



2025:CGHC:22670
AFR

HIGH COURT OF CHHATTISGARH AT BILASPUR

CRA No. 1589 of 2024

Judgment reserved on 06.03.2025

Judgment delivered on 09.6.2025

Manoj Kumar Agrawal S/o Jayram Agrawal Aged About 32 Years R/o Village- Pusaur, Police Station- Pusaur, District- Raigarh, C.G. Present Address- Kalindi Kunj, Chowki- Jutmil, District- Raigarh, C.G.

--- Appellant (s)

versus

1. State Of Chhattisgarh Through Station House Officer, Police Station- Pusaur, District- Raigarh, C.G.
2. XYZ Nil

--- Respondent(s)

CRR No. 706 of 2024

XYZ Nil.

---Applicant(s)

Versus

1. Manoj Kumar Agrawal S/o Shri Jayram Agrawal Aged About 32 Years Pusour, P.S. Pusaur At Present R/o Kalindikunj, Chowky - Jutemill Raigarh, Tehsil And District Raigarh, Chhattisgarh.
2. State Of Chhattisgarh Thruogh, Officer Of Incharge Of Police Station Pusour, Distt Raigarh, Chhattisgarh.

--- Respondent(s)

For Appellant	:	Mrs. Fouzia Mirza, Sr. Advocate with Mr. Sooraj Jaiswal, Advocate in CRA No. 1589 of 2024 and Mr. T.K. Jha, Advocate for Applicant in CRR No. 706 of 2024.
For Respondent	:	Mr. T.K. Jha, Advocate with Mr. Tapan Kumar Chandra, Advocate for respondent No. 2 in CRA No. 1589 of 2024 and Mrs. Fouzia Mirza, Sr. Advocate with Mr. Sooraj Jaiswal Advocate for the Applicant in CRR No. 706 of 2024.
For State	:	Mr. Kishan Lal Sahu, Dy. GA

Hon'ble Mr. Justice Narendra Kumar Vyas

CAV Judgment

1. Since the issues involved in both the cases are arising out of the same FIR, therefore, they are heard analogously and are being disposed of by this common judgment.
2. This Criminal Appeal under Section 14-A (1) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989 (henceforth, 'SC/ST Act, 1989') has been preferred by the appellant / accused challenging the order dated 03.08.2024 (Annexure A-1) framing charges against him under Sections 376(2)(n), 506 Part II of the IPC and Sections 3(2)(v), 3(1)(r) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989 (henceforth 'the Act of 1989').
3. **Facts of the case in brief are as under:-**
 - (a) On 01.11.2022 a written report was made by the victim before Police Station Pusour alleging that she met the appellant on 24.01.2009 during

badminton competition at Raigarh, thereafter they started talking to each other. In January, 2012 on being called by appellant, she went to Pussour, appellant took her to his house and forcibly made physical relation with her saying that he will marry her. Thereafter, even after her resistance, he established physical relation with her on many occasions at different places i.e. Jaipur, Pahadganj Delhi, Puri etc. In the month of November, 2018 when she had conceived pregnancy, the appellant got it aborted by administering medicine. Thereafter, on 09.02.2019 the appellant had performed marriage with other girl, however, he continued relationship with victim. When victim again became pregnant, the appellant again aborted her pregnancy.

(b) It is alleged that on 01.03.2022 the appellant took her to Shiv Mandir on Mahashivratri where the appellant by applying vermilion on her forehead, married with her and when she became pregnant, the appellant refused to marry and abused in the name of her caste, assaulted and threatened to kill and told that the people of her caste were sweepers in our society. It is alleged that the appellant kept the victim in rented house as his wife about 11 months and thereafter he stopped providing her house rent, subsequently this incident was informed by the victim to her sister then the appellant committed marpit with her. On the basis of report, offence under Sections 376 & 506 of IPC was registered and during investigation, the offence under Section 3 (1) (b), 3 (2) (5) of the Act of 1989 and Section 4, 6 of the Prevention of Children from Sexual Offences Act, 2012 have also been added.

(c) After completion of the investigation charge sheet under aforementioned sections were filed. The appellant filed an application under Section 227 CrPC seeking his discharge from the offence contending that the alleged first incident of rape was committed before implementation of POCSO Act, 2012, as such the act is not applicable, therefore, he prayed for quashing of the charges under Section 4 and 6 of the Prevention of Children from Sexual Offences Act, 2012. Learned trial Court vide order dated 05.07.2023 has rejected the same. The appellant being aggrieved with this order has preferred CRR No. 914 of 2023 which was partly allowed by this Court and impugned order so far as it framing of charge against the appellant was set aside and the trial Court was directed to re-frame the charge against the appellant on the next date fixed or as early as possible in accordance with law, based on the material available in the charge sheet submitted by the prosecution. This Court vide its order dated 10.05.2024 has affirmed the order, rejecting the application filed under Section 227 CrPC seeking discharge.

(d) Thereafter learned trial Court vide impugned order dated 03.08.2024 has framed the charges against the appellant under Sections 376(2)(n), 506 IPC and Section 3(2)(v), 3(1)(r) of the SC and ST Act.

4. Being aggrieved & dissatisfied with framing of charges for commission of offence of rape and offence under the Atrocities Act the appellant has preferred the instant this Criminal Appeal whereas the victim has

preferred Criminal Revision for non framing of charges under the POCSO Act.

Submissions of appellant in CRA No. 1589 of 2024 and Respondent No. 2 in CRR No. 706 of 2024.

5. Learned Sr. counsel for the appellant in CRA No. 1589 of 2024 would submit that the Coordinate Bench of this Court in CRR No. 914 of 2023 has set aside the charges framed against the appellant and remanded back the matter to the trial Court for re-framing of the charges in accordance with the law on the material available in the charge sheet. She would further submit that a CrMP No. 429 of 2024 was filed by the appellant before this Court which was dismissed as withdrawn on 15.06.2024. Learned Sr counsel for the appellant would further submit that from perusal of charge sheet no case under Sections 376(2)(n), 506 Part-II IPC and 3(2)(v), 3(1) (r) of SC and ST Act is made out and there is no sufficient ground for proceedings against the appellant. She would further submit that victim is major lady at the time of incident and she has knowledge of the pros and cons of relationship. She would further submit that there is no evidence in the whole charge sheet with regard to abortion being done by the appellant and when the appellant had shown his disinclination for marriage then the victim lodged the FIR against him. Learned Sr. counsel for the appellant would further submit that if the entire face value of the charge-sheet is taken into consideration, ingredients of offence under Section 375 of IPC are not made out for framing of charge against the appellant. Learned Sr.

counsel for the appellant would submit that the allegation made in the FIR and the statement of the victim recorded before the trial Court clearly demonstrates that there is no misconception of fact with regard to promise of marriage by the appellant or her consent was based on a fraudulent misrepresentation of marriage which the appellant never intended to keep since very inception and it is only under Section 90 of the IPC a consent given under fear of injury is not a consent in the eyes of law. The consent given by the victim was conscious and informed choice made by her after due deliberation spread over a long period of time coupled with a conscious positive action not to protest. She would further submit that as per Section 3(2)(v) of the SC and ST Act there is no allegation that the appellant committed offence only because of the fact that the victim belonged to Schedule Caste Community.

6. Learned Sr. Counsel for appellant would further submit that from the statement of victim, incident of rape pertains to January, 2012 and POCSO Act has received the assent of the President on 19.06.2012 and it was published in the Gazette of India on 20.06.2012 and as per notification No. S.O. 2705(E) dated 09.11.2012, POCSO Act has been enforced w.e.f 14.11.2012, therefore, the act cannot be made effective retrospectively, as such non-framing of charges by the trial Court under the POCSO Act against the appellant is legal, justified and does not warrant interference by this Court and would pray for dismissal of the CRR No. 706 of 2024.

7. Learned Sr counsel for the appellant would submit that as per letter dated 16.06.2023 submitted by Police Station in-charge Pusor District Raigarh wherein an enquiry was conducted with regard to the date of birth of the appellant, as per the School Register and other relevant document the date of birth of the appellant was found to be 02.07.1995 which shows that on the date of commission of offence the appellant was a child, therefore, order may be passed for conducting proceedings before Juvenile Board having jurisdiction and thus she would pray for allowing the Criminal Appeal by quashing the impugned order of framing of charges. To substantiate her submission, she would refer to the judgments of Hon'ble Supreme Court in the cases of **Dhruvaram Murlidhar Sonar vs. State of Maharashtra 2019(18) SCC 191**, **Pramod Suryabhan Pawar vs. State of Maharashtra LNIND 2019 Sc 668**, **Mandar Deepak Pawar vs. State of Maharashtra 2022 Live law (SC) 649** and **Mallikarjun Desai Goudar vs. State of Maharashtra 2023 SCC Online Kar 8**.

Submissions of Respondent No.2 in CRA No. 1589 of 2024 and Applicant in CRR No. 706 of 2024.

8. Learned counsel for the respondent No. 2/victim would submit that as per prosecution the offence was started in January 2012 and continued upto 12.10.2022, the offence of rape with a minor is continuing and last date of commission of offence was 12.10.2022 at that time the accused had attained 18 years of age, therefore, submission with regard to juvenility is not sustainable. He would refer to the judgment of Hon'ble

Supreme court in the case of **Vikas Chaudhary vs. State of NCT of Delhi reported in SLP (Crl.) No. 8628 of 2019** wherein it has been held that in continuing offence the last date of commission of offence has to be taken into consideration and on the date if the accused had attained the age of 18 years by then he would not claim the benefit of juvenility and would pray for dismissal of the appeal. Learned counsel for the respondent No.2/victim so far as non-framing of charges under POCSO Act would submit that as per dakhil kharij register, date of the victim was 30.11.1995 and in the month of January 2012 her age was 17 years and 1 month and the accused exploited her till may 2022. He would further submit that POCSO Act came in to force on 14.11.2012 at that time, the age of the victim was below **18 years from 14.11.2012 to 30.11.2012,** as such provisions of POCSO Act are applicable but learned special Judge has committed illegality in not framing the charges under the POCSO Act. He would further submit that learned Special Judge has wrongly interpreted order of High Court, therefore, order passed by the Special Judge is non sustainable in the eye of law and would pray for quashing of the order.

9. On the other hand, learned State Counsel opposes the prayer made by the appellant and would submit that after due investigation the appellant has been charge-sheeted for the aforesaid offences and prima-facie, material collected is sufficient to put the appellant at trial. He would further submit that role attributed to appellant and statements of victim, the trial Court has rightly framed charges under the aforesaid Sections

against the appellant. He would further submit that taking into consideration the material available on record, it cannot be held that no prima-facie case against the appellant is made out. He would further submit that that charge-sheet cannot be quashed, particularly when there is sufficient evidence available on record to put the accused person to trial and would pray for dismissal of the appeal. So far as framing of charges under the POCSO Act he would submit that whether the offence was done prior to enactment of POCSO Act 2012 to exclude the offence enumerated in the POCSO Act, 2012 is a matter of evidence which cannot be adjudicated before this Court and would pray for quashing of the order dated 03.08.2024 so far as non framing of charges under the POCSO Act and would pray for remitting the matter back to the trial Court to first frame charges and the prosecution may be allowed to lead evidence on the aspect whether the offence under the POCSO Act is attracted or not.

10. I have heard learned counsel for the parties and perused impugned judgment.

11. From the extensive submission made by the parties, the points emerged for determination by this Court are

(I) Whether the trial Court was justified in framing the charges against the appellant for commission of offence under Section 376(2)(n), 506 IPC and Section 3(1)(r), 3(1)(v) of the SC and ST Act, 1989.

(ii) Whether the trial Court was justified in not framing the charges under the POCSO Act, 2012 in view of facts and circumstances of the case or not?

12. Since both the issues are interconnected therefore, they are dealt by this Court analogously.
13. From the charge sheet and the case diary, it is quite vivid that the complainant has lodged a written complaint on 01.11.2022 alleging that she came in contact with the appellant in the year 2009 and after some time, the appellant called her on the pretext of marriage in the year 2012 at Pusour thereafter she visited his house at Pusour from Jashpur wherein he has made physical relationship with her and thereafter he has taken her to various places like Jaipur, Pahadganj Delhi, Puri etc wherein he made forceful physical relationship with her and when she became pregnant, the appellant aborted the pregnancy of victim by providing medicine. From the record, it is reflected that the complainant has also alleged about pregnancy in the year 2022 and the appellant applied vermilion on her forehead saying that he will perform marriage with her. She has also alleged that some personal photographs are with the appellant. On the basis of the complaint, FIR has been lodged against the appellant. On the above factual matrix, learned Sr. counsel for the appellant would submit that the alleged incident has been taken place in January 2012, therefore, POCSO Act will not be applicable, is misconceived fact and deserves to be rejected. The prosecution in support of its case has also collected evidence which has to be considered by the trial Court at the time of recording of the evidence, therefore, it cannot be held at this stage that the charge under POCSO

Act is not applicable in view of the well settled legal position of law that the criminal law cannot be applied retrospectively.

14. The record of the case would clearly demonstrate that this Court while allowing CRR No. 914 of 2023 on 10.05.2024 against the order dated 05.07.2023 by which the trial Court has framed the charge against the appellant and his application for discharge under Section 227 CrPC has been rejected. This order of rejection has been affirmed by this Court wherein this court directed to re-frame the charge and this Court has not directed to delete the charge and the trial Court was directed to reframe the charges. The trial Court without considering the order of this Court has committed illegality in not framing the charges under POCSO Act.
15. It is well settled legal position of law that the FIR is not encyclopedia of all the imputation, therefore, to test whether an FIR discloses commission of cognizable offence what is to be looked at is not any omission in the acquisitions but the gravamen of the acquisitions contained therein to find out whether prima-facie some cognizance offence has been committed or not. The Hon'ble Supreme Court in the case reported in **2024 INSC 772 in the case of Somjeet Mallick vs State of Jharkhand and others** has held in paragraph 18 and 19 as under:-

18. It is trite law that FIR is not an encyclopedia of all imputations. Therefore, to test whether an FIR discloses commission of a cognizable offence what is to be looked at is not any omission in the accusations but the gravamen of the accusations contained therein to find out whether, prima facie, some cognizable offence has been committed or not. At this stage, the Court is not required

to ascertain as to which specific offence has been committed. It is only after investigation, at the time of framing charge, when materials collected during investigation are before the Court, the Court has to draw an opinion as to for commission of which offence the accused should be tried. Prior to that, if satisfied, the Court may even discharge the accused. Thus, when the FIR alleges a dishonest conduct on the part of the accused which, if supported by materials, would disclose commission of a cognizable offence, investigation should not be thwarted by quashing the FIR.

19. No doubt, a petition to quash the FIR does not become infructuous on submission of a police report under Section 173(2) of the CrPC, but when a police report has been submitted, particularly when there is no stay on the investigation, the Court must apply its mind to the materials submitted in support of the police report before taking a call whether the FIR and consequential proceedings should be quashed or not. More so, when the FIR alleges an act which is reflective of a dishonest conduct of the accused.

16. The judgment cited by the learned Sr. Counsel for the appellant in case of **Andrew Rani vs. State of Meghalaya reported in 2024 SCC Online Megh 594** is distinguishable on the facts as the said judgment is against the order of conviction and after appreciating the statements and evidence adduced before the trial Court, Hon'ble Division Bench has held that the POCSO Act is not applicable whereas in the present case the evidence is still required to be examined by the trial Court.
17. Thus the CRR No. 706 2024 filed by the victim is allowed in part directing the trial Court to frame charges under the POCSO Act against the applicant. The prosecution and the accused are at liberty to lead evidence to ascertain whether the offence under the POCSO Act is attracted or not which cannot be ascertained without appreciation of evidence in this regard in view of circumstances prevailing in the facts of the case, as such point No. 2 answered in favour of the victim.

18. So far as submission of learned Sr. counsel for the appellant that framing of charge by the learned trial Court on 03.08.2024 is being considered by this Court now.
19. From the record of the case as well as case diary, medical prescription available with the record and statement of witnesses recorded by the prosecution wherein it has been alleged that due to their relationship with appellant, the victim became pregnant and the appellant has given her medicine for abortion. This fact has been stated by all the witnesses whose statements under Section 164 CrPC have been examined by the prosecution. Whether relationship, abortion or vermilion applied on the forehead of the victim on the pretext of marriage cannot be ascertained without recording of the evidence, therefore, submission made by learned Sr. counsel that the victim is consented party and the act done by them falls within the ambit of consensual act and appellant is entitled to get protection in view of Section 375 IPC, is misconceived and deserves to be rejected coupled with the fact whether POCSO Act is attracted or not is required to be ascertained as held by this Court in foregoing paragraph, therefore, all the submissions made by learned Sr. Counsel for the appellant, which are defense of the accused cannot be considered at this stage and framing of charge cannot be quashed by this Court, further looking to the facts and circumstance of the case judgment cited by learned Sr. counsel for the appellant in cases of **Dhruvaram Murlidhar Sonar, Pramod Suryabhan Pawar, Mandar Deepak Pawar, and Mallikarjun**

Desai Goudar (supras) are distinguishable from the facts of the present case.

20. So far as power of quashing of the charge by the High Court it has been well settled by the Hon'ble Supreme Court in catena of decisions has held that the High Court while exercising under Section 482 Cr.P.C cannot conduct mini trial or roving enquiry.
21. The Hon'ble Supreme Court in the case **State by SP through the SPE, CBI vs. Uttamchand Bohra, 2022 (16) SCC 663**, has held that;-

Exercise of jurisdiction under Section 227 and 228 of CrPC.

21. On consideration of the authorities about the scope of Sections 227 and 228 of the Code, the following principles emerge:

(i) The Judge while considering the question of framing the charges under Section 227 CrPC has the undoubted power to sift and weigh the evidence for the limited purpose of finding out whether or not a prima facie case against the accused has been made out. The test to determine prima facie case would depend upon the facts of each case.

(ii) Where the materials placed before the court disclose grave suspicion against the accused which has not been properly explained, the court will be fully justified in framing a charge and proceeding with the trial.

(iii) The court cannot act merely as a post office or a mouthpiece of the prosecution but has to consider the broad probabilities of the case, the total effect of the evidence and the documents produced before the court, any basic infirmities, etc. However, at this stage, there cannot be a roving enquiry into the Crr 1313 of 2024 pros and cons of the matter and weigh the evidence as if he was conducting a trial.

(iv) If on the basis of the material on record, the court could form an opinion that the accused might have committed offence it can frame the charge, though for conviction the conclusion is required to be proved beyond reasonable doubt that the accused has committed the offence.

(v) At the time of framing of the charges, the probative value of the material on record cannot be gone into but before framing a charge the court must apply its judicial mind on the material placed on record and must be satisfied that the commission of offence by the accused was possible.

(vi) At the stage of Sections 227 and 228, the court is required to evaluate the material and documents on record with a view to find out if the facts emerging therefrom taken at their face value disclose the existence of all the ingredients constituting the alleged offence. For this limited purpose, sift the evidence as it cannot be expected even at that initial stage to accept all that the prosecution states as gospel truth even if it is opposed to common sense or the broad probabilities of the case.

(vii) If two views are possible and one of them gives rise to suspicion only, as distinguished from grave suspicion, the trial Judge will be empowered to discharge the accused and at this stage, he is not to see whether the trial will end in conviction or acquittal."

2.2. The Hon'ble supreme Court has further held in para-12 of its judgment in the case of State of Gujarat vs. Dilipsingh Kishorsinh Rao, 2023 SCC Online SC 1294, that:-

"12. The primary consideration at the stage of framing of charge is the test of existence of a prima-facie case, and at this stage, the probative value of materials on record need not be gone into. This Court by referring to its earlier decisions in the State of Maharashtra Vs. Som Nath Thapa (1996) 4 SCC 659 and the State of MP Vs. Mohan Lal Soni (2000) 6 SCC 338 as held the nature of evaluation to be made by the Crr 1313 of 2024 court at the stage of framing of the charge is to test the existence of prima-facie case. It is also held at the stage of framing of charge, the court has to form a presumptive opinion to the existence of factual ingredients constituting the offence alleged and it is not expected to go deep into probative value of the material on record and to check whether the material on record would certainly lead to conviction at the conclusion of trial."

10. In the matter of State (NCT of Delhi) vs. Shiv Charan Bansal and Others, 2020 (2) SCC 290, the Hon'ble Supreme Court has held that at the stage of framing of charge, the trial court is not required to conduct a meticulous appreciation of evidence or a roving inquiry into the same and has the power to sift and weigh the evidence for the limited purpose of finding out whether or not a prima facie case is made out against the accused to proceed with the trial.

11. In the present case, FIR has been lodged by Ram Kumar Miri, NA- 2/respondent-2 herein, to whom the victim has informed the incident that the accused persons have assaulted him by hands and fists, by which he received injuries on his body. The doctor, who medically examined him, has found numerous injuries on his body, and advised him for NCCT of head, ENT opinion, and X-ray of his right hand. He found three lacerated wounds, three abrasions, and swelling on his body. In the CT scan report, doctor has found linear fracture of right nasal bone, in the X-ray report of right hand, fracture of proximal Phalanx of right thumb was also found. Although the doctor has opined that death could not be possible from the said injuries, but for the offence of Section 307 of the IPC, only the intention coupled with some overt act to be seen, and not the nature of injuries. Further, from the statement of witnesses, and also the manner in which the victim being assaulted by the applicants herein, the learned trial Court considered it sufficient to frame charge under Section 307 of the IPC including other offences of IPC, which in the opinion of this court, cannot be found any faulty, and cannot find any ground to interfere with the order of the learned trial Court to frame charge against the applicants. Learned trial Court has rightly come to the conclusion that there is sufficient ground for framing of charge and to proceed with the same, dismissed the application of the applicants, filed under Section 227 of the CrPC, which cannot be said to be either perverse, or contrary to facts of the case, calling for any interference invoking revisional jurisdiction under Section 438, and 442 of the BNSS Act, 2023, conferred upon this Court.

22. Learned Sr. counsel for the appellant would submit that the appellant was juvenile at the time of alleged incident, therefore, he should have tried as juvenile under Juvenile Justice (Care and Protection of Children) Act, 2015. This plea has not been taken by the appellant before the trial Court and even this plea requires enquiry as contemplated under the Act, therefore, the appellant is at liberty to take such plea before the trial Court which shall be considered and decided by the trial Court, in accordance with the law.

23. Considering the fact and the law laid down by the Hon'ble Supreme Court from perusal of the contents of the FIR and the statements of the victim recorded by the Police, prima-facie case of framing of charge is made out against the appellant and there is strong suspicion against the appellant. Whether the allegations are true or untrue, shall have to be decided during the trial. In exercise of power of revision, this Court cannot examine the correctness of the allegations in the complaint, except in exceptional rare cases in which it is clear that the allegations are frivolous or do not disclose any offence.
24. In view of the foregoing discussion, I do not find any illegality or infirmity in the order impugned passed by learned Special Judge (Atrocities), Raigarh framing charges against the appellant for commission of offence under Section 376(2)(n), 506 Part II of the IPC and Sections 3(2)(v), 3(1)(r) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989 is dismissed. Accordingly, point No.1 answered against appellant Manoj Kumar Agrawal.
25. In view of above discussion, CRR No. 706 of 2024 is allowed and CRA No.1589 of 2024 is dismissed. It is made clear that the trial Court will decide the trial without being influenced from any observation made by this Court on merit and evidence recorded before it.

Sd/-

(Narendra Kumar Vyas)
Judge