

IN THE HIGH COURT OF MADHYA PRADESH
AT INDORE

BEFORE

HON'BLE SHRI JUSTICE PREM NARAYAN SINGH

CRIMINAL REVISION No. 4468 of 2018

BETWEEN:-

JUNED S/O SALIM KHAN, AGED ABOUT 21 YEARS,
OCCUPATION: STUDENT WARD NO. 2, EKLERIA ROAD,
TALEN TEHSIL PACHORE (MADHYA PRADESH)

.....PETITIONER

(BY SHRI REKHA SHRIVASTAVA, ADVOCATE)

AND

1. THE STATE OF MADHYA PRADESH STATION HOUSE OFFICER THR.PS. TALEN (MADHYA PRADESH)
2. HEMANT SHARMA GRAM TALEN DIST. RAJGARH (MADHYA PRADESH)
3. LAKHAN YADAV GRAM TALEN DIST. RAJGARH (MADHYA PRADESH)

.....RESPONDENTS

(BY SHRI ANAND SONI, LEARNED ADDITIONAL ADVOCATE GENERAL)

RESERVED ON : 24.11.2023

PRONOUNCED ON : 28.11.2023

This criminal revision having been heard and reserved for orders, coming on for pronouncement this day, the court passed the following:

ORDER

Invoking the revisional jurisdiction under Section 397 read with Section 401 of Cr.P.C., the petitioner has preferred this revision against the impugned order dated 12.07.2018 passed by learned Sessions Judge, Sarangpur, District-Rajgarh, in S.T. No.120/2018 by which the learned trial Court framed the charges against the petitioner under Sections 124A, 153A and 295A of Indian

Penal Code, 1860 (hereinafter referred to as the 'IPC'), Section 67A of Information Technology Act (hereinafter referred to as the 'IT Act') and Section 4 read with Section 6 of the Indecent Representation of Women (Prohibition) Act, 1986 (hereinafter referred to as 'Act, 1986').

2. Succinctly, the case of the prosecution is that the respondent Nos. 2- Hemant Sharma and 3-Lakhan Yadav have filed a written complaint on 14.02.2018 against the petitioner at Police Station-Talen and on that basis, an First Information Report for the offences under Sections 295A, 153A, 124A of IPC and Section 67 of IT Act have been lodged. Further, after investigation, charge-sheet under Sections 295A, 153A(1), 124A of IPC, Section 67/67D of I.T. Act and Section 4/6 of the Act, 1986 has been filed. In the sequel thereof, after considering material available on charge-sheet, the learned trial Court has framed the charges as aforesaid by the impugned order dated 12.07.2018. Being aggrieved from that order, the petitioner has filed this revision.

3. In this revision petition, learned counsel for the petitioner pleaded that the learned trial Court, overlooking the contents of the case, wrongly framed the charges against the petitioner. The complainants have not made any allegation against the present petitioner. The petitioner was not the original admin of the WhatsApp group and only when two other members had left the group, then the petitioner became admin of the group by default. The petitioner is in no way connected with the objectionable photographs because he has not shared or liked the photographs. It is also contented that since the petitioner has not created the said photographs, no prima-facie case regarding aforesaid offences is made out against the petitioner. Thus, he cannot be charged under aforesaid offences and it is requested to set aside the impugned order of framing charge and discharge the petitioner from the aforesaid charges for the offences under

Sections 124A, 153A and 295A of IPC, Section 67A of IT Act and Section 4 read with Section 6 of the Act 1986.

4 . On the contrary, learned Additional Advocate General has remonstrated that since the petitioner was the member of group, he has not left the group after seeing the objectionable photographs, he will be liable for the charges as aforesaid. It is further contended that as per WhatsApp rules, when a person avails the services of WhatsApp, he is bound to accept the terms and conditions regarding use of WhatsApp. If a person uses it otherwise than the terms prescribed, he cannot take protection that he is using it lawfully. In addition to that, it is also expostulated that at the stage of framing charges, only the strong suspicion of offence and a prima-facie case are required. Hence, this revision petition being devoid of merits, liable to be dismissed.

5. In backdrop of the rival submissions, the question for consideration arises as to whether the impugned order passed by the learned trial Court with regard to framing of aforesaid charges is suffering from impropriety, illegality and infirmity in the eyes of law and facts.

6. In view of aforesaid arguments, I have gone through the record, Ms. Rekha Shrivastava, learned counsel for the petitioner heavily relied upon the judgment passed by Hon'ble Apex Court in the case of ***Balwant Singh and another Vs. State of Punjab, (1995) 3 SCC 21***, in which it has been held that for offences under Sections 124A, 153(1)(A) and 295A, Mens rea is an essential element of the offence. Shri A.K. Soni, learned Additional Advocate General for the respondent/State, controverting the contentions of the petitioner, submitted that since the petitioner was member and Admin of WhatsApp group by which the said photograph was percolated, he will be liable for the offences

as aforesaid.

7. On this aspect, learned Additional Advocate General has drawn the attention of this Court towards the judgment of Allahabad High Court rendered in the case of ***Mohd. Imran Malik Vs. State of U.P. and another***, wherein it has been held that

"The instant application under Section 482 Cr.P.C. is moved for quashing of the proceedings of the Case Crime No.339/9 of 2021 (State v. Imran & Anr.) (arising out of Case Crime No.525 of 2019) under Section 66 of the Information Technology Act (in short 'the I.T. Act'), Police Station-Civil Lines, District Muzaffar Nagar. It is alleged in the F.I.R that a WhatsApp Message containing the photo of our Hon'ble Prime Minister Shri Narendra Modi, the face has been shown to be of a picture of a pig.

It is contended by learned counsel for the applicant that the said message was not sent by the applicant and it was sent by one Najam Alam. He was only the group 'admin'. It is further submitted that no case against him is made out and the proceeding is liable to be quashed.

Learned A.G.A., on the other hand, has opposed the application and stated that liability of the sender of the message and that of the 'group admin' is co-extensive and it cannot be said no offence under Section 66 of the I.T. Act is made out against the applicant.

From the perusal of the record, it appears that the applicant was a 'group admin' and he is also a co-extensive member of the group. In view of the above, I do not find any cogent reason to interfere. The application under Section 482 of Cr.P.C. is dismissed accordingly."

8. In view of aforesaid judgment, since the applicant was undisputedly the group admin of WhatsApp group at the time when the said photograph was percolated and shared, he will be liable for the aforesaid offences irrespective to the fact that he became admin by default.

9. Learned counsel for the petitioner has submitted that as per FSL Report, the said mobile phone was not found in running condition. Virtually, it

may be a defence of petitioner but at the stage of framing charges, it cannot be considered. Moreover, the said incident of percolation of indecent and objectionable material was happened on 14.02.2018, whereas the said mobile was seized on 16.02.2018 at 5:00 pm from the possession of petitioner and FSL Report did not clarify as to whether mobile was not in running condition on 14.02.2018, the date of incident. Hence, it cannot be assumed on the basis of only FSL report that on 14.02.2018, when the said objectionable photograph was percolated, the mobile of the petitioner was not in running condition.

10. Be that as it may, it is also well settled that such type of defence cannot be considered at the stage of framing charges. In this regard, the law laid down by Hon'ble Apex Court in the case of **State of Orissa vs. Debendranath Padhi [2004 Law Suit (SC) 1408]** is worth to refer here as under:

"Further, at the stage of framing of charge roving and fishing inquiry is impermissible. If the contention of the accused is accepted, there would be a mini trial at the stage of framing of charge. That would defeat the object of the Code. It is well-settled that at the stage of framing of charge the defence of the accused cannot be put forth."

11. This Court is conscious of the various decisions laid down by Hon'ble Apex Court on the point. In the case of **Union of India vs. Prafulla Kumar Samal and Another [AIR 1979 SC 366]**, the Hon'ble Apex Court has held as under:

"The scope of section 227 of the Code was considered by a recent decision of this Court in the case of State of Bihar v. Ramesh Singh(1) where Untwalia, J. speaking for the Court observed as follows:-

"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".

12. So far as the law laid down by Hon'ble Apex Court in the case of **Balwant Singh (supra)** is concerned, in this case, only slogans were raised in a crowded place after the assassination of Smt. Indira Gandhi, the then Hon'ble Prime Minister of India and the case was related to conviction of the appellants and not related to the framing of the charges. Moreover, Hon'ble the Apex Court, after giving benefit of doubt, has allowed the appeal and acquitted the appellants of that case, whereas in the case at hand, learned trial Court has to see only the prima-facie case against the petitioner. As such, the petitioner cannot be benefited by the aforesaid law laid down by Hon'ble the Apex Court.

13. Here, it is pertinent to mention that as per First Information Report, in order to incite the religious sentiments of Hindus, a nude photo of a lady alongwith National Flag was shared on WhatsApp. The name of WhatsApp group was 'Sanskari Kamine' and mobile number of group admin was 7898441469. Further, on the basis of memorandum statement of petitioner recorded under Section 27 of Indian Evidence Act, the said mobile was seized from the petitioner.

14. Learned Additional Advocate General has also contended that since the petitioner has not left the group and remained in group, even after seeing the objectionable photographs, he will be liable for the aforesaid offences.

15. In this regard, Section 33 of IPC mandates that “The word “act” denotes as well a series of acts as a single act : the word “omission” denotes as well as series of omissions as a single omission .” In this way, inasmuch as, the petitioner had not left the WhatsApp group and remained in group as admin, the prima-facie case regarding the aforesaid offences made against him.

16. On this aspect, the ratio laid down by Hon’ble Apex Court in the case of ***Chitresh Kumar Chopra Vs. State (Govt. of NCT of Delhi) (2009) 16 SCC 605***, is relevant to refer here as under :-

"25. It is trite that at the stage of framing of charge, the court is required to evaluate the material and documents on record with a view to finding out if the facts emerging therefrom, taken at their face value, disclose the existence of all the ingredients constituting the alleged offence or offences. For this limited purpose, the court may sift the evidence as it cannot be expected even at the initial stage to accept as gospel truth all that the prosecution states. At this stage, the court has to consider the material only with a view to find out if there is ground for "presuming" that the accused has committed an offence and not for the purpose of arriving at the conclusion that it is not likely to lead to a conviction."

17. Again, in the case of ***Amit Kapoor vs. Ramesh Chander [(2012) 9 SCC 460***, Hon'ble Apex Court observed as under:-

"27. .. At best and upon objective analysis of various judgments of this Court, we are able to cull out some of the principles to be considered for proper exercise of jurisdiction, particularly, with regard to quashing of charge either in exercise of jurisdiction under Section 397 or Section 482 of the Code or together, as the case may be:

27.2. The Court should apply the test as to whether the

uncontroverted allegations as made from the record of the case and the documents submitted therewith prima facie establish the offence or not. If the allegations are so patently absurd and inherently improbable that no prudent person can ever reach such a conclusion and where the basic ingredients of a criminal offence are not satisfied then the Court may interfere.

27.3. The High Court should not unduly interfere. No meticulous examination of the evidence is needed for considering whether the case would end in conviction or not at the stage of framing of charge or quashing of charge.

27.4. Where the exercise of such power is absolutely essential to prevent patent miscarriage of justice and for correcting some grave error that might be committed by the subordinate courts even in such cases, the High Court should be loath to interfere, at the threshold, to throttle the prosecution in exercise of its inherent powers.

27.9. Another very significant caution that the courts have to observe is that it cannot examine the facts, evidence and materials on record to determine whether there is sufficient material on the basis of which the case would end in a conviction; the court is concerned primarily with the allegations taken as a whole whether they will constitute an offence and, if so, is it an abuse of the process of court leading to injustice.

27.13. Quashing of a charge is an exception to the rule of continuous prosecution. Where the offence is even broadly satisfied, the Court should be more inclined to permit continuation of prosecution rather than its quashing at that initial stage. The Court is not expected to marshal the records with a view to decide admissibility and reliability of the documents or records but is an opinion formed prima facie.”

18. In so far as the revisional jurisdiction in examining the orders as to the framing of charges is concerned, it is condign to quote the following extract of the judgment passed by Hon’ble Apex Court in the case of ***State of Rajasthan v. Fatehkaran Mehdu, (2017) 3 SCC 198***, herein below:

“ 26. The scope of interference and exercise of jurisdiction under Section 397 CrPC has been time and again explained by this Court. Further, the scope of

interference under Section 397 CrPC at a stage, when charge had been framed, is also well settled. At the stage of framing of a charge, the court is concerned not with the proof of the allegation rather it has to focus on the material and form an opinion whether there is strong suspicion that the accused has committed an offence, which if put to trial, could prove his guilt. The framing of charge is not a stage, at which stage final test of guilt is to be applied.

Thus, to hold that at the stage of framing the charge, the court should form an opinion that the accused is certainly guilty of committing an offence, is to hold something which is neither permissible nor is in consonance with the scheme of the Code of Criminal Procedure.”

19. In terms of the revisional jurisdiction in examining the orders passed by trial Court, the following excerpt of the judgment of Hon’ble Apex Court in the recent case of ***Amit Kapoor vs. Ramesh Chandra reported as (2022) 9 SCC 460*** is propitious to reproduce here under:-

“12. Section 397 of the Code vests the court with the power to call for and examine the records of an inferior court for the purposes of satisfying itself as to the legality and regularity of any proceedings or order made in a case. The object of this provision is to set right a patent defect or an error of jurisdiction or law. There has to be a well-founded error and it may not be appropriate for the court to scrutinise the orders, which upon the face of it bears a token of careful consideration and appear to be in accordance with law. If one looks into the various judgments of this Court, it emerges that the revisional jurisdiction can be invoked where the decisions under challenge are grossly erroneous, there is no compliance with the provisions of law, the finding recorded is based on no evidence, material evidence is ignored or judicial discretion is exercised arbitrarily or perversely. These are not exhaustive classes, but are merely indicative. Each case would have to be determined on its own merits.

13. Another well-accepted norm is that the revisional jurisdiction of the higher court is a very limited one and cannot be exercised in a routine manner. One of the inbuilt restrictions is that it should not be against an

interim or interlocutory order. The Court has to keep in mind that the exercise of revisional jurisdiction itself should not lead to injustice ex facie. Where the Court is dealing with the question as to whether the charge has been framed properly and in accordance with law in a given case, it may be reluctant to interfere in exercise of its revisional jurisdiction unless the case substantially falls within the categories aforesaid. Even framing of charge is a much advanced stage in the proceedings under the CrPC.”

20. In view of the aforesaid prepositions, the learned trial Court, while framing of charges, must apply its judicial mind on the material placed on record and must be satisfied that there is strong possibility subsist that the accused has committed the offence. At the juncture of framing of charges, the Court has to prima facie examine whether there is sufficient ground for proceeding against the accused. Nevertheless, the Court is not expected to evaluate or analyse the findings in order to arrive at the conclusion that the material furnished by the prosecution are sufficient to convict the accused or not? In the case at hand, the findings of learned trial Court regarding prima facie case against the accused persons appear to be infallible.

21. With regard to the revisional power of this Court, it is well settled that the jurisdiction of the revisional Court is not as that of an appellate Court, which is free to reach its own conclusion on evidence untrammelled by any finding entered by the trial Court. Actually the jurisdiction of revisional Court has a limited scope. The revisional Court can interfere with the impugned order of the learned trial Court only when it is unjust and unfair. In case where the order of subordinate Court does not suffer from any illegality, merely because of equitable considerations, the revisional Court has no jurisdiction to re-consider the matter and pass a different order in a routine manner.

22. In view of the aforesaid principles of law and factual matrix of the

case, this Court is of the view that there is no illegality, perversity or infirmity found in the impugned order of the learned trial Court regarding framing of charges against the petitioners, hence no interference is warranted by this Court. As a result thereof, this revision petition, being devoid of merits, is dismissed and the impugned order dated 12.07.2018 is hereby affirmed.

23. A copy of this order be sent to the concerned Court for necessary information.

Certified copy, as per rules.

Vindesh



(PREM NARAYAN SINGH)
JUDGE