

KAUP010011152022



**IN THE COURT OF II ADDITIONAL DISTRICT &
SESSIONS JUDGE, UDUPI**

Present : **Dinesh Hegde**, B.A., LL.B., II Addl.
District and Sessions Judge, Udupi

Dated : This the **29th day of December, 2023**

S.C. No.21/2022

Petitioner: Nasir Abdhul Kadri Byari,
Aged about 55 years,
S/o Abdul Khader,
R/at H.No.2-48,
Karandadi,
Majur Post and Village,
Kaup Taluk,
Udupi District.

(By Sri.M.R.H., Advocate)

//VS //

Respondent: The State
Women Police Station,
Udupi District.

(Rep. By: Public Prosecutor)

Advocate for the accused has filed this petition under section 227 of Cr.P.C., to discharge the accused.

2. The learned Public Prosecutor filed objections.

3. Heard both sides arguments and perused the materials placed on record.

4. The following point arise for my consideration:

1. Whether the accused has made out grounds to discharge him under section 227 of Cr.P.C of the offences punishable under Section 375(B), (D) and 376(2), (J), (L) of IPC?

2. What Order?

5. My findings on the above points are as follows:

Point No.1 : In the Negative

Point No.2: As per the final order for the following:

REASONS

6. It is the case of the prosecution that initially the complainant Rashmi Dias filed a complaint against the accused on 23.03.2022 before the Women Police Station alleging that on

16.01.2022 at about 9.30 a.m., the petitioner/accused visited the house of complainant to attend the 18th birthday of her daughter who is the victim who is mentally, differently abled person. When the complainant went to bathroom and at that time CW3 Laxmi Bai @ Laxmavva the house keeper also went out for some work in the afternoon, at that time the accused sexually assaulted the victim. The victim is a physically challenged girl and hence complainant filed a complaint and the same was registered in Crime No.23/2022 for the offence punishable under Section 375(B), (D) and 376(2), (L) of IPC.

7. Based on the FIR the investigating officer went to the spot of occurrence and investigated the case, recorded the statement of the witnesses.

8. After case was committed for trial, the accused appeared before this court and he is on bail. At the stage of herring before charge learned Advocate appearing for the accused filed application under Section 227 of Cr.P.C to discharge the accused.

9. In the application filed under section 227 of Cr.P.C, the advocate for the accused has submitted that the entire allegation

alleged in the prosecution story is "a pack of lies" and the complainant herself scripted such false, frivolous, baseless, unfounded concocted story with the help of some planted witnesses with a view to extort money, for a forced settlement of disputed transaction, on personal differences, in order to project complainant's anger, to cause irreparably damage to the image and reputation of the applicant and his family and further thereby completely ruin the professional career of the applicant. When the applicant did not heed to the illegal demands of the complainant then the complainant used the oblique and ulterior motive opportunity and used her disabled daughter (the alleged victim) as a tool to achieve criminally crooked and unfounded script to teach an unbearable life and liberty threatening lesson to the applicant and the entire allegations leveled by the complainant against the applicant is vague, having vocal uncertainty, indifference, improvement and over thinking as it proves that "the complainant is blatantly lying" for substantial gain for herself and thereby put the applicant in great hardship, irreparable damage and turmoil by causing monetary, physical, mental distress and trauma. There are sterling and impeachable quality evidence, infirmities,

contradictions, improved statement and unreliable versions within the filed charge sheet and articles, which exposes the complainant's " pack of blatant lies" and it proves the complete innocence of the applicant. It is alleged in the said document that "accused last visited complainant's home on 18th birthday i.e., 16-01-2022. It suggests that the Complainant took this opportunity to implicate the applicant. The complainant herself in written complaint stated that the complainant did not do the medical test of the alleged victim for the reason that the accused himself is an experienced advocate. The complaint and FIR even if taken on face value and accepted in their entirety do not prima facie constitute any offence or make out any case against the accused.

10. Time of Crime, Occurrence is \false, manipulated and improved version pertaining to time of alleged offence committed. Duration of the alleged offence further proves the false and baseless story of the complainant. Mystery of alleged victims' ability to understand, speak and the truth behind and the complainant is scared of exposing her version of falsehood and deception. The complainant and the applicant were the classmates while pursuing law and the complainant was a client of the

applicant in various legal matters since September 2019 till filing of this matter and hence the alleged victim and the complainant were very close to the applicant for more than 02 years since 2019 and hence the applicant is having the complete knowledge of alleged victim's ability to understand and speak and the applicant submits that the alleged victim used to make mobile phone calls and spoken to the applicant for 10 to 15 minutes with the consent of the complainant on almost regular basis for more than 02 years sometime before filing the complaint. There is neither any trustworthy substantial material statement nor corroborative piece of reliable medical evidence provided in the medical report of the alleged victim. She was in touch with applicant and sent text messages and exchanged several phone calls with the applicant and however the applicant was arrested on 09-05-2022 when applicant went to the women police station, Udupi to submit his version with evidence to prove his innocence. Neither such heinous offence had taken place nor the applicant committed the crime as alleged. As a result of such a false and frivolous allegation the complainant has not only tarnished and stigmatized for life, the image and reputation of the applicant but also his family and other members

associated with him as he is a well-respected member of the legal fraternity and civil society. The applicant has been facing extreme levels of humiliation in the civil society and leading to him being psychologically affected, depressed and isolated as a result of which he has been seeking medical treatment ever since the allegation is made and that health condition has aggravated ever his return from judicial custody. Judicial process is a solemn proceeding, which shall not be allowed to be converted into an instrument of oppression or harassment, as the complainant with complete knowledge and dishonestly taken a ride on precious time and resources of the various government authorities and machinery to satisfy her ugly greed for money at the cost of some innocent's life and liberty. The complainant has also abused the process of law in this process, mocked the judiciary and the government agencies, frivolously drained the resources and precious time of the State due to her false and frivolous allegations just to achieve her ulterior motive. Neither the evidence statement is sufficient nor any legal ground for proceeding against the applicant. Whereas the applicant prays to discharge from the offence alleged and the complainant may be criminally tried for lodging this false case.

11. Apart from the above submissions the Advocate for the accused has also made several incidents of exchange of WhatsApp chats between the accused and the complainant. Under these circumstances it is prayed to discharge the accused from the charges leveled against him. Hence, prayed to discharge the accused.

12. Learned Public Prosecutor in his objections apart from narrating the facts of the case has submitted that charge sheet against the accused is filed under Section 375(B) (D), 376(2) (L) of IPC. The CW2 is a mentally challenged person and against such person the accused has committed sexual assault. From the statement and medical report of the victim there are prima facie materials come to the conclusion that the accused has committed offences alleged against him. At this stage no such enquiry can be conducted to evaluate the evidence relied by the prosecution. Court has to decide whether there are sufficient material to proceed against the accused to frame charges leveled against him or not is only to be considered. Therefore, he has argued that at this stage the accused cannot be discharged.

13. Learned Advocate appearing for the accused relied upon the following decisions;

1) **Vijayan Vs State of Kerala(2010) SCC 398**, wherein it was held that the court is required to evaluate the material and documents on record with a view to find out the existence of all the ingredients constituting the alleged offences.

2) **Kanchan Kumar Vs State of Bihar; Criminal Appeal No.1562/2022**, wherein it was held that whether the infirmities have to be considered while adjudicating application under Section 227 of Cr.P.C.

3) **State of Orissa Vs Debendranath Padhi AIR 2005, 369 SC**, Section 227 of Cr.P.C is enacted in the code for purpose of saving the accused from unnecessary harassment by prolonged trial.

4) **Krishna Lal Chawla Vs State of U.P. LL 2021 SC 145**, it was held that a duty under the constitution and the Cr.P.C to identify and dispose of frivolous litigation.

5) Ahmed Vs State of M.P. 1997, Cri. LJ 1844

(MP), it was held that when offences not prima facie made out against accused person framing of charge not proper.

6) Sher Singh Vs State of Punjab 11 (2003)

DMC 192(P & H) it was held that vague allegations are not acceptable.

7) Radhu Vs State of Madhya

Pradesh(Criminal Appeal No.624/2005 wherein it was held that a finding of guilt in a case of rape, can be corroborated based.

14. The learned Public Prosecution in support of his contention has relied a decision of Hon'ble Supreme Court in **Criminal Appeal No.1399/2023 between Captain Manjit Singh Viridi (Retd.) Vs Hussain Mohammed Shattaf and others**, wherein it was held that, it is settled principles of law that at the stage of considering an application for discharge the court must proceed on the assumption that the material which has been brought on record by the prosecution is true and evaluate the material in order to determine whether the facts emerging from the

material, taken on its face value, disclose the existence of the ingredients necessary to constitute the offence.

15. The charge sheet and enclosure reveal that the victim is the daughter of the complainant and the victim is mentally challenged above the age of 18 years. The complainant being the mother of the victim lodged the complainant against the accused by alleging the sexual assault committed on victim. The documents produced by the prosecution at this stage prima face established that competent authority issued certificate to the effect that the IQ level of the victim is below 70 that is to say IQ of the victim is only 20 and moderate mental retardation. According to the competent authority the victim is mental retarded.

16. During the investigation the victim was enquired in the presence of the complainant by a Special Educationist Shaila Ammanni of a Institution Asha Nilaya along with special educationist Jayalakshmi Acharya were several questions put to victim and her statement was recorded in a form of questions and answers. Such statement of the victim shows that the accused touched her abdomen, breast and kissed her. Though some of the

questions were asked by complainant herself to the victim, that itself cannot be considered as false implication of the accused at this stage and it has to be adjudicated at the trial. The medical opinion of the victim issued by medical officer reveal that there are no signs suggestive of vaginal penetration. However, the medical opinion shows possibility of digital penetration and non penetrative sexual assault cannot be ruled out. There are no evidence of injuries suggestive of application of force at the time of examination. All these materials produced by the prosecution along with charge sheet has to be tested in the trial. The statement of the witnesses and the documentary evidence produced by the prosecution, prima facie made out the offences punishable under Section 375(B), (D), 376(2) (L) of IPC.

17. Section 227 of Cr.P.C. reads as follows:

“Discharge. If, upon consideration of the record of the case and the documents submitted therewith, and after hearing the submissions of the accused and the prosecution in this behalf, the Judge considers that there is not sufficient ground for proceeding against the accused, he shall discharge the accused and record his reasons for so doing”.

18. The materials produced by the prosecution along with charge sheet reveal there are sufficient materials to frame charges against the accused for the offence punishable under Section 375(B), (D), 376(2) (L) of IPC. It is well settled law that truthfulness, sufficiency and acceptability of material produced with the charge sheet can be done only at the stage of trial.

19. When such being the facts, the decisions relied by the learned Advocate for accused is not applicable to the facts of this case at this stage. By considering all the above facts, I am of the opinion that there is sufficient ground to proceed against the accused and hence he is not entitled for discharge. Therefore, I answer above point in the **Negative** and pass the following:

ORDER

Application filed by the Advocate for
the accused under section 227 of Criminal
Procedure Code is hereby rejected.

(Dictated to the Stenographer, transcribed by her, corrected and signed by me and then pronounced in open court on this the **29th day of December, 2023**)

(DINESH HEGDE)
II Addl. District & Sessions Judge,
Udupi