

A MANENDRA PRASAD TIWARI

v.

AMIT KUMAR TIWARI & ANR.

(Criminal Appeal No. 1210 of 2022)

B AUGUST 12, 2022

**[DR. DHANANJAYA Y CHANDRACHUD AND
J. B. PARDIWALA, JJ.]**

- Penal Code, 1860 – s.376 – Protection of Children from Sexual Offences Act, 2012 (POCSO) – ss. 5 and 6 – Code of Criminal Procedure, 1973 – ss. 397, 482 – Discharge of Accused – ‘X’, delivered a baby and thereafter committed suicide by hanging herself – FIR was registered for the offence punishable u/s 376 of IPC and the provision of the POCSO Act against the respondent – The special Judge framed charges for the abovementioned offences against the respondent – The accused questioned the legality and validity of the order of framing charge by filing the Criminal Revision on the ground that the deceased and the accused had developed intimacy for each other and were in a relationship – The High Court allowed the Criminal Revision Petition and discharged the accused from the charges – The High Court discharged the accused charged with the offence of rape on the ground of delay in the registration of the FIR – On appeal, held: The High Court recorded no specific finding as regards the age of the deceased – In a case praying for quashing of the charge, the principle to be adopted by the High Court should be that if the entire evidence produced by the prosecution is to be believed, would it constitute an offence or not – The framing of charge is not a stage, at which stage the final test of guilt is to be applied – The Court should not interfere with the order unless there are strong reasons to hold that in the interest of justice and to avoid abuse of the process of the Court a charge framed against the accused needs to be quashed – High Court’s conclusion about the age of the deceased and also as regards the delay in lodging the FIR besides being a premature assessment of evidence, is also attributable to the wrong premises on which the High Court’s reasoning is based.*

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Allowing the appeal, this Court

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HELD: 1. It was mainly argued before the High Court that on the date of the commission of the offence, the deceased was major and was in a relationship with the accused on her own free will and volition. The accused could not be said to have committed any offence as alleged. Surprisingly, even the State, to a certain extent, supported the submission canvassed on behalf of the accused before the High Court. What is relevant to note is that although the High Court has devoted two full paragraphs for the purpose of recording the submissions as regards the age of the deceased, yet ultimately no specific finding has been recorded in that regard by the High Court. The High Court proceeded altogether on a different footing. The High Court thought fit to discharge the accused of all the charges on the ground that there was delay in lodging the FIR and the entire case put up by the parents of the deceased was doubtful. The impugned order of the High Court is utterly incomprehensible. This Court is yet to come across a case where the High Court has thought fit to discharge an accused charged with the offence of rape on the ground of delay in the registration of the FIR. [Paras 19 & 20][189-H; 190-A-C]

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2. The law is well settled that although it is open to a High Court entertaining a petition under Section 482 of the CrPC or a revision application under Section 397 of the CrPC to quash the charges framed by the trial court, yet the same cannot be done by weighing the correctness or sufficiency of the evidence. In a case praying for quashing of the charge, the principle to be adopted by the High Court should be that if the entire evidence produced by the prosecution is to be believed, would it constitute an offence or not. The truthfulness, the sufficiency and acceptability of the material produced at the time of framing of a charge can be done only at the stage of trial. To put it more succinctly, at the stage of charge the Court is to examine the materials only with a view to be satisfied that *prima facie* case of commission of offence alleged has been made out against the accused person. It is also well settled that when the petition is filed by the accused under Section 482 CrPC or a revision Petition under Section 397 read with Section 401 of the CrPC seeking for

- A the quashing of charge framed against him, the Court should not interfere with the order unless there are strong reasons to hold that in the interest of justice and to avoid abuse of the process of the Court a charge framed against the accused needs to be quashed. Such an order can be passed only in exceptional cases and on rare occasions. It is to be kept in mind that once the trial court has framed a charge against an accused the trial must proceed without unnecessary interference by a superior court and the entire evidence from the prosecution side should be placed on record. Any attempt by an accused for quashing of a charge before the entire prosecution evidence has come on record should not be entertained sans exceptional cases. [Para 21][190-D-H; 191-A-B]

- 3. The scope of interference and exercise of jurisdiction under Section 397 of CrPC has been time and again explained by this Court. Further, the scope of interference under 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 the 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 Code of Criminal Procedure. Section 397 CrPC 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 or the perversity which has crept in the proceeding. In view of the position of law as discussed above, the impugned order of the High Court could be termed as perverse and not sustainable in law. We refrain from observing anything further in regard to the exact and correct age of the deceased at the time of commission of the offence as alleged as it may cause prejudice to the parties in some manner or the other.

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It is for the trial court to determine the correct age on the basis of the evidence that may be led by the prosecution as well as by the defence. One another disturbing feature of this litigation is that it is the unfortunate father of the deceased who had to come before this Court seeking justice. It was expected of the State to challenge the illegal order passed by the High Court. Barring a few exceptions, in criminal matters the party who is treated as the aggrieved party is the State which is the custodian of the social interests of the community at large and so it is for the State to take all the steps necessary for bringing the person who has acted against the social interests of the community to book. Yet one another disturbing feature is that the trial court thought fit not to frame charge against the accused for the alleged offence punishable under Section 306 of the IPC i.e. abetment to the commission of suicide. Unfortunately, no one has questioned that part of the order of the trial court declining to frame charge for the alleged offence of abetting the commission of suicide punishable under Section 306 of the IPC. [Paras 22, 23, 28 & 29][191-B-E; 194-G-H; 195-A-C]

*Amit Kapoor and Ramesh Chander (2012) 9 SCC 460 :
[2012] 7 SCR 988; State of Maharashtra v. Som Nath Thapa (1996) 4 SCC 659 : [1996] 1 Suppl. SCR 189 - relied on.*

State of Delhi v. Gyan Devi (2000) 8 SCC 239 : [2000] 4 Suppl. SCR 270; Chitresh Kumar Chopra v. State (Government of NCT of Delhi) (2009) 16 SCC 605 : [2009] 13 SCR 230; Thakur Ram and others v. State of Bihar (1966) Cri LJ 700 - referred to.

Case Law Reference

[2000] 4 Suppl. SCR 270	referred to	Para 21
[2012] 7 SCR 988	relied on	Para 24
[2009] 13 SCR 230	referred to	Para 26
[1996] 1 Suppl. SCR 189	relied on	Para 27

CRIMINAL APPELLATE JURISDICTION: Criminal Appeal No. 1210 of 2022.

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A From the Judgment and Order dated 02.12.2021 of the High Court of Madhya Pradesh at Jabalpur in CRR No. 211 of 2021.

Siddharth Singh, Adv. for the Appellant.

B Ms. Ankita Choudhary, Dy AG, Swarnendu Chatterjee, Ms. Pragya Prijat Singh, Himanshu Nailwal, Ambuj Tiwari, Ms. Deepakshi Garg, Yashwardhan Singh, Sunny Choudhary, Manoj, Advs. for the Respondents.

The Judgment of the Court was delivered by

J. B. PARDIWALA, J.

C 1. This appeal, by special leave, is at the instance of the original first informant (father of the deceased) and is directed against the judgment and order passed by the High Court of Madhya Pradesh at Jabalpur dated 02.12.2021 in the Criminal Revision Application No. 211 of 2021 by which the High Court allowed the revision application filed

D by the accused (respondent No. 1 herein) and thereby set aside the order passed by the trial court framing charge against the accused of the offence punishable & discharged him under Section 376 of the Indian Penal Code (for short, "IPC") and Sections 5 and 6 reply of the Protection of Children from Sexual Offences Act, 2012 (for short, 'POCSO Act').

E **FACTUAL MATRIX**

F 2. The facts of this litigation are quite heart-breaking and at the same time, more disturbing is the utterly incomprehensible impugned judgment of the High Court discharging the accused of the offence of rape essentially on the ground of delay in the registration of the First Information Report (FIR).

G 3. Since this litigation arises from the First Information Report (FIR) registered for the offence punishable under Sections 376 of the IPC and the provisions of the POCSO Act, this Court must ensure that the identity of the victim is protected. In such circumstances, the deceased victim shall be referred to as 'X'.

H 4. The appellant herein is a resident of the Village Bansati, P.S. Rewa, District Rewa. His family members as on date consists of his wife, namely Smt. Rani Tiwari, three sons and one daughter. The deceased 'X' was the eldest child of the first informant. The deceased

studied up to standard 9th. On 27.04.2020 in the morning, the wife of the first informant informed that ‘X’ (deceased) had severe pain in her stomach. The first informant thought that there could be a tumor in the stomach of his daughter. The first informant took his daughter ‘X’ (deceased) on his motorcycle to the Harsh Hospital situated at Chakghat for the purpose of medical treatment. They reached the hospital at about 10.30 am. ‘X’ was made to sit on a bench outside the hospital. The first informant went inside the hospital to speak to Dr. K.B. Shukla. It appears that by the time the first informant and Dr. K.B. Shukla could attend to ‘X’, she delivered a baby. In such circumstances, the doctor refused to admit ‘X’ in the hospital. As the first informant relentlessly pleaded before the doctor, ‘X’ was ultimately admitted in a minor OT of the hospital. It appears that thereafter ‘X’ requested a lady sweeper of the hospital, namely, Nirmala Saket to allow her to use her mobile so as to speak to one Amit Tiwari (accused), also a resident of the same village. ‘X’ could not use the mobile as Nirmala was left with no balance. It appears that thereafter ‘X’ disclosed before her father that she had conceived through Amit Tiwari and would take a room on rent in Chakghat and start living life along with Amit & the new born infant. As ‘X’ was admitted in the hospital, the first informant had to arrange for finance and in such circumstances, he left for his village to arrange for money. By the time he returned at 3 pm to the hospital, he was informed by the doctor that his daughter ‘X’ had committed suicide by hanging herself with a *duptta* on the rod of the OT light affixed to the ceiling. The first informant rushed inside the room and noticed that his daughter ‘X’ was hanging and the new born infant was laid on a dressing table in the very same room. According to the first informant, his daughter ‘X’ committed suicide out of shame as she had delivered an illegitimate child conceived through Amit Tiwari (accused).

5. In such circumstances referred to above, the first informant lodged an FIR at the P.S. Chakghat, District Rewa, which came to be registered as the FIR No. 0064/2020 for the offence punishable under Sections 376 and 306 respy of the IPC and Sections 5 and 6 respy of the POCSO Act.

6. Upon registration of the FIR, the investigation was undertaken by the police. The further statement of the first informant was recorded by the police under Section 161 of the Code of Criminal Procedure (for short, “CrPC”). The same reads thus:-

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- A “...On 27.04.2020, in the morning my wife told that ‘X’ is suffering from Stomach pain, I feel that there is tumour in her stomach. On which, I took my daughter to Harsh Hospital, Chakghat on my motorcycle bearing registration no. UP 96 0200, Honda CD, 100 for treatment. I reached at Harsh Nursing Home at about 10:30 a.m. and my daughter ‘X’ was asked to sit outside
- B that also on 27.04.2020, my daughter after taking phone from the sweeper of Hospital namely Nirmala Saket after getting her called through the doctor of Hospital, had talked with someone, on which, my daughter ‘X’ told that I talked with Amit Tiwari, who is resident of my village, then, he has said that we will live together by taking a room in Chakghat and baby boy which she has given birth, is also of Amit if you will go from here, then Amit will come and will live here by taking room...
- C D ...my daughter has committed suicide by hanging herself due to public shame as a result of giving birth to the illegitimate child of Amit Tiwari. Prior to my daughter did not tell me anything...”
- E 7. The police also recorded the statement of Dr. Krishnavatar Shukla of the Harsh Nursing Home, Baghedi, P.S. Chakghat, Rewa. The same reads thus:-
- F “On 27.04.2020, at about 10:30 P.M., my previously acquittance, Manendra Prasad Tiwari, R/o Bahera took his daughter ‘X’ Tiwari to my nursing home for treatment due to stomach pain and thereby got her sit under the tin shed outside Hospital, he came to my chamber and thereby requested to do a check-up of his daughter, on which, on humanitarian ground, after approximately half an hour, when I came out of the clinic along with Sh. Manendra Tiwari, at the time, delivery of patient Kumari ‘X’ had been happened, which was normal and she gave birth to a baby boy. Who on the request of Manendra Tiwari, were shifted in O.T. room after cleaning etc. through Dai Nirmala Saket. Also on 27.04.2020, patient Km. ‘X’ brought, mobile phone through sweeper Nirmala Saket for talking to her home, on which, I sent my mobile phone
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through sweeper and she said that I don't know with whom she talked. Again on 28.04.2020 at about 1:30 p.m. patient Km. 'X' again brought mobile phone for talking to her father and had gone to village at about 11:00 p.m. thereafter, at about 3:00 Pm...

...Nirmala Saket told me that patient K. 'X' was talking with some boy. Km. 'X' committed suicide by hanging herself due to public sham as a result of giving birth to an illegitimate child. This is my statement."

8. The statement of Nirmala Harijan (Dai) was recorded by the police. The same reads thus:-

"On 27.04.2020, at about 10:30 p.m., in the morning a girl name 'X' came for treatment alongwith her father Manendra Tiwari, and a father told that she was suffering from tumour and he started talking with doctor Saheb, and he asked Kumari 'X', to sit on a bench under a tin shed situated outside the Hospital. After one hour, when the said girl started crying, then, I went near her and saw that she was suffering from delivery pain. When, I reached there at the time child has been come out, on which I cleaned the child and informed the Dr. Sahib. Thereafter, on the instruction of Dr. Saheb, firstly I took the girl in a room situated upstairers. In that room, none another person patient was present. During night, I remained accompanied with the girl in that room. Thereafter, in the morning the girl came down stairs when I was sweeping downstairs then the girl said that I won't stay upstairs, bring my child down stairs. On which, I took the child downstairs and gave it to the girl. Thereafter, said girl and her child was shifted in OT room. Thereafter, she begged for mobile phone from me, and on inquiry, she did not tell that where she would talk. Since, I had no balance on my mobile phone due to which, I refused to give. Thereafter, when I told the said fact to Dr. Saheb, then, Dr. Saheb gave his mobile, on which, I gave that phone to that girl, who talked on the mobile phone, but I did not hear that where and with whom she had talked and nor she told me in this regards. And on the same date i.e. on 28.04.2020, at about 11 am., a father went to his village."

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- A 9. The police statement of Smt. Rani Tiwari, mother of 'X' (deceased) came to be recorded by the police. The same reads thus:-

"On 15.08.2019, my daughter Mrs. 'X' told me that I missed my period and on 07.07.2019 I developed a physical relationship with Amit Tiwari. My daughter told me that she loves Amit Tiwari and Amit wants to marry me, I also want to marry him and please do not tell father about it. On 27.04.2020, my daughter said that she is suffering from stomach ache, then also I did not tell anything to my husband. Then me along with my husband took our daughter to the Harsh Hospital situated in Baghdi for her treatment. We reached around 10:30 AM, we made 'X' sat on bench..."

- B 10. The statement of Smt. Rani Tiwari, mother of the deceased under Section 164 of the CrPC also was recorded by the Magistrate. The same reads thus:-

C D "....Amit Tiwari knew my daughter from the past one and a half years. My daughter told me on 07.07.2019, that from past one and half months I'm not getting my periods and I am carrying Amit Tiwari's baby. My daughter informed me that she and Amit Tiwari are planning to get married. I went at Amit's house with the proposal of their marriage, but Amit's mother denied for it. On 28.04.2020, 'X' had a conversation with Amit Tiwari over a phone call, where Amit agreed to come to the Hospital. Me and my husband at around 11:00 AM came back from the hospital. Amit Tiwari did not come to the Hospital. When my and my husband reached the hospital at around 02:00 P.M. then she got to know that, 'X' had committed suicide and this is my statement."

- E F 11. *Prima Facie*, the following is discernible from the statements aforesaid:

G H (a) The school record indicates that 'X' (deceased) was born on 20.07.2001;

(b) The mother of the deceased in her statement recorded under Section 164 of the CrPC has stated that she was informed by her daughter (deceased) on 07.07.2019 that she had missed her period (menstruation) past one and a half month

and further she had conceived through Amit Tiwari A
(accused);

- (C) ‘X’ (deceased) attained majority on 20.07.2019;
(d) There appears to be some conflict as regards the exact date so far as the statement of the mother of the deceased recorded by the police under Section 161 of the CrPC is concerned and the statement recorded by the Magistrate under Section 164 of the CrPC.

12. Upon the completion of the investigation, the investigating agency filed charge sheet against the accused (respondent No. 1 herein) C
for the offences as enumerated above.

13. The case came to be committed to the court of the Special Judge, POCSO, District Rewa. The Special Judge proceeded to frame the charge against the accused vide order dated 18.12.2020. The relevant part of the order reads thus:

“On behalf of the Prosecution, the present Chargesheet has been filed under Section 376, 306 IPC and Section 5/6 of POCSO Act and it was argued by the ADPO that the charges under the aforesaid Sections be framed against the Accused because in the present case, sufficient evidences are available in this regard.

On the contrary, it was argued by the Ld. Counsel for the Accused that the offence under Section 306 IPC does not attract against the Accused because, deceased’s father Manendra Tiwari has stated in his statements that his daughter hanged herself due to public shame as a result of giving birth to an illegitimate child. Similarly, the mother of girl has also not stated that her daughter has committed suicide due to the torture or abatement of someone. No other evidence is also available to this effect from which, it could appear that Section 306 IPC attracts in the present case. Therefore, it was prayed to discharge the Accused from the offence of Section 306 IPC.

Similarly, it was also argued that the Offence under Section 5/6 of POCSO Act does not made out against the accused, because, on the date of occurrence, prosecutrix was a girl

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- A *aged more than 18 years and if a girl aged more than 18 years voluntarily establishes physical relations, then, it does not come under the category of crime. In the evidence, this fact has come on record that the marriage of Accused and Prosecutrix had to be solemnized, in this situation, Section 376 IPC also do not attract. Therefore, it was also prayed to discharge from both the aforesaid Sections.*
- B *In support, case laws of M. Arjunan Vs. State Represented by Inspector of Police (2019) 3 SCC 315, Madanmohan Singh Vs. State of Gujarat & Ors (2010) 8 SCC 628, Dwarika Singh Thakur Vs. State of M.P. Crl., Rev. No. 1678/2011 dated 06.03.2013, Union of India Vs. Prafulla Kumar Sanwal (1979) 3 SCC 4, Indrapal Vs. State of M.P. (2001) 10 SCC 736, Ude Singh Vs. State of Haryana (2019) 17 SCC 301, Gajadhar Prasad Patel Vs. State of M.P. 2003 (1) MPLJ 605, Ajay Pataudiya Vs. State of M.P. 2003 (4) MPLJ 195, Mangleshwar Singh Vs. State of M.P. 2003 (3) MPLJ 44, Bagdiram Vs. State of M.P. 2005 (40) MPLJ, Vishnu Prasad Vs. State of M.P. 2005 (3) MLPJ 23, Madiya @ Mahadev Vs. State of M.P. 2006 (1) MPLJ, have been produced.*
- C *Arguments of both the parties were taken into consideration.*
- D *The aforesaid case laws were perused.*
- E *According to the incident, on 28.04.2020, father of deceased namely Manendra Tiwari lodged a report in P.S. Chakghat to this effect that on 27.04.2020, deceased who was 17 years old, who is his daughter, he took her to Harsh Hospital, Chakghat for treatment due to complaining Stomach Ache and thereby admitted her in hospital at 10.30 p.m., and she gave birth to a child at 12.00 p.m. On 28.04.2020, her daughter hanged herself with her Duptta in the hospital. She has committed suicide due to giving birth to an illegitimate child and he has suspicion that the illegitimate child of his daughter is of Accused Amit Tiwari.*
- F *On the aforesaid information, case was registered and the enquiry was started. During the enquiry, it was found that Accused had love affair with the deceased, as it appears from the statements under Section 16 Cr.P.C. of the Complainant*
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Manendra Tiwari. This fact is also mentioned in his statement that before death, her daughter told him that she had talked with the accused, on which, she had said that he will live with the deceased by taking a room in Chakghat and his daughter also said that you go from hospital, Accused will come there. In this manner, it appears that deceased had love affair with the Accused. Regarding Section 306, it is the case of prosecution that the girl committed suicide due to guilt as a result of giving birth to an illegitimate child. Under Section 107 IPC, it has been provided regarding the abatement and for the offence of Section 306 IPC, the facts of Section 107 should be extract. If, it is accepted that Accused was bearing the child of Accused and due to giving birth to an illegitimate child, deceased committed suicide, then, it is nowhere appears that what is the abatement on the part of Accused in the said suicide.

The case laws which have been produced on behalf of the Accused for discharging him from the offence of Section 306 IPC, which have been mentioned, in this case law also, it has been held that for the offence of Section 306 IPC, the facts of Section 107 IPC should be proved. In the present case, no such prima facie evidence has been produced to this effect that the Accused abated the deceased to commit suicide, in fact, according to the prosecution story, when deceased herself talked with the Accused on phone, then accused said that we will live together by taking room on rent and he denied refuse from marriage. In this situation, merely due to stating by the prosecution, whereas, no such ground is available, then there is no ground available to frame charge under Section 306 IPC against the Accused, therefore, Accused is discharged from the offence of Section 306 IPC.

But, so far as the question of discharging from the offence of Section 376 IPC and Section 5/6 of POCSO Act is concerned, in this regard, the sexual assault with a girl less than the age of 18 years is committed, then, the POCSO Act attracts and similarly Section 376 IPC also attracts.

The entire plea of the defence side is that on the date of occurrence, prosecutrix was the girl aged more than 18 years,

A *due to this reasons, both the aforesaid Sections also do not attract.*

In the present case, the Admission Register has been produced regarding the age of the Prosecutrix, in which, her date of birth is mentioned as 20.07.2001. In the present case,

B *28.04.2020 has been mentioned as the date of occurrence due to this reason that on the aforesaid date, deceased gave birth to the child and deceased committed suicide, but, the statement of mother of deceased recorded under Section 161 Cr.P.C., are enclosed in the present case, in which, she had stated that on 15.08.2019, her daughter told her that on*

C *07.07.2019, Accused had established physical relations with her daughter. In this situation, the Accused established physical relations with the deceased on 06.07.2019 and on the aforesaid date, the age of deceased was definitely less than 18 years i.e. her age is about 17 years 11 months. In this situation, there is no sense of the fact if the sexual intercourse is done with a girl less than the age of 18 years with her consent or on the assurance of marriage, in fact, same is crime under the POCSO Act. Similarly, same is also an offence under Section 376 IPC. In this situation, Accused is not discharged from the offence of Section 376 IPC and Section 5/6 of POCSO Act. Therefore, regarding the above, the prayer is hereby dismissed.*

D *Therefore, prima facie sufficient grounds are available to frame charges under Section 376(1) IPC and Section 5(a)(ii)/ 6 of POCSO Act, against the Accused. Therefore, the charges under the aforesaid Sections were framed and same were readover to the Accused through Video Conferencing. The Accused denied the crime.*

E *Since, the Accused is confined in Tyonthar Sub-Jail, therefore, the Chargesheet be send to Sub-Jail, Tyonthar for his signatures and after taking signatures of Accused, same be enclosed in the records.*

F *Put up on 22.12.2020 for Trial programme.”*

G *14. The accused questioned the legality and validity of the aforesaid order passed by the Special Judge framing charge by filing the Criminal*

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Revision Application No. 211 of 2021 substantially on the ground that the deceased and the accused had developed intimacy for each other and were in a relationship. The deceased being major at the time of the incident could be said to be a consenting party and in such circumstances, the Special court could not have proceeded to frame the charge of rape against the accused.

15. The High Court adjudicated the criminal revision application filed by the accused and allowed the same vide the impugned judgment and order dated 02.12.2021. The order reads thus:-

"The applicant has preferred this criminal revision under Section 397 read with Section 401 of the Code of Criminal Procedure seeking quashment of the order dated 18.12.2020 passed by learned Special Judge, POCSO, Tyonthar, District Rewa in Special Case No. 156/2020 whereby charge of Section 376 of IPC and 5/6 of POCSO Act has been framed against the applicant saying that he had developed physical relations with the deceased and at the relevant point of time, she had not attained the majority.

Shri Prakash Upadhyaya, learned counsel for the applicant, on the other hand has criticized the observation made by the trial Court mainly on the ground that the date of birth of the deceased, as per her school record was 20.08.2001 and as per her recorded date of birth, she attained the majority on 20.08.2019 whereas she has given birth to a child on 27.04.2020 with eight months' pregnancy and according to him, it makes clear that on the date of developing physical relations, the deceased was major. He submits that there is no material available on record to indicate that the present applicant had developed physical relations with the deceased forcefully without her consent. He further submits that even there is no suicidal note in which deceased had herself disclosed this fact that the present applicant had made physical relations with her without her consent and as such, she was victim of rape as has been defined under Section 375 of IPC. Learned counsel has also submitted that the case has been registered against the present applicant on the basis of the complaint made by the mother of the deceased and if the statements of parents of the deceased are seen, nowhere it is

- A disclosed that the present applicant had forcefully developed physical relations with the deceased. He submits that even otherwise, if it is assumed that whatever has been alleged against the appellant is correct, it is not established that physical relations had been developed by the present applicant with the deceased against her consent. According to the learned counsel, as per the date of birth of the deceased recorded in her school record and considering the date of giving birth to a child after eight months pregnancy, it is clear that deceased was major on the date when she conceived. He further submits that under such a circumstance, case of Section 376 of IPC is not made out and the charge has been framed merely because the trial Court presumed the fact that as per the statement of parents of the deceased, she was minor. Learned counsel further submits that the date of birth recorded in the school record is a material piece of evidence and that cannot be discarded for ascertaining the age of the deceased and, therefore, the learned trial Court has committed an error in framing the charge of Section 376 of IPC and Section 5/6 of POCSO Act.
- E Shri Devendra Gangrade, learned Panel Lawyer appearing for the respondent/State on the other hand has opposed the submissions made by learned counsel for the applicant and has read over 161 statement of mother of the deceased that the sexual act was committed with the deceased on 07.07.2019 and according to her, the deceased at the relevant point of time was 17 years of age. The statement of mother also reveals that there was love-affair between the applicant and the deceased and the deceased told her mother that she wanted to marry the applicant.
- G According to Shri Upadhyay, learned counsel for the applicant, the statement of mother of the deceased indicates that physical relations developed between the applicant and the deceased with consent but not otherwise. He submits that the age of the prosecutrix cannot be presumed ignoring the recorded date of birth in her school record and on the basis of presumption, offence of Section 376 of IPC and Section 5/6 of POCSO Act is not made out and the applicant cannot be
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charged for the said offences. According to him, the order dated 18.12.2020 passed by the trial Court framing charge under Section 376 of IPC and Section 5/6 of POCSO Act is, therefore, not sustainable in the eyes of law and it is liable to be set aside. A

Although the fact regarding delay has not been argued but from perusal of the record. It also reflects that the deceased at the time of death had eight months pregnancy but FIR and complaint to the police was not made in time. Even in the life time of the deceased she did not approach the police. The story as narrated by the mother of the deceased seems to be doubtful on the ground of delay. B C

Considering the arguments advanced by the learned counsel for the parties as also meticulously perusing the record, I am also of the view that the order passed by the court below dated 18.12.2020, which is impugned in this revision, framing charge under Section 376 of IPC and Section 5/6 of POCSO Act is not sustainable and is accordingly set aside. Accordingly, the applicant is discharged from the charge of offence framed vide Special Case No. 156/2020.” D

16. Thus from the aforesaid, it is evident that the accused came to be discharged from the entire prosecution. E

17. In such circumstances referred to above, the original first informant (father of the deceased) is here before this Court with the present appeal seeking to question the legality and validity of the impugned order passed by the High Court. F

ANALYSIS

18. Having heard the learned counsel appearing for the parties and having gone through the materials on record, the only question that falls for our consideration is whether the High Court committed any error in passing the impugned order. G

19. It is pertinent to note at this stage that in the impugned order, the High Court has recorded the submissions made by the learned counsel who appeared on behalf of the accused and the public prosecutor who appeared on behalf of the State in details. It was mainly argued before the High Court that on the date of the commission of the offence, the H

- A deceased was major and was in a relationship with the accused on her own free will and volition. The accused could not be said to have committed any offence as alleged. Surprisingly, even the State, to a certain extent, supported the submission canvassed on behalf of the accused before the High Court. What is relevant to note is that although the High Court has devoted two full paragraphs for the purpose of recording the submissions as regards the age of the deceased, yet ultimately no specific finding has been recorded in that regard by the High Court. The High Court proceeded altogether on a different footing. The High Court thought fit to discharge the accused of all the charges on the ground that there was delay in lodging the FIR and the entire case put up by the parents of the deceased was doubtful.

20. At the cost of repetition, we state that the impugned order of the High Court is utterly incomprehensible. We have yet to come across a case where the High Court has thought fit to discharge an accused charged with the offence of rape on the ground of delay in the registration D of the FIR.

21. The law is well settled that although it is open to a High Court entertaining a petition under Section 482 of the CrPC or a revision application under Section 397 of the CrPC to quash the charges framed by the trial court, yet the same cannot be done by weighing the E correctness or sufficiency of the evidence. In a case praying for quashing of the charge, the principle to be adopted by the High Court should be that if the entire evidence produced by the prosecution is to be believed, would it constitute an offence or not. The truthfulness, the sufficiency and acceptability of the material produced at the time of framing of a charge can be done only at the stage of trial. To put it more succinctly, at F the stage of charge the Court is to examine the materials only with a view to be satisfied that *prima facie* case of commission of offence alleged has been made out against the accused person. It is also well settled that when the petition is filed by the accused under Section 482 CrPC or a revision Petition under Section 397 read with Section 401 of G the CrPC seeking for the quashing of charge framed against him, the Court should not interfere with the order unless there are strong reasons to hold that in the interest of justice and to avoid abuse of the process of the Court a charge framed against the accused needs to be quashed. Such an order can be passed only in exceptional cases and on rare occasions. It is to be kept in mind that once the trial court has framed a H

charge against an accused the trial must proceed without unnecessary interference by a superior court and the entire evidence from the prosecution side should be placed on record. Any attempt by an accused for quashing of a charge before the entire prosecution evidence has come on record should not be entertained sans exceptional cases. [see *State of Delhi v. Gyan Devi*, (2000) 8 SCC 239].

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22. The scope of interference and exercise of jurisdiction under Section 397 of 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 the 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 Code of Criminal Procedure.

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23. Section 397 CrPC 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 or the perversity which has crept in the proceeding.

24. It is useful to refer to judgment of this Court in *Amit Kapoor and Ramesh Chander*, (2012) 9 SCC 460, where the scope of Section 397 CrPC has been succinctly considered and explained. Para 12 and 13 resply are as follows:

“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 scrutinize the orders, which upon the face of it bears a token of careful

- A *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.*
- B *"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."*
- C *25. The Court in para 27 has recorded its conclusion and laid down the principles to be considered for the exercise of jurisdiction under Section 397 particularly in the context of quashing of charge framed under Section 228 CrPC. Paras 27, 27(1), (2), (3), (9), (13) resply are extracted as follows:*
- D *"27. Having discussed the scope of jurisdiction under these two provisions, i.e., Section 397 and Section 482 of the Code and the fine line of jurisdictional distinction, now it will be appropriate for us to enlist the principles with reference to which the courts should exercise such jurisdiction. However, it is not only difficult but is inherently impossible to state with precision such principles. 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:*

27.1. Though there are no limits of the powers of the Court under Section 482 of the Code but the more the power, the more due care and caution is to be exercised in invoking these powers. The power of quashing criminal proceedings, particularly, the charge framed in terms of Section 228 of the Code should be exercised very sparingly and with circumspection and that too in the rarest of rare cases.

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

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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.

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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.

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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....”

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26. This Court in the case of *Chitresh Kumar Chopra v. State (Government of NCT of Delhi)*, reported in (2009) 16 SCC 605, observed in para 25 as under:-

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- A “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. (See: Niranjan Singh Karam Singh Punjabi & Ors. Vs. Jitendra Bhimraj Bija & Ors, (1990) 4 SCC 76).*”
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27. In *State of Maharashtra v. Som Nath Thapa*, (1996) 4 SCC 659, a three-Judge Bench of this Court explained the meaning of the word “presume”. Referring to the dictionary meanings of the said word, the Court observed thus:

- E “32. ...if on the basis of materials on record, a court could come to the conclusion that commission of the offence is a probable consequence, a case for framing of charge exists. To put it differently, if the Court were to think that the accused might have committed the offence it can frame the charge, though for conviction the conclusion is required to be that the accused has committed the offence. It is apparent that at (1990) 4 SCC 76 the stage of framing of charge, probative value of the materials on record cannot be gone into; the materials brought on record by the prosecution has to be accepted as true at that stage.”.”
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28. In view of the position of law as discussed above, the impugned order of the High Court could be termed as perverse and not sustainable in law. We refrain from observing anything further in regard to the exact and correct age of the deceased at the time of commission of the offence as alleged as it may cause prejudice to the parties in some manner or the other. It is for the trial court to determine the correct age on the basis of the evidence that may be led by the prosecution as well as by the defence.

29. One another disturbing feature of this litigation is that it is the unfortunate father of the deceased who had to come before this Court

seeking justice. It was expected of the State to challenge the illegal order passed by the High Court. Barring a few exceptions, in criminal matters the party who is treated as the aggrieved party is the State which is the custodian of the social interests of the community at large and so it is for the State to take all the steps necessary for bringing the person who has acted against the social interests of the community to book [see *Thakur Ram and others v. State of Bihar* (1966) Cri LJ 700]. Yet one another disturbing feature is that the trial court thought fit not to frame charge against the accused for the alleged offence punishable under Section 306 of the IPC i.e. abetment to the commission of suicide. Unfortunately, no one has questioned that part of the order of the trial court declining to frame charge for the alleged offence of abetting the commission of suicide punishable under Section 306 of the IPC. In such circumstances, we do not say anything further in this regard.

30. We find that the High Court's conclusion about the age of the deceased and also as regards the delay in lodging the FIR besides being a premature assessment of evidence, is also attributable to the wrong premises on which the High Court's reasoning is based.

31. For the foregoing reasons, this appeal succeeds and is hereby allowed. The impugned order passed by the High Court is hereby set aside. The trial court shall now proceed to put the accused on trial in accordance with the order framing charge dated 18.12.2020.

32. It is needless to clarify that our observations in this judgment are *prima facie* and relevant only for the purpose of deciding the legality and validity of the impugned discharge order passed by the High Court. The guilt or the innocence of the accused shall be determined by the trial court strictly in accordance with the evidence that may be led in the course of trial.

33. Pending application, if any, also stands disposed of.

Ankit Gyan
(Assisted by : Rahul Rathi, LCRA)

Appeal allowed.