, or alternatively, cannot be justifiably refuted, being material of sterling and impeccable quality. The material relied upon by the accused should be such, as would persuade a reasonable person to dismiss and condemn the actual basis of the accusations as false. In such a situation, the judicial conscience of the High Court would persuade it to exercise its power under Section 482 of the Cr.P.C. to quash such criminal proceedings, for that would prevent abuse of process of the court, and secure the ends of justice.

30. Based on the factors canvassed in the foregoing paragraphs, we would delineate the following steps to determine the veracity of a prayer for quashing, raised by an accused by invoking the power vested in the High Court under Section 482 of the Cr.P.C.:-

30.1 Step one, whether the material relied upon by the accused is sound, reasonable, and indubitable, i.e., the material is of sterling and impeccable quality?

30.2 Step two, whether the material relied upon by the accused, would rule out the assertions contained in the charges levelled against the accused, i.e., the material is sufficient to reject

*and overrule the factual assertions contained in the complaint, i.e., the material is such, as would persuade a reasonable person to dismiss and condemn the factual basis of the accusations as false.*

*30.3 Step three, whether the material relied upon by the accused, has not been refuted by the prosecution/complainant; and/or the material is such, that it cannot be justifiably refuted by the prosecution/complainant?*

*30.4 Step four, whether proceeding with the trial would result in an abuse of process of the court, and would not serve the ends of justice?*

*30.5 If the answer to all the steps is in the affirmative, judicial conscience of the High Court should persuade it to quash such criminal - proceedings, in exercise of power vested in it under Section 482 of the Cr.P.C. Such exercise of power, besides doing justice to the accused, would save precious court time, which would otherwise be wasted in holding such a trial (as well as, proceedings arising therefrom) specially when, it is clear that the same would not conclude in the conviction of the accused."*

10. It is quite apparent from the bare perusal of aforesaid judgments passed by the Hon'ble Apex Court from time to time that where a criminal proceeding is manifestly attended with mala fide and/or where the proceeding is maliciously instituted with an ulterior motive for wreaking vengeance on the accused and with a view to spite him/her due to private and personal grudge, High Court while exercising power under Section 482 Cr.PC can proceed to quash the proceedings

11. The Hon'ble Apex Court in case titled **Amit Kapoor v. Ramesh Chander and Anr, (2012) 9 SCC 460** has held that framing of a charge is an



exercise of jurisdiction by the trial Court in terms of Section 228 of the Cr.PC unless the accused is discharged under Section 227 Cr.PC. In the aforesaid judgment, the Hon'ble Apex Court held that under Sections 227 and 228 Cr.PC, 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 proceed to frame the charge. In the judgment (supra), the Hon'ble Apex Court has further held that once the facts and ingredients of the Section concerned exist, then the Court would be right in presuming that there is ground to proceed against the accused and frame the charge accordingly, but most importantly, the Hon'ble Apex Court in the aforesaid judgment has carefully concluded that 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. At this stage, this Court deems it fit to reproduce the following paras of aforesaid judgment having been passed by the Hon'ble Apex Court as follows:-

***“17. Framing of a charge is an exercise of jurisdiction by the trial court in terms of Section 228 of the Code, unless the accused is discharged under Section 227 of the Code. Under both these provisions, the court is required to consider the 'record of the case' and 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 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. There is a fine distinction between the language of Sections 227 and 228 of the Code. Section 227 is expression of a definite opinion and judgment of the Court while Section 228 is tentative. Thus, to say that at the stage of framing of charge, the Court should form an opinion that the accused is certainly guilty of committing an offence, is an approach which is impermissible in terms of Section 228 of the Code.

18. It may also be noticed that the revisional jurisdiction exercised by the High Court is in a way final and no inter court remedy is available in such cases. Of course, it may be subject to jurisdiction of this court under Article 136 of the Constitution of India. Normally, a revisional jurisdiction should be exercised on a question of law. However, when factual appreciation is involved, then it must find place in the class of cases resulting in a perverse finding. Basically, the power is required to be exercised so that justice is done and there is no abuse of power by the court. Merely an apprehension or suspicion of the same would not be a sufficient ground for interference in such cases.

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. We may refer to the well settled law laid down by this Court in the case of *State of Bihar v. Ramesh Singh* (1977) 4 SCC 39:

“4. Under Section 226 of the Code while opening the case for the prosecution the Prosecutor has got to describe the charge against the accused and state by what evidence he proposes to prove the guilt of the accused. Thereafter comes at the initial stage the duty of the Court to consider the record of the case and the documents submitted therewith and to hear the submissions of the accused and the prosecution in that behalf. The Judge has to pass thereafter an order either under Section 227 or Section 228 of the Code. If “the Judge considers that there is no sufficient ground for proceeding against the accused, he shall discharge the accused and record his reasons for so doing”, as enjoined by Section 227. If, on the other hand, “the

Judge is of opinion that there is ground for presuming that the accused has committed an offence which— ... (b) is exclusively triable by the Court, he shall frame in writing a charge against the accused", as provided in Section 228. Reading the two provisions 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 Section 227 or Section 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. Strong suspicion against the accused, if the matter remains in the region of suspicion, cannot take the place of proof of his guilt at the conclusion of the trial. But at the initial stage if there is a strong suspicion which leads the Court to think that there is ground for presuming that the accused has committed an offence then it is not open to the Court to say that there is no sufficient ground for proceeding against the accused. The presumption of the guilt of the accused which is to be drawn at the initial stage is not in the sense of the law governing the trial of criminal cases in France where the accused is presumed to be guilty unless the contrary is proved. But it is only for the purpose of deciding *prima facie* whether the Court should proceed with the trial or not. If the evidence which the Prosecutor proposes to adduce to prove the guilt of the accused even if fully accepted before it is challenged in cross-examination or rebutted by the defence evidence, if any, cannot show that the accused committed the offence, then there will be no sufficient ground for proceeding with the trial. An exhaustive list of the circumstances to indicate as to what will lead to one conclusion or the other is neither possible nor advisable. We may just illustrate the difference of the law by one more example. If the scales of pan as to the guilt or innocence of the accused are something like even, at the conclusion

*of the trial, then, on the theory of benefit of doubt the case is to end in his acquittal. But if, on the other hand, it is so at the initial stage of making an order under Section 227 or Section 228, then in such a situation ordinarily and generally the order which will have to be made will be one under Section 228 and not under Section 227."*

12. There cannot be any quarrel with the aforesaid proposition of law that at the time of framing charge, Court is not required to evaluate the evidence on record, but it is well settled now that while framing charge, court is not expected to merely act as a post office and charge the accused on the basis of charge presented before it. Hon'ble Apex Court in catena of judgments has held that it is salutary duty of the courts to prevent the abuse of the process or miscarriage of justice and sift through the material to ascertain whether a prima-facie case, if any, exists against the accused or not.

13. This Court has already dealt with in detail aforesaid aspect of the matter in case titled **Varun Bhardwaj v. State of H.P., Latest HLJ 2017 (HP) 707**, relevant paras whereof are reproduced herein below:-

*"20. This Court after carefully examining the document made available on record by the Investigating Agency sees substantial force in the argument having been made by the learned counsel for the petitioner that there is/was no material much less substantial available on record to frame charge under Section 307 of the IPC. Similarly, perusal of impugned order passed by the Court below reproduced herein above, nowhere suggests that court below before proceeding to frame charge under Section 228 of the Cr.PC against the accused carefully sifted/perused the material made available on record to ensure/ascertain whether prima-facie case exists against the accused or not? The Hon'ble Apex Court in L. Krishna Reddy's case supra, has specifically held that while framing charge under Section 228 Cr.PC, court must keep in mind the interest of the person arraigned as an accused, who may be put to the ordeals of trial on the*

basis of flippant and vague evidence. In the instant case, perusal of impugned order nowhere suggests that learned trial Court while proceeding to frame charge made an endeavor to sift/peruse the material adduced on record by the Investigating Agency. There appears to be no application of mind by the learned court below while charging under Section 307 Cr.PC. The Hon'ble Apex Court further held that once a case is presented to it by the prosecution, it is bounden duty of Court to sift through the material to ascertain whether a prima-facie case has been established or not. But even if otherwise, ratio as laid down by the Hon'ble Apex Court in other cases cited above are also taken into consideration, it clearly emerge from the same that in all probabilities, learned court below while framing charge is required to ascertain whether prima-facie case exists or not. Needless to say exercise, if any, carried out by the Court while ascertaining whether prima-facie case, if any, exists against the accused or not, must reflect in order, whereby charge is proposed to be framed. But in the instant case, as has been discussed in detail, there appears to be no attempt, if any, made by the learned trial Court to ascertain whether prima-facie case exists against the accused at the time of framing of charge or not and as such, impugned order is not sustainable being totally contrary to the law laid down by the Hon'ble Apex Court in the judgment referred herein above.

21. True, it is jurisdiction of this Court under Section 397 of the Cr.PC is very limited but same can be exercised so as to examine the correctness, illegality or propriety of order passed by the trial Court or inferior court as the case may be. The legality, propriety or correctness of an order passed by an inferior court is the very foundation of exercise of jurisdiction under Section 397 but ultimately it also requires justice to be done. In the judgments referred herein above, the Hon'ble Apex Court has held that jurisdiction vested in this Court in terms of Section 397 Cr.PC can be exercised to the fact that there is a palpable error, non-compliance with the provision of law or where decision is completely erroneous or where the judicial discretion is exercised arbitrarily.

22. Hence, in the instant case, for the reasons stated above, this Court sees substantial reason to exercise its revisionary power to correct impugned order, which on the face of it is not based upon the principles as have been laid down in the judgments recorded by the Apex Court while discussing scope of power of Court to frame charge under Section 228 of the Cr.PC. In the Vineet Kumar's case supra, the Hon'ble Supreme Court has held that Court cannot permit prosecution to go on if the case falls in one of the categories as enumerated in the case titled *State of Haryana and others vs. Bhajan Lal and*

*others, because judicial process is a solemn proceeding and same should not be an instrument of oppression or, needless harassment. This court has no hesitation to conclude after carefully examining the impugned order vis-à-vis , material available on record that learned court below merely acted as a post office, who accepted the charge sheet under Section 173 of the Cr.PC as verbatim without making an effort to ascertain whether prima-facie case exists against the accused or not? Impugned order nowhere reveals that learned court below while passing impugned order made an effort to sift through the material produced before it to conclude whether prima-facie case is made out against the petitioner. Hence, this Court has reason to conclude that great prejudice has been caused to the petitioner."*

14. This Court, having taken note of the judgment rendered by the Hon'ble Apex Court in **L. Krishna Reddy v. State by Station House Officer and Ors (2014) 14 SCC 401**, has held that while framing charge under Section 228 Cr.PC, court must keep in mind the interest of the person arraigned as an accused, who may be put to the ordeals of trial on the basis of flippant and vague evidence. In **L. Krishna Reddy's case** supra, the Hon'ble Apex Court has categorically held that once a case is presented to the learned trial Court by the prosecution, it is bounden duty of Court to sift through the material to ascertain whether a prima-facie case is made out or not. True, it is that in numerous judgments, the Hon'ble Apex Court has observed that at the stage of framing charge, Courts need not undertake an elaborate enquiry while sifting and weighing the material but same time, it has been also held that court needs to consider whether evidentiary material on record, would reasonably connect the accused with the crime or not.

15. Now being guided by the aforesaid law laid down by the Hon'ble Apex Court, which has been followed by this Court in number of cases, this Court shall proceed to examine and consider the prayer made in the instant petition vis-à-vis factual matrix of the case.

16. Precisely, case of the prosecution against the petitioners is as emerge from the charge sheet filed before the court below under Section 173 Cr.PC is that on the date of the alleged incident, petitioners herein forcibly took the victim-prosecutrix on the roof of their house and thereafter, petitioner No.3 allegedly sexually assaulted her against her wishes and as such, they all are liable to be punished and sentenced for having committed offence punishable under Section 376-D IPC. Before ascertaining the sustainability, if any, of the charge under Section 376-D IPC, this Court deems it necessary to take note of the provision contained under Section 376-D of the Code, which reads as under:

***“376-D Gang rape: Where a woman is raped by one or more persons constituting a group or acting in furtherance of a common intention, each of those persons shall be deemed to have committed the offence of rape and shall be punished with rigorous imprisonment for a term which shall not be less than twenty years, but which may extend to life which shall mean imprisonment for the remainder of that person's natural life, and with fine:  
Provided that such fine shall be just and reasonable to meet the medical expenses and rehabilitation of the victim:  
Provided further that any fine imposed under this section shall be paid to the victim.”***

Having perused aforesaid provision of law, it emerges that where a woman is raped by one or more persons constituting a group or acting in furtherance of a common intention, each of those persons shall be

deemed to have committed the offence of rape punishable under the aforesaid provision of law.

**17.** Respondents in their reply to the instant petition as well as in the challan filed under Section 173 Cr.PC have categorically admitted factum with regard to pendency of civil dispute inter-se parties on account of some property. Besides above, averments contained in the petition, which stand un-rebutted reveal that petitioners as well as respondents No. 2 and 3, at whose behest FIR sought to be quashed came to be lodged, are closely related to each other and have been fighting with each other for years together on account of some property/house left by their forefathers. Petitioner No.1 filed Civil Suit for declaration of permanent prohibitory injunction in the learned trial Court, which was allowed. Respondent No.3 filed an appeal against the aforesaid judgment rendered by the court below, which was partly allowed, against which both the brothers filed RSA No. 595 of 2012 and RSA No. 628 of 2012, which were decided by this Hon'ble Court on 8.9.2014 remanding the case to the trial Court to decide afresh and out of the said findings, presently, RSA No. 1 of 2018 titled Kuldeep Chand v. Suresh Chand and cross appeal titled Suresh Chand v. Kuldeep Chand is pending. Since despite repeated opportunities, no reply has been filed by respondents No.2 and 3 to the petition, averments contained in the same are presumed to be correct, especially when such averments have been



virtually admitted by the respondent-State in its reply as well as in charge sheet filed under Section 173 Cr.PC.

**18.** Having heard Mr. Sanjeev Kuthiala, learned Senior counsel representing the petitioner and perused material available on record, this Court finds force in the submission made on behalf of the petitioners that an attempt has been made to falsely implicate petitioners in the case registered against them. Similarly, this Court finds from the record that petitioner No. 1 and respondent No.3 have an old animosity with each other on account of some property dispute and in this regard, they have already filed numerous cases against each other. Material adduced on record by the petitioners further reveals that respectable members of the society are also aware of the dispute/enmity inter-se petitioner No.1 and respondent No.3 and as such, they, after lodging of FIR sought to be quashed in the instant proceedings, also apprised the police that false case has been registered against the petitioners.

**19.** Leaving it aside, there appears to be no coherence and consistency in the statements made by the victim-prosecutrix, her brother and father (complainant) to the police and Judicial Magistrate under Sections 154, 161 and 164 Cr.PC, respectively, rather story put forth by the prosecution appears to be highly improbable on the face of it. In his initial version given under Section 154 Cr.PC, complainant alleged that on the date of alleged incident, he had locked his house from inside and had given keys to his daughter i.e. victim-prosecutrix, enabling her to shoo

away the dogs barking outside their house. Most importantly, complainant in his initial statement stated before the police that after five minutes, he asked for keys from his daughter, but since she did not answer his calls, he sent his son to find her whereabouts. As per own statement of the complainant, his daughter went missing somewhere at 11:00 pm in the night, but missing report came to be lodged at 6:45 PM next day i.e. 14.4.2014. Victim-prosecutrix, who subsequently, came to be recovered from the first floor of the house of the petitioners in her statement recorded under Section 161 Cr.PC alleged that when she came out of the bathroom, petitioner No. 3 Sumesh gagged her mouth and forcibly took her to the roof of his house, where petitioners No. 1 and 2 were already present and thereafter, petitioner No.3 sexually assaulted her. In the aforesaid statement, victim-prosecutrix alleged that petitioner No.3 after having subjected her to sexual intercourse, made her consume 18 sleeping pills, whereafter she became unconscious and when she regained conscious, she was in Civil Hospital Nurpur (Annexure P-3). Besides above, victim-prosecutrix in her aforesaid statement claimed that in the year, 2011, petitioner No. 3 had clicked her nude photographs while she was taking bath in the bath room and thereafter, started blackmailing her. Precisely, in her aforesaid statement, she stated that petitioner No. 3 had been blackmailing her since year 2011 on the pretext that in case, she does not succumb to his demands, he would upload her nude

photographs on the internet and in this manner, he sexually assaulted her 40-50 times.

**20.** Brother of victim-prosecutrix in his statement recorded under Section 161 Cr.PC (Annexure P-2), stated that police found his sister in unconscious condition below the stairs of first floor of the house of the petitioners. He stated that on 16.5.2014, his sister disclosed to him that on 13.4.2014, while she was coming out of the bathroom, all the petitioners caught hold of her and forcibly took her to their house and administered drugs/pills, whereafter petitioner No. 3 sexually assaulted her against her wishes. He stated that when his sister refused, petitioner No. 3 gave her beatings and hid her below the stairs of the first floor. Aforesaid statement of brother of the victim-prosecutrix, which is totally contrary to the statements of victim-prosecutrix as well as complainant (respondent No.3) appears to be highly unreliable because victim-prosecutrix in her statement recorded under Section 161 Cr.PC nowhere stated that while she was coming out of the bathroom, she was abducted/kidnapped by all the petitioners, rather she stated that petitioner No.3 forcibly took her to the roof of his house and sexually assaulted her after making her consume medicines/ pills, whereas brother of victim-prosecutrix gave altogether different version as has been noticed herein above.

**21.** Subsequently, victim-prosecutrix in her statement recorded under Section 164 Cr.PC before the Judicial Magistrate changed her stance and claimed that when on the alleged date of incident, she came

out of the bathroom, her uncle, aunt and cousin (i.e. petitioners herein) forcibly caught hold of her and took her to the roof of the house, but while stating so, she also stated that thereafter, uncle and aunty (petitioners No. 1 and 2) went down and petitioner No.3 sexually assaulted her against her wishes. In the aforesaid statement, she alleged that after some time, petitioners, No. 1 and 2 again came back and petitioner No. 1 stated that lets make her consume drugs/ medicine, whereafter she would die and they would throw her away.

**22.** If the statement of victim-prosecutrix recorded under Section 164 Cr.PC is read in its entirety, it can be safely inferred that there was some kind of unnatural relationship between victim-prosecutrix and petitioner No.3, who are otherwise cousins. It appears from the record that though there was enmity inter-se petitioner and respondent No.3 on account of house left by their forefather, but victim-prosecutrix and petitioner No.3 were having some kind of relationship because medical evidence adduced on record suggests that victim-prosecutrix had sexual intercourse a number of times prior to the alleged incident coupled with the fact that DNA profile of both petitioner No. 3 and victim-prosecutrix matched completely as is evident from the MLC (Annexure P-4). As per own statement of victim-prosecutrix, she was repeatedly sexually assaulted by petitoenr No.3 since the year, 2011, but to substantiate such allegation, no material worth credence has been led on record. Having regard to the nature and intensity of dispute inter-se parties, it is highly unbelievable that

petitioner No.3 kept on sexually assaulting victim-prosecutrix against her wishes for three years on the pretext that in case she refuses, he would upload her nude photographs on internet. Even it is presumed that victim-prosecutrix did not lodge complaint against petitioner No.3 on account of her fear that in the event of her lodging report, she would be defamed, but it cannot be accepted that during this period, she could not disclose such fact to her parents. Though victim-prosecutrix in her statement recorded under Section 164 Cr.PC stated that on 28.2.2014, when she had gone in the room of petitioner No.3, she broke the phone of the petitioner-Sumesh so he could not black mail her further. If it is so, there is no explanation that what prevented her after 28.2.2014, to lodge complaint against petitioner No.3. Aforesaid version of the victim/prosecutrix, who was major at the relevant time, itself suggests that she had been frequently visiting the house of the petitioner and she had direct access to the room of petitioner No.3.

**23.** Leaving everything aside, version put forth by victim-prosecutrix that on the date of the alleged incident, she was forcibly abducted from her house by the petitioners and then was subjected to sexual intercourse on the roof of the house, otherwise appears to be highly improbable and unbelievable in view of the fact that houses of the parties to the lis are adjacent to each other coupled with the fact that they share common courtyard. Though in the instant case, complainant in his statement recorded under Section 154 Cr.PC, alleged that petitioner No.3

raped his daughter after making her consume some medicine, but victim-prosecutrix in her statement recorded under Section 164 Cr.PC stated that first, all the petitioners abducted her and took her to the roof of their house and thereafter petitioner No.3 sexually assaulted her. Interestingly, while stating so, victim-prosecutrix stated that petitioner Nos. 1 and 2 after leaving her there went down and thereafter, petitioner No.3 sexually assaulted her. There is no mention, if any, with regard to administration of drugs/ pills by the petitioners to the victim-prosecutrix before or while she was being subjected to sexual intercourse, rather in her aforesaid statement, victim-prosecutrix stated that after some time, petitioners No. 1 and 2 also came and said that make her consume drugs/ pills so that she dies. It is not understood that while she was being subjected to forcible sexual intercourse, what prevented her to raise alarm. Since houses of petitioner No.3 and prosecutrix are adjacent to each other and they had common courtyard, it is difficult to believe that nobody heard the cries of victim-prosecutrix and in the event of alarm being raised by victim-prosecutrix, her family members, who at the time of the alleged incident were awake because of the sudden disappearance of their daughter, would have definitely come to her rescue.

**24.** Interestingly, though in the case at hand, victim-prosecutrix repeatedly claimed that she was given/administered 18 pills at the time of the alleged incident, but her such version stands totally falsified in the wake of report of RFSL (Annexure P-5), which suggests that no drug was

detected in the blood test of the victim-prosecutrix sent for chemical analysis. Report of RFSL completely demolishes the case of the prosecution and falsifies the version put forth by the victim-prosecutrix, which otherwise cannot be believed on account of material inconsistencies and contradictions.

**25.** There is another aspect of the matter that complainant in his statement recorded under Section 154 CrPC stated to the police that he has suspicion that petitioners might have made his daughter run away, but it is not understood that in case he had suspicion that petitioners may have abducted/hid his daughter, then why he did not inquire about her whereabouts from the petitioners immediately after her disappearance, rather in the case at hand, complainant waited for more than 18 hours to lodge the missing report, whereafter police allegedly recovered victim-prosecutrix from the house of the petitioners. Yet, there is another aspect of the matter, which is very relevant in the case at hand that the complainant after having seen photographs shown to him by the police fairly disclosed to the police that victim-prosecutrix is sleeping in the first floor of his house.

**26.** Having carefully perused statement of victim-prosecutrix recorded under Section 164 Cr.PC juxtaposing her initial statement recorded under Section 161 Cr.PC and statement of complainant respondent No.3 under Section 154 Cr.PC, this Court has no hesitation to conclude that FIR sought to be quashed in the instant proceedings has

been filed with an ulterior motive for wreaking vengeance on the petitioners with a view to spite them on account of private and personal grudges. Aforesaid conclusion drawn by this Court is further substantiated by the fact that petitioners No.1 and respondent No.3 (complainant), who are real brothers have been fighting with each other tooth and nail over a house left by their ancestors, qua which, cross litigations are pending adjudication in the various courts of law. Material available on record further reveals that petitioners repeatedly lodged complaint with police that they are being harassed by respondent No.3 and his family (Annexure P-1 and P-2). Apart from above, respectable persons of the society also apprised the SDM and DSP Nurpur with regard to ill intentions and ulterior motive of respondent No.3 as is evident from Annexure P-3.

**27.** Story put forth by the victim-prosecutrix that on the date of the alleged incident, she was forcibly taken by the petitioners to the roof of their house and then was subjected to sexual intercourse, cannot be believed being highly improbable, rather same appears to be concocted because of the peculiar facts and circumstances of the case as has been discussed herein above. No doubt, in the case at hand, there is overwhelming evidence with regard to animosity inter-se petitioners and family of respondent No.3, but having regard to the relationship of victim-prosecutrix with petitioners No. 1 and 2, it is difficult to digest and believe that they permitted their son (petitioner No.3) to rape their own niece in front of their eyes. It is not expected in Indian society that parents would



be party to such heinous crimes. Similarly, it is unbelievable that victim-prosecutrix had gone out at night and accused were waiting for her outside the house. Though respondent-complainant and victim-prosecutrix alleged that petitioners made her to consume drugs/ pills with a view to eliminate her, but it is not understood that what petitioners would have gained by eliminating her, who was otherwise closely related to them. Since there was civil dispute pending *inter-se* parties, wherein both the parties were fighting tooth and nail, it cannot be believed that in that scenario, petitioners would take risk of first abducting daughter of the complainant and then, subject her to sexual intercourse and as such, in the peculiar facts and circumstances of the case, this Court is persuaded to arrive at a conclusion that FIR sought to be quashed in the instant proceedings have been lodged solely with a view to humiliate, harass and implicate the petitioners in a false case.

**28.** Otherwise also, version as has been put forth by the victim-prosecutrix, if tested/analyzed in light of other evidence collected on record by the Investigating Agency, especially medical evidence, case of the prosecution is bound to fail and hence, no fruitful purpose would be served by allowing such proceedings to continue. To the contrary, petitioners would suffer irreparable loss, harassment and mental agony, if criminal proceeding in the present case, which is manifestly attended with malafide and has been maliciously instituted with an ulterior motive to settle personal scores, is allowed to continue.

**29.** Besides above, this Court after having carefully perused order dated 12.11.2018, passed by the learned Additional Sessions Judge-1, Kangra, at Dharamshala, framing charges against the petitioners, has no hesitation to conclude that there is/was no material much less substantial available on record, enabling the court below to frame charges under Section 376-D against petitioners No. 1 and 3 and under Section 109 against petitioner No.2. True it is, at the initial stage of framing of charge, the court is concerned not with proof but with the strong suspicion whether the accused has committed an offence, which if put to trial, could prove him guilty, but in all the judgments, which have been taken note herein above, the Hon'ble Apex Court has held that at the time of framing of charge, court should come to the conclusion that prima facie case, if any, exists to the satisfaction of the Court against the accused.

**30.** Hon'ble Apex Court in **L. Krishna Reddy's** Case (supra) taking note of the its other judgments passed in "**Stree Atyachar Virodhi Parishad Vs. Dilip Nathumal Chordia & Anr.**, (1989) 1 SCC 71 as well as "**Central Bureau of Investigation Vs. K. Narayana Rao** (2012) 9 SCC 512", has held that Courts need not undertake an elaborate enquiry while sifting and weighing the material but court needs to consider whether evidentiary material on record, if generally accepted would reasonably connect the accused with the crime or not, it has further held that once a case is presented to the Court by the prosecution, it is the duty of the Court to sift through the material to ascertain whether prima-facie case has been

established against the accused or not? However, in the case at hand, there appears to be no effort, if any, made by the court below while framing charge to sift through the material adduced on record by the Investigating Agency along with challan filed under Section 173 Cr.PC to ascertain prima-facie case, if any, against the accused. Had the court below undertook such exercise at the time of framing of charge, it would not have passed order which now stands impugned before this Court.

**31.** Needless to say exercise, if any, carried out by the court while ascertaining whether prima-facie case, if any, exists against the accused or not, must reflect in the order, whereby charge is proposed to be framed. But unfortunately in the case at hand, there appears to be no attempt, if any, made by the court below to ascertain prima-facie case, if any, against the accused at the time of framing of charge and as such, order framing charges, being unsustainable in the eye of law, cannot sustain. Otherwise also, court below while framing charge under Section 376-D against petitioners No. 1 and 3, and Section 109 IPC against the petitioner No.2 appears to have swayed with emotions because in view of the facts and circumstances discussed herein above, no case much less under Section 376-D can be said to have been made out against the petitioners. Neither, there is sufficient evidence to conclude that on the date of the alleged incident, victim-prosecutrix was raped by petitioner No. 3 with the help and aid of petitioners No. 1 and 2, nor there is

evidence that all the aforesaid accused acted in furtherance of common intention.

**32.** Moreover, this Court having perused material available on record, has no hesitation to conclude that chances of conviction, if any, on the basis of material adduced on record by the Investigating Agency, are very remote and bleak and in case, FIR sought to be quashed in the instant proceedings, order dated 12.11.2018 framing charge as well as consequent proceedings arising therefrom, is allowed to sustain, accused shall be unnecessarily put to the ordeals of protracted trial, which ultimately may lead to acquittal of the accused.

**33.** Consequently, in view of the detailed discussion made herein above as well as law laid down by the Hon'ble Apex Court, present petition is allowed and FIR No. 91 of 2014 dated 15.4.2014, registered at PS Nurpur, District Kangra, HP, order dated 12.11.2018 framing charges under Sections 376-D and 109 of IPC, passed by the learned Additional Sessions Judge-1, Kangra, at Dharamshala as well as consequent criminal proceedings, are quashed and set-aside. Accordingly, present petition is disposed of, so also pending applications, if any.

**31<sup>st</sup> August, 2020**

*manjit*

**(Sandeep Sharma),  
Judge**