

**MEMORIAL WRITING COMPETITION BY DAL, PIMR**

**INDORE, 2022**

**IN THE HIGH COURT OF KOSHIN, HINDIMAI**

**WOMEN OF HINDIMAI AND ORS**

**(APPELLANT)**

**V**

**KRISTHISH HOME PAN HINDIMAI AND ORS**

**(RESPONDENT)**

**UPON SUBMISSION TO THE HIGH COURT AND ITS**

**HONOURSHIPS**

**COMPANION JUSTICES OF THE HIGH COURT OF**

**HINDIMAI**

**PETITION FILED AGAINST 376, 375 AND ORS**

**MEMORIAL ON BEHALF OF RESPONDENT**

## TABLE OF CONTENTS

---

<b>INDEX OF AUTHORITIES.....</b>	<b>3</b>
<b>ABBREVIATIONS.....</b>	<b>9</b>
<b>STATEMENT OF JURISDICTION.....</b>	<b>11</b>
<b>STATEMENT OF FACTS.....</b>	<b>12</b>
<b>STATEMENT OF ISSUES.....</b>	<b>13</b>
<b>SUMMARY OF ARGUMENTS.....</b>	<b>14</b>
<b>ARGUMENTS ADVANCED.....</b>	<b>15</b>
<b>1. Whether the case is based on circumstantial evidence?.....</b>	<b>15</b>
1.1. Respondent supported all the children and women.....	16
1.1.1. Sefina was not the victim.....	16
1.1.2. POSCO Act is not maintainable.....	17
1.1.3. Section 375 and 376 is not maintainable.....	18
1.2. FIR was not required in this case.....	19
1.2.1. Children were dead because of health issues.....	20
1.3. CBI investigation report.....	21
1.3.1. There were no forged documents.....	22
<b>2. Whether any provision of the law was set aside? Whether child witness is reliable?.....</b>	<b>23</b>
2.1. NGOs and the medias are against the respondent.....	23
2.1.1. There are many other inmates who supported Kristhish Home.....	24
2.2. Police officials made exact records.....	25
2.2.1. Section 169 is maintainable.....	26
2.2.2. Section 172 and 173 of CrPC is maintainable.....	28

2.3. Respondent didn't threaten the appellant.....	28
2.3.1. No maintenance of section 506 of IPC.....	30
2.3.2. Phone records and call records not found.....	31
<b>3. Whether PIL is maintainable?.....</b>	<b>31</b>
3.1. Article 32 is not maintainable.....	32
3.2. Court is not bound to upheld the case.....	33
3.2.1. Article 226 is not maintainable.....	33
3.3. Freedom to live with dignity and honour.....	35
<b>PRAYER.....</b>	<b>36</b>

## INDEX OF AUTHORITIES

### CASES

S.NO	TITLE	CITATION	APPEAR ON PAGES
1	Prem Singh V The state (Govt. of NCT of Delhi)	8 <sup>th</sup> Dec, 2016	15, 24
2	State V. N. Dev Dass	6 <sup>th</sup> March, 2010	15, 16, 24
3	Ali Jishan @ Jishan Chawhan V State of Kerala	26 <sup>th</sup> Nov, 2009	16, 24
4	Babu V. State of Kerala	11 <sup>th</sup> Aug, 2010	17, 24
5	Rameshbhai Chandubhai Rathod V. The state of Gujrat	27 <sup>th</sup> April, 2009	17, 22
6	Mannu Sao V State of Bihar	22 <sup>nd</sup> July, 2010	17
7	Majendran Langeswaran V State (NCT of Delhi and anr)	1 <sup>st</sup> July, 2013	17
8	Velmurugan V. State	19 <sup>th</sup> June, 2008	18
9	G. Veerabrahmam V. The state of AP	15 <sup>th</sup> July, 1985	18

10	Chandraiahgari Ananthareddi V. State of AP	15 <sup>TH</sup> Nov, 1995	18
11	State V. Illiyas Kujoor	26 <sup>th</sup> March, 2010	18
12	Suresh V. State of Haryana	21 <sup>st</sup> August, 2018	19
13	Rajendra Prahlaro Wasnik V. The state of Maharashtra	12 <sup>th</sup> Dec, 2018	19
14	Anwar Ali V. The state of Himachal Pradesh	25 <sup>th</sup> Sep, 2020	19
15	In reference V Phoolchand Rathore	11 <sup>th</sup> Dec, 2015	20
16	Nawabbudin V. State of Uttarakhand	8 <sup>th</sup> Feb, 2022	18
17	State V. Kapil	25 <sup>th</sup> April, 2013	24
18	State V. Kamal Chaurasia	29 <sup>th</sup> Jan, 2016	18, 24
19	John and ors V. State of MP	5 <sup>th</sup> July, 2011	19
20	State V. Bheem	31 <sup>st</sup> March, 2014	19, 24

21	State V. Kunal Kumar	21 <sup>st</sup> Feb, 2015	21
22	Laxman Tarafdar V. The state of WB	1 <sup>st</sup> July, 2010	20
23	Sanjay Mishra V. The state of MP	18 <sup>th</sup> Dec, 2018	20
24	Rape is a dark reality in Indian V. The state (Delhi admn)	11 <sup>th</sup> Feb, 2016	20
25	State V. Md. Sanallah	22 <sup>nd</sup> Nov, 2013	21
26	State V. Mr. Jitender and anr	14 <sup>th</sup> Aug, 2013	21
27	State V. Sarvjeet Jaswal and ors	22 <sup>nd</sup> Nov, 2013	28
28	State V. Dilshad	16 <sup>th</sup> Aug, 2013	21
29	State V. Samir	6 <sup>th</sup> Sep, 2013	21
30	State V. Dharminder @ Billoo	28 <sup>th</sup> Jan, 2011	22
31	State V. Ache Lal	9 <sup>th</sup> Nov, 2012	22, 29
32	State V. Satya Prakash Verma	13 <sup>th</sup> April, 2018	19, 22
33	Prem Dass V. State of Delhi	29 <sup>th</sup> March, 2012	22

34	Kamlapati Trivedi V. State of WB	13 <sup>th</sup> Dec, 1978	19, 27
35	Dr. Kapil Garg and SH. Hari Singh V. The State	29 <sup>th</sup> Aug, 2003	20, 27
36	Ramji Son of Tung Nath Lalji son V. Bhagwan Prasad son of Gopi Nath	28 <sup>th</sup> March, 2006	23
37	Ashfaque Ahmed V. State of Kerala	4 <sup>th</sup> May, 2011	23
38	Anil Kumar Jain V. State (NCT Delhi)	10 <sup>th</sup> Feb, 2011	20
39	Dattaprabhu V. The state of Maharashtra	21 <sup>st</sup> Aug, 2012	25, 26
40	Vishal @ Shivaji Mahadeo Kamble V. The state of Maharashtra	16 <sup>th</sup> Dec, 2016	26
41	M/S Crayons advertising pvt ltd V. state of Rajasthan	22 <sup>nd</sup> May, 2017	27
42	Shahnaj Taj Md. Hashmi and anr V. The senior inspector of Police	5 <sup>th</sup> May, 2017	27

43	State of WB and ors V. Swapan Kumar Guha and ors	2 <sup>nd</sup> Feb, 1982	27
44	Vijay Pal and anr V. State of UP	25 <sup>th</sup> Sep, 2012	28
45	Dinesh Kumar Maurya V. The state of UP	19 <sup>th</sup> Feb, 2016	28
46	Vijay Singh V. State of UP	26 <sup>th</sup> May, 2017	28
47	Mahadev Prasad Kaushik V. state of UP	17 <sup>th</sup> Oct, 2008	28
48	Raju V. State of UP	2 <sup>nd</sup> Feb, 2010	29
49	Satnam Singh V. State of Punjab and anr.	23 <sup>rd</sup> Aug, 2013	30
50	Narendra Kumar and ors V. The state	13 <sup>th</sup> Jan, 2004	30
51	Syed Salim V. MJ Simon and ors	22 <sup>nd</sup> March, 1990	30
52	Mr. MK Razdhan V. The state and shri Indukant Dixit	3 <sup>rd</sup> March, 2008	30
53	Chhotu Khan V. The state	6 <sup>th</sup> Jan, 2012	30
54	UC Parikh V. State of UP	27 <sup>th</sup> Oct, 2016	31



55	State V. Ashok Kumar	11 <sup>th</sup> July, 2012	31
56	Mehsana District Central V. state of Gujrat	28 <sup>th</sup> Jan, 2004	31
57	Kum. Jayashree Zine and ors V. Maharashtra Public Service	19 <sup>th</sup> June, 2008	31
58	5 Whether it is to be circulated V. The honble; court be pleased	31 <sup>st</sup> July, 2014	25, 26

#### STATUS

1. PIL cases in India..... 31, 32, 33, 34
2. POSCO Act, 2012..... 32
3. Indian Constitution law and philosophy..... 31, 32, 33

#### ARTICLES AND JOURNALS

1. Public Interest Litigation..... 32, 35
2. Quashing and clubbing of FIRs..... 33
3. Writ Petition and criminal law..... 32, 33
4. Religious leader under POSCO Act..... 34
5. Right to Const. remedies..... 32, 33, 35

#### BOOKS

1. IPC, IEA, CrPC, Indian Constitution Act.

#### WEBSITES

1. [www.indiankanoon.org](http://www.indiankanoon.org)

## ABBREVIATIONS

---

¶	: Paragraph
CRPC	: Criminal Procedure Code
IEA	: Indian Evidence Act
IPC	: Indian Penal Code
Const.	: Constitution
Ors	: Others
Anr	: Another
V.	: Versus
UOI	: Union of India
Honble'	: Honourable
i.e.	: That is
W.P.	: Writ Petition
PIL	: Public Interest Litigation
HC	: High court
SC	: Supreme Court
NGO	: Non-Governmental Organisation
WOM	: Women of Hindimai
CBI	: Central Bureau of Investigation
FIR	: First Investigation Report
Govt.	: Government
Govts.	: Governments
Ld. C	: Learned Council

Cl	: Clause
WB	: West Bengal
Art.	: Article
Arts.	: Articles
u/a	: Under Article
u/s	: Under Section
u/ss	: Under Sections
S.	: Section
SS.	: Sections

## **STATEMENT OF JURISDICTION**

---

The court is not competent to hear the W.P. u/a. 226 of the const. of Hindimai. As the matter involves the rights and dignity of the respondent. The claim of the appellant over the const. of Hindimai is not satisfied under various circumstances. The Honble' HC has no jurisdiction to hear upon the case.

It is humbly submitted before the Honble' HC of Hindimai, that the court is not empowered to hear the case by virtue of art. 226 of the const. of India. Along with taking in view of ss. 106 and 169 of CrPC, ss. 376 and 375 of IPC and ors. SS. Accordingly.

## STATEMENT OF FACTS

---

1. Hindimai one of the populated countries with over 1300 million population. According to world crime rate it comes under the 84<sup>th</sup> position in the most crime rate and that too also with women and children. Owing to the abusive environment 20 percent of the total female population has been relocated to govt. aided and non-govt aided institution and NGOs. One such NGO is run by a religious group called Canayanos. It was headed by a religious head Meshaline.

2. He started his celibacy life at the age of 18 and now he is 35 years old. He was the behind the idea of setting up Kristhish Home Pan Hindimai for women and children. To support all such women and children who are below the poverty line and has no financial supports for betterment of their life. They do all missionary work and approached homes and also forced people to convert their religion. Many parents willingly send their children to Kristhish home for brighter future and education.

3. The incident and the claim that Sefina put on Meshaline for sexually abusing her was investigated but didn't yield any such information. Even the CBI report reveal that there is no sign of sexual assault found from the victim body and there was no correlation between the death of the children and their being sexually assault. The shelter home authorities stated that Sefina is putting this allegation because she was not made the Canadyan superior lady. However, she was not that worthy of being into that celibacy life. But she didn't accept it and put such allegations on Meshaline and other authorities who support and worked for him. Even she claimed that the police were biased but there was no such sufficient evidence because of which the guilt of the accused can be charged.

4. After which, Khwaja an investigative journalist along with Sefina and other inmates of the religious campaign with an NGO Women of Hindimai blamed that Meshaline has also threatened the victim and her family to take up the case and file an appeal in the HC of Koshin with PIL asking justice for Sefina and other women and children who were sexually assaulted. Similarly, inmates of other states have also filed the same in their respective states and the same is been pending in HC.

## STATEMENT OF ISSUES

---

**[1] Whether the case is based on circumstantial evidence?**

**[2] Whether any provision of the law was set aside? Whether child witness is reliable?**

**[3] Whether PIL is maintainable?**

## **SUMMARY OF ARGUMENTS**

---

### **[1] Whether the case is based on circumstantial evidence?**

It is to be submitted before the Honble' HC that the case is clearly based on circumstantial evidences according to s. 106 of IEA. As per the facts, there is no such eye witness neither any such evidence which can clearly show that the appellants were sexually abused. The facts reveal that the medical reports and CBI investigation could also can't find any such evidences from the body of the dead bodies that they were sexually abused. And as per this s. the court should rely the decision only when it makes a clear chain of evidences.

### **[2] Whether any provision of the law was set aside? Whether child witness is reliable?**

It is to be humbly submitted before the honble' HC that there are several provisions which were not taken care about by the appellants. Such as ss. 106 of IEA, s. 169 of CrPC, s. 172 and 173 of CrPC. Because accordingly, only s. 506 of IPC for threatening and other ss. Such as forged documents etc all doesn't have clear proof that the original and the only documents of evidence rely on this. Meanwhile taking granted of s. 106 of IEA, if we look into the deeper side, there is nothing proved correctly with documents and chain of evidence. The things which were produced are all under oral conduct and not by any complete proof.

### **[3] Whether PIL is maintainable?**

It is to submitted before the Honble' HC that PIL can be accepted because if the appellants have filed PIL for their rights. Then the respondents rights are also getting infringed because of false allegation. Because it not only outrages their occupation but also outrage the modest and respect of the respondents. They are no were found guilty of any offence but still the claim is being upon them. Which is the clear case of outraging the modesty of the respondents. Until an unless it is not proved beyond reasonable doubt that respondent is the only culprit and has been found guilty by the court, the undue blaming of the respondent is way apart for const. Remedies under PIL. Apart from it, according to a. 226 of Indian const. HC has rights under trying for PIL if any rights are abridged in any way.

## ARGUMENTS ADVANCED

---

### **[1] Whether the case is based on circumstantial evidence?**

[¶1] It is to be humbly submitted before the honble' HC that, the case is purely based on circumstantial evidence. There is no clear evidence to prove the guilt of the respondent. According to s. 106 of IEA, the burden of proving that the respondent is guilty of the offence lies upon the appellant. The facts reveal that the appellant was already having intention of defaming the name of the respondent and his religious group because she wasn't able to get the position as a superior of Canadyan group. i.e., it clearly reveals that to examine the guilt of the respondent there must be appreciation of evidence by the prosecution. i.e., it is a well settled law that where there is no direct evidence and the whole case rest on circumstantial evidence the guilt can only be found when all the incriminating facts and evidences are found incompatible with the innocence of the accused.<sup>1</sup> In simple words, it should form a complete chain of evidence so complete as not to leave any reasonable ground for a conclusion inconsistent with the innocence of the accused.

[¶2] There is no doubt that the sole case can rely on circumstantial evidence but it should be tested by touchstone of law relating to circumstantial evidence. There is no dispute that even though there is no eye witness and the case is based on circumstantial evidence, then too the guilt of the accused can be found. But the prosecution should prove beyond reasonable doubt the complete chain of events and circumstances which definitely point towards the guilt of the accused as the case may be.<sup>2</sup> Thus, in a case of circumstantial evidence the prosecution must establish each instance of incriminating circumstances, by way of reliable evidence and the circumstances so proved must form a complete chain of events on the basis of which no conclusion other than one of the guilt of the accused can be reached.

[¶3] Since, the motive plays a vital role in determining the guilt of the accused. In this contention there is no such intention or motive found clearly to prove the guilt of the respondent. In the above circumstances, the motive is found absent on the basis of circumstantial evidence.<sup>3</sup>

---

1. S. 106 of IEA

2. Prem Singh V. State ( Govt. of NCT of Delhi) 8<sup>th</sup> Dec, 2016

3. State V. N. Dev Dass Singha 6<sup>th</sup> March, 2010



**[1.1.] Respondent supported all the children and women.**

[¶4] It is to be submitted that, the undue pointing out the respondent who supported all women and children who were below the poverty line and were not having any support neither financially nor personally is a defame of religion. Taking in consideration, the respondent is innocent and has been falsely implicated in this case by the appellant.<sup>4</sup> It is pointed that it should be taken full care in evaluating circumstantial evidence and if the evidence is relied upon must be found to have fully established and the cumulative effect of all the evidence should be consistent only with the hypothesis of the guilt of the accused.<sup>5</sup>

[¶5] Though the question of motive arises even in circumstantial evidence and direct evidence. On both the scenario the intention and knowledge of the accused has to be proved to find the guilt of the accused.<sup>6</sup> There can be no doubt regarding the fact that the case is built on circumstantial evidence. In a case of circumstantial evidence, direct proof of the culpability of the accused is often lacking. When the case is based on circumstantial evidence, the evidence should be firmly and coherently established.

[¶6] In a case based on circumstantial evidence, the settled law is that the circumstances from which the conclusion of the guilt is drawn should be fully proved and such circumstances must be conclusive in nature.<sup>7</sup>

[1.1.1.] Sefina was not the victim.

[¶7] It is to be submitted before the honble' HC, the appellant was not a victim. She put false allegation on the respondent. Because she was in carve to become the superior of the respondent team. But she was not worthy for that. And this intention and motive bought her to put false allegation on respondent.

[¶8] The burden of proof is always on the party who asserts the existence of any fact, which infers legal accountability in all cases whether of direct or circumstantial evidence the best evidence must be abducted which the nature of case admits. In order to justify the inference of guilt, the inculpability facts must be incapable with the innocence of the accused.<sup>8</sup>

---

4. S. 313 of CrPC

5. State V. N. Dev Dass Singha 6<sup>th</sup> March, 2010

6. S. 8 of IEA

7. S. 106 of IEA

8. Ali Jishan @ Jishan Chawan V. State of Kerala 26<sup>th</sup> Nov, 2009

[¶9] It can be held that HC should not interfere with the judgment in acquittal or charging of the accused in a reversed manner. The findings of the trial court could not to be held to be perverse being based on irrelevant material i.e., evidence on record.<sup>9</sup> The motive is a thing which is primarily known to the accused themselves. And is not possible for the prosecution to explain what actually prompted. And therefore, it is a settled law that the motive loses all its importance in a case where direct evidence of eyewitnesses is available, because even if there may be a very strong motive for the accused person to commit a crime, they can't be convicted if the evidence of eyewitness is not convincing.<sup>10</sup>

[¶10] The facts that alleged on the legal inference must be clearly proved and beyond reasonable doubt connected with factum probandum. If the said evidence is found to be credible, cogent and trustworthy for the purpose of recording conviction, to treat the evidence as mitigating circumstance, would amount to consideration of an irrelevant aspect.<sup>11</sup>

[¶11] The case of circumstantial evidence has to dealt with greater care and microscopic documentary and oral evidence on record. It is then alone that the court will be in a position to arrive at a conclusion upon proper analysis of evidence in relation to the ingredients of an offence.<sup>12</sup> In the case of circumstantial evidence, particularly besides the entire case of prosecution even the statement of the accused is also relevant.<sup>13</sup>

[¶12] The above circumstances clearly satisfy the conditions stated, which need to be satisfied in a case of circumstantial evidence in the case. The circumstances proved by the prosecution are of conclusive nature and they exclude the possibility of any other view which could be taken rationally and reasonably.<sup>14</sup>

[1.1.2] POSCO Act is not maintainable.

[¶13] It is to be submitted before the honble' HC that, POSCO Act, is not maintainable. Because, ss. Applicable under POSCO will only come under consideration when there is clear evidence beyond reasonable doubt that sexual assault has happened with children. And it can only come under effect when there is a guilt found.

---

9. S. 9 of IEA

10. Babu V. State of Kerala 11<sup>th</sup> August 2010

11. Rameshbhai Chandubhai Rathod V. State of Gujrat 27<sup>th</sup> April, 2009

12. Manu Sao V. State of Bihar 22<sup>nd</sup> July, 2010

13. S. 106 of IEA

14. Majendran Langeshwaran V. State ( NCT of Delhi) 1<sup>st</sup> July, 2013

[¶14] The ld. Counsel for the respondent would state that the judgment of convicting the respondent as accused u/ss. of POSCO Act would not stand correct. Because the entire facts submits that the case is purely based on circumstantial evidence, the prosecution has to establish all the links in the chain of circumstances and even if one link is missing. The respondent is liable for acquittal.<sup>15</sup> The prosecution case hinges upon circumstantial evidence, as the occurrence was not witnessed by anyone. Undoubtedly, in cases of circumstantial evidences, motive bears a significant role. People do not act wholly without motive.<sup>16</sup>

[1.1.3] Section 375 and 376 is not maintainable.

[¶15] It is to be humbly submitted before the honble' HC that, if there no prove that sexual penetration has happened with any of the victims dead body or with the appellant then prosecution u/ss. 5 and 6 of POSCO Act won't be maintainable.<sup>17</sup> In any circumstances, it will not fall under aggressive penetrative assault as per the CBI report.<sup>18</sup>

[¶16] This is a case of circumstantial evidence. There is no direct evidence in the sense of eye witness account to connect the accused with the crime in question. The law is well settled that the conviction of the accused can only be based only if there is a complete chain formed out of the evidence.<sup>19</sup> There must be reasonable ground for a conclusion inconsistent with the innocence of the accused.

[¶17] And charging the accused under unclear evidence without any testimony would be injustice. Consequently, no inference can be drawn that the accused is guilty of the offence u/s 376 of IPC as the appellant has made inconsistent statement due to which her testimony becomes unreliable.<sup>20</sup> Therefore this case is neither based on penetrative assault not aggrieved penetrative assault.<sup>21</sup> Even it can be happened that may be the appellants where not forcefully but they themselves involved in the physical act, and because of not getting the superior post they are blackmailing the respondents to draw attention u/ss. 376 and 420 of IPC.<sup>22</sup>

---

15. Velmurugan V. State 19<sup>th</sup> June, 2008

16. S. 9 of IEA

17. G. Veerabrahmam V. State of Andra Pradesh 15<sup>th</sup> July, 1985

18. S. 8 of POSCO Act

19. Chandraiahgari Ananthareddi and anr V. State of Andra Pradesh 15<sup>th</sup> Nov, 1995

20. Nawabbudin V. State of Uttarakhand 8<sup>th</sup> Feb, 2022

21. State V. Illiyas Kujoor 26<sup>th</sup> March, 2010

22. State V. Kamal Chourasia 29<sup>th</sup> Jan, 2016

**[1.2.] FIR was not required in this case.**

[¶18] It is to be submitted before the honble' HC that if the circumstantial evidence is found to be of incompatible character in establishing the guilt of the accused, that forms the foundation for conviction. Then it has nothing to do with providing any chargesheet or giving any sentence to the accused. The precautions that must be taken by all the courts in case of circumstantial evidence is that, if the court has some doubt on circumstantial evidence on proving the guilt of the accused, then the court should acquit the accused from all the charges.<sup>23</sup> And if all the doubts are clear under reasonable grounds. Charges can be applied to it.<sup>24</sup>

[¶19] Having thus, closely seen the materials, available on records including the evidence of the witness, there is nothing found. Even on the FIR charge sheet, no forensic report declared anything and neither the victims dead bodies reveal any sort of sexual assault.<sup>25</sup> According to IPC, the appellant is telling different scenarios other than the evidences and facts.<sup>26</sup> And such time inconsistent statement which doesn't support evidence chain and charge sheet u/ss. of CrPC doesn't inspire the confidence of the court to go along with FIR and that being so favour that it goes beyond doubt in favour of accused respondent.<sup>27</sup>

[¶20] In every cause of action, some motive relies. And in the present case there is no such motive found to stronger the arguments of the appellant. The court in the catena of cases has expounded the test of complete chain link theory for the prosecution to prove a case beyond reasonable doubt based on the circumstantial evidence.<sup>28</sup> Consequently no inference can be drawn out of motive proving the guilt of the accused respondent u/ss 375 and 376 of IPC.<sup>29</sup>

[¶21] It is clear that the position regarding the case of accepting the FIR is different in this case.<sup>30</sup> Here, the FIR of the police was consistent, they filed FIR charge sheet but go further because there was no evidence proving the guilt of the accused. And so, the magistrate should take the cognizance of it and should acquit the accused respondent u/s. 169 of CrPC.<sup>31</sup>

23. Rajendra Prahladro Wasnik V. The state of Maharashtra 12<sup>th</sup> Dec, 2018

24. S. 376 of IPC

25. Suresh V. State of Haryana 21<sup>st</sup> Aug, 2018

26. John and ors V. State of Madhya Pradesh 5<sup>th</sup> July, 2011

27. State V. Satya Prakash Verma 13<sup>th</sup> April, 2018

28. Anwar Ali V. State of Himachal Pradesh 25<sup>th</sup> Sep, 2020

29. State V. Bheem 31<sup>st</sup> March, 2014

30. S. 164 of CrPC

31. Kamalapati Trivedi V. State of WB 13<sup>th</sup> Dec, 1978

[¶22] In many of SC cases, has to be held that in cases of circumstantial evidence motive assumes importance except in cases where the prosecution is able to prove and establish beyond doubt the entire chain of events which lead to the evitable conclusion of the guilt of the accused.<sup>32</sup> In view of s. 313 of CrPC, the accused has controverted and rebutted the entire evidence against him submitting that he is innocent and he has not committed any offence.

[¶23] There is nothing incriminating against the accused on record. The evidence of the appellant is not reliable for FIR as there is lack of motive and evidence.<sup>33</sup> It is to be submitted that in the event of contradictory statement in the testimony of the prosecutrix which is inconsistent with that of some other as well as with the view of medical evidence also there is no evidence found sufficient for FIR lodge against accused respondent.<sup>34</sup>

[1.2.1.] Children were dead because of health issues.

[¶24] It is to be submitted that as per the facts and medical reports, it is clear that there is no such evidences or semen traces found from the body of the victims which can say that they were sexually assaulted. The bodies were dead because those children were not fit and their parents were informed about it by the respondent. And so, here DNA report and blood report too didn't reveal the cause of death.<sup>35</sup>

[¶25] Consequently, no inference can be drawn from the appellant prosecution that there is enough evidence to find about the cause of death of the children.<sup>36</sup> There was no material on record that offence u/s 376 of IPC is maintainable and sufficient for lodging FIR.

[¶26] S. 169 of CrPC tells the release of accused on the lack of evidence. It is said that if under investigation while filing of FIR the evidence is not sufficient to find the guilt, then the police in charge can present the accused in front of the magistrate for further judicial inquiry and can release the accused on bond.<sup>37</sup>

32. In Reference V. Phoolchand Rathore 11<sup>th</sup> Dec, 2015

33. Laxman Tarafdar V. State of WB 1<sup>st</sup> July, 2010

34. Sanjay Mishra V. The state of MP, 18<sup>th</sup> Dec, 2018

35. Rape is a dark reality in India V. State ( Delhi Admn) 11<sup>th</sup> Feb, 2016

36. Anil Kumar Jain V. state (NCT Delhi) 10<sup>th</sup> Feb, 2011

37. Dr. Kapil Garg and sh. Hari Singh V. State 29<sup>th</sup> Aug, 2003

### **[1.3.] CBI investigation report.**

[¶27] It is to be submitted before the honble' HC that, as per the reports of the CBI investigation, there is no such evidence found by the investigating officers that the death of the children was due to sexual assault and abduction. The appellant has no strong and clear evidence and eye witness to prove it.

[¶28] The evidence of the prosecutrix is not reliable as it suffers from various contradiction.<sup>38</sup> It has to disperse the suspicious cloud and dust out the smear as all these things clog the very truth. It means no man who is innocent should be punished and no man who has committed an offence should ne scot-free.<sup>39</sup>

[¶29] No inference can be drawn to conclude that CBI report is forged and its fake. There is no such consistency of the appellant to find the guilt of the accused. And under s. 313 of CrPC the accused is innocent without any reasonable doubt. The question is on how to test the veracity of the prosecutrix statement when there is lack of evidence. The statement of the appellant is not reliable as its suffers from various contradiction.

[¶30] The facts so established should be only with the hypothesis of the guilt of the accused. This means, this is to say that there should not be any other hypothesis other than finding the guilt of the accused.<sup>40</sup> The evidence and statement should be conclusive in nature and tendency. There must be a chain of evidence so complete as there should not be any other grounds in contradiction to the innocence of the accused and must show in human probability that the act must have been done by the accused.<sup>41</sup>

[¶31] There is no inference laying down u/s 376 of IPC.<sup>42</sup> It is a case of heinous crime of rape. Which carries gave implication to the accused if convicted. Therefore, for convicting any person for said offence, the degree of prove has to be that of the high standard and not mere possibility of committing the said offence. In a criminal case the prosecution has to prove its case beyond reasonable doubt against the accused and not merely dwell upon the shortcoming of the offence.<sup>43</sup>

---

38. S. 313 of CrPC

39. state V. Kunal Kumar 21<sup>st</sup> Feb, 2015

40. State V. Md. Sanullah 22<sup>nd</sup> Nov, 2013

41. State V. Mr. Jitender and anr 14<sup>th</sup> Aug, 2013

42. State V. Dilshad 16<sup>th</sup> Aug, 2013

43. State V. Samir 6<sup>th</sup> Sep, 2013

[1.3.1.] There were no forged documents.

[¶32] It is to be submitted before the honble' HC that forged documents made under rape case u/s 376 and 375 is not that easy as though. The FIR reports can easily reveal that the documents are forged. Even the judicial investigation can prove the same without any contradiction. Therefore, concluding the documents as forged is way out of knowledge.

[¶33] Even the proving of threat and mere existence of sexual assault is not clearly shown in the evidence and witness. It is a settled principle of law that more serious the offence, stricter will be the prosecution. And stricter the degree of proof. Since a higher degree of assurance is required by the appellant to prove the guilt of the accused respondent.<sup>44</sup>

[¶34] The only evidence of rape is the appellant and none other material was taken as recorded. Neither the CBI record nor forensic record and nor any witnesses. The documents which were produced were told forged.<sup>45</sup> And this is not at all sufficient to prove the guilt without forming any chain of trustworthy evidence.<sup>46</sup>

[¶35] It can't be lost sight of evidence causing distress and humiliation to the victim but at the same time a false allegation of rape can cause equal distress, humiliation and damage to the accused as well. The accused must also be protected against the possibility of false implication. Always the statement of the prosecutrix can't be held reliable.

[¶36] There is no mathematical formula through which the truthfulness of the prosecution or a defence case could be concretized. It would depend upon the evidence of each case including the manner of deposition and his demeanors, clarity, corroboration of witnesses and overall, the conscience of a Judge evoked by the evidence on record. So, the Courts have to proceed further and make genuine efforts within judicial sphere to search out the truth and not stop at the threshold of creation of doubt to confer benefit of doubt.<sup>47</sup>

[¶37] And with a circumstantial reason, the guilt of the accused respondent can't be taken as granted. Because, the evidences and the documents are in front of the eyes of the justice. And neglecting it would be injustice.<sup>48</sup>

44. State V. Dharminder @ Billoo 28<sup>th</sup> Jan, 2011

45. State V. Ache lal 9<sup>th</sup> Nov, 2012

46. Rameshbhai Chandubhai Rathod V. State of Gujrat 27<sup>th</sup> April, 2009

47. State V. Satya Prakash Verma 13<sup>th</sup> April, 2018

48. Prem Das V. State of Delhi 29<sup>th</sup> March, 2012

**[2] Whether any provision of the law was set aside? Whether child witness is reliable?**

[¶38] It is to be humbly submitted before the honble' HC that, there was no law which was set aside by any of the police officials. But if we look into the depth of the case laws, then there are certain ss. under which respondent was held innocent in the perforation of the law. But it was set aside by the appellant.

[¶39] The ss. which were set aside are s. 169 of CrPC, 313 of IPC, 106 of IEA etc. under such circumstances, the respondent is clearly innocent. Because there is no such evidence to find the guilt of the accused respondent. The order of approving of report is not an order of acquittal.<sup>49</sup> But only if the police incharge has not done their duty according to the law.

[¶40] And as per the facts and evidences, the police incharge go ahead with the inquiry and after lack of evidence the case was given to CBI. And the CBI report also revealed its report clearly. But the appellant didn't accept the reports of the CBI and police officials and made it as a forged document. But on the other side, the respondent has produced the required documents in front of the magistrate and keeping such documents and provisions aside would be unconscionced in the eyes of the law.

**[2.1.] NGOs and the medias are against the respondent.**

[¶41] NGOs and medias are against the respondents because the appellants have biased the medias to took their side. It is obvious that without any evidence and without any provisions or testimony the medias are blaming the name of the respondent accused. It clearly says that the appellant has biased the medias and NGOs to make up their arguments stronger. No investigation was made against the appellant upon their conduct.

[¶42] There is no much force in the contention of the appellant. And FIR and CBI report are the most important document. As its nick name suggests, it is the earliest and the first information of all the cognizable offence recorded by in charge of police station.<sup>50</sup> It sets up all the rules and principles into motion and makes the commencement of the investigation which ends up the formation of opinion u/s 169 of CrPC as the case may be, and forwarding of a police report u/s 173 of CrPC.<sup>51</sup>

49. Ramji Son of Tung Nath, Lalji son V. Bhgvan Prasad son of Gopi Nath 28<sup>th</sup> March, 2006

50. S. 169 of CrPC

51. Ashfaque Ahmed V. State of Kerala 4<sup>th</sup> May, 2011



[2.1.1.] There are many other inmates who supported Kristhish Home.

[¶43] It is to be submitted before the honble' HC that as the NGOs and medias are in support of the appellant then there are many other inmates and other official authorities who are in support of the Kristhish Home. There are many such evidences and facts which says that there is no coherent evidence to find the guilt of the accused. There is nothing clear on the side of appellant about any documents, materials or any other witness which could prove beyond the reasonable doubt that respondent accused is guilty of the said charges.<sup>52</sup>

[¶44] To examine the guilt of the accused, evidence must be abductured by the prosecution. The present case is a clear case of circumstantial evidence, and the inference of justice can only be justified if there is no complete chain of evidence.<sup>53</sup> In the statement u/s. 313 of CrPC the accused has either denied the incriminating evidence emerging from prosecution case and put to him and has exasperated his innocence about the same. The accused respondent is innocent and has been falsely implicated in the case by the appellant.<sup>54</sup>

[¶45] In a case built on circumstantial evidence direct proof of the culpability of the accused respondent is often lacking. When the case is based on circumstantial evidence the circumstances must be trustworthy and cogent.<sup>55</sup> The court in series of evidence if rely on circumstantial evidence, such evidence must follow a test that, the circumstances from which an inference of guilt is sought to be drawn, must be cogently and firmly established.

[¶46] And the testimony is inconsistency and unreliable u/s. 376 of IPC. There is no credence on the part of appellant to show the evidence clearly.<sup>56</sup> And under ss. 376 and 420 of IPC the evidence shown up by the appellant is not clearly revealed and inconsistent.<sup>57</sup> The prosecution has to prove the case beyond reasonable doubt against the accused and not merely on oral conduct.<sup>58</sup>

---

52. Prem Singh V. State (Govt. of NCT of Delhi) 8<sup>th</sup> Dec, 2016

53. State V. N. Dev Dass Singha 6<sup>th</sup> March, 2010

54. Ali Jishan @ Jishan Chawan V. State of Kerala 26<sup>th</sup> Nov, 2009

55. Babu V. State of Kerala 11<sup>th</sup> Aug, 2010

56. State V. Kapil 25<sup>th</sup> April, 2013

57. State V. Kamal Chaurasia 29<sup>th</sup> Jan, 2006

58. State V. Bheem 31<sup>st</sup> March, 2014

## **[2.2.] Police officials made exact records.**

[¶47] It is to be submitted before the honble' HC that there was no forged documents made by the respondent. The respondents upon their defence and as per the principles of law prepare the documents on the basis of investigation and circumstances under CrPC.<sup>59</sup> There was direct inquiry done by the police officials on the plea of the appellant.<sup>60</sup>

[¶48] And after filing the report u/s. 169 of CrPC, the police officials will take cognizance of s. 190 of CrPC and would submit the records to the magistrate for further investigation.<sup>61</sup> And if there is no such evidence or credentials found sufficient for FIR to file or to find the guilt of the accused then the police officer may pass the report to CBI and then to the magistrate as per the procedure.<sup>62</sup>

[¶49] If the records shows that the allegations made against the respondent accused is false, the case of the complainant and so-called eye witness of the complainant that respondent is only the accused is false, then such records should be taken under consideration.<sup>63</sup> When there is such report then it should be kept in mind that the materials need to be considered to see whether prima facie case is made out but the entire magistrate need to be considered by the magistrate.

[¶50] At this stage it arises that whether the report and opinion given by the investigating agency needs to be accepted and whether the material collected by the investigating agency can form the basis for the opinion formed by the investigating officer.<sup>64</sup> It should also be kept in mind by the magistrate that an innocent person should not be put to trial only because some allegations are made against him.<sup>65</sup>

[¶51] If the magistrate fails to give the reason for not believing the material and documents collected by the investigating officer then such order can't sustain in law. The magistrate to see and accept all the material produced.<sup>66</sup>

---

59. S. 161 of CrPC

60. S. 172 of IPC

61. S. 169 of CrPC

62. 5 Whether it is to be circulated V. The honble; court be pleased 31<sup>st</sup> July, 2014

63. S. 313 of CrPC

64. S. 172 and 173 of IPC

65. S. 190 of CrPC

66. Dattaprabhu V. State of Madhya Pradesh 21<sup>st</sup> Aug, 2014

[2.2.1.] Section 169 is maintainable.

[¶52] It is to be submitted before the honble' HC that yes, s. 169 of CrPC is maintainable. Because under if there is a false allegation made by the appellant against the respondent which is actually done, then the magistrate can go ahead with framing the FIR again.<sup>67</sup> The mala fides also needs to be considered by the magistrate. If the material as shown and produced is beyond reasonable doubts and gives a decision of acquittal then it should not be rejected by the court on the basis of CBI report and investigating report.<sup>68</sup>

[¶53] More particularly, the case diary of the police officer is not the part of this section. The prosecution remains completely silent as to under what circumstances the investigating machinery formed an opinion that the accused is not involved and there is no strong evidence to implicate the accused respondent under crime scene.<sup>69</sup> And under such circumstances there should be release of respondent accused.<sup>70</sup>

[¶54] An information given under sub-section (1) of Section 154 of CrPC. is commonly known as First Information Report (F.I.R.) though this term is not used in the Code. It is a very important document. And as its nick name suggests it is the earliest and the first information of a cognizable offence recorded by an officer in charge of a police station. It sets the criminal law into motion and marks the commencement of the investigation which ends up with the formation of opinion under Section 169 or 170 of CrPC., as the case may be, and forwarding of a police report under Section 173 of CrPC. It is quite possible and it happens not infrequently that more information than one are given to a police officer in charge of a police station in respect of the same incident involving one or more than one cognizable offence. In such a case he need not enter every one of them in the station house diary and this is implied in Section 154 of CrPC.<sup>71</sup> It sets the machinery of criminal law in motion and marks the commencement of the investigation which ends with the formation of an opinion under Section 169 or 170 CrPC., as the case may be, and forwarding of a police report under Section 173 CrPC.

---

67. S. 173 of IPC

68. 5 Whether it is to be circulated V. The honble; court be pleased 31<sup>st</sup> July, 2014

69. S. 169 of CrPC

70. Dattaprabhu V. State of Maharastra 21<sup>st</sup> Au, 2012

71. Vishal @ Shivaji Mahadeo Kamble V. The state of Maharastra 16<sup>th</sup> Dec, 2016

[¶55] Thus in view of the above, the law on the subject emerges to the effect that an FIR u/s 154 of CrPC is a very important document. It is the first information of cognizable offence by the police in charge. It sets the machinery of criminal law in motion and marks the commencement of the investigating which ends with the formation of an opinion u/s. 169 of CrPC. In such a case, he need not enter the entire diary.<sup>72</sup>

[¶56] S. 173 of CrPC, contemplates filing a report upon completion of investigation, which should contain all the particulars mentioned u/s 173 of CrPC. Such case include reports u/s 169 of CrPC, where the accused has been released on his bond for want of sufficient evidence.<sup>73</sup> And disclosing of such records won't be fair enough to held further trial by the magistrate under this s.<sup>74</sup>

[¶57] Release of accused when evidence deficient.- If, upon an investigation under this Chapter, it appears to the officer in charge of the police station that there is not sufficient, evidence or reasonable ground of suspicion to justify the forwarding of the accused to a Magistrate, such officer shall, if such person is in custody, release him on his executing a bond.<sup>75</sup> Magistrate accepts a report under Section 169 Criminal Procedure Code is different. On an analysis of the various sections, it appears that a report under Section 169 of the Cr. P. C. and the magistrate agreeing with it, are proceedings under Chapter XIV which relates to information to the police and their power to investigate.<sup>76</sup>

[¶58] The scheme of CrPC is that an officer in charge of a police station has to commence investigation as provided in Section 156 or 157 CrPC on the basis of entry of the first information report, on coming to know of the commission of a cognizable offence.<sup>77</sup> On completion of investigation and on the basis of the evidence collected, he has to form an opinion under Section 169 or 170 CrPC, as the case may be, and forward his report to the Magistrate concerned under Section 173(2) CrPC.

72. M/S. Crayons Advertising Pvt Ltd V. State of Rajasthan through pp 22<sup>nd</sup> May, 2017

73. Shahnaj Taj Md. Hashmi and anr. V. The senior inspector of police 5<sup>th</sup> May, 2017

74. S. 161 of CrPC

75. State of WB and ors V. Swapan Kumar Guha and ors 2<sup>nd</sup> Feb, 1982

76. Dr. Kapil Garg and sh. Hari Singh V. State 29<sup>th</sup> Aug, 2003

77. Kamlapati Trivedi V. State of WB 13<sup>th</sup> Dec, 1978

[2.2.2.] Section 172 and 173 of CrPC is maintainable.

[¶59] It is to be submitted before the HC, that s. 172 and 173 would be maintainable along with ss. 169 and 313 of CrPC. It tells that the police officer has to file FIR within 24 hrs. And as per the facts and the evidences the police in charge filed the appellants charge sheet but due to lack of evidence couldn't find any guilt of the respondent.<sup>78</sup>

[¶60] She has taken all the evidences under the circumstances which are usually inconsistent with the facts and evidences under the testimony of the witness.<sup>79</sup> It is submitted that there is vast contradiction in the FIR, the statement of the victim recorded u/s 164 of CrPC and hence the prosecution story becomes unreliable.

[¶61] Thus, there is contradiction between the F.I.R., the statement of the victim recorded under Section 164 CrPC. and the statement of the victim recorded before the court.<sup>80</sup> In support of the respondent accused he was very innocent u/s 313 of CrPC and was falsely implicated u/ss. 376, 375 and 506 of IPC. But the prosecution evidence produced by the appellant is not sufficient to find the guilt of the accused and hence, such contradiction between the magistrate and evidentiary documents comes u/s 161 of CrPC and are in contradiction to FIR filing u/s 172 and 173 of IPC because of lack of evidence.<sup>81</sup>

### **[2.3.] Respondent didn't threaten the appellant.**

[¶62] In the alternative the Id. Counsel on behalf of appellant may present a heinous crime of threatening the appellant.<sup>82</sup> As far as it is concerned even the Id. Magistrate has not considered it as the only or one of the offences under this case because of circumstantial evidence.<sup>83</sup>

[¶63] It was submitted by the Id. Counsel of appellant that the victim's family was threatened by the respondent to take up the case. But there is nothing such happened. It's a myth produced by the appellant without any witness. If there was any calls to threaten the appellant and her family then there should be that particular call recording. But the same was not produced by the appellant in front of the court.<sup>84</sup>

78. State V. Sarvjeet Jaswal and ors 22<sup>nd</sup> Nov, 2013

79. Vijay Pal and anr V. State of UP 25<sup>th</sup> Sep, 2012

80. Dinesh Kumar Maurya V. State of UP 19<sup>th</sup> Feb, 2016

81. Vijay Singh V. State of UP 26<sup>th</sup> May, 2017

82. S. 506 of IPC

83. S. 106 of IEA

84. Mahadev Prasad Kaushik V. State of UP and anr 17<sup>th</sup> Oct, 2008

[¶64] It cannot be lost sight of that rape causes the greatest distress and humiliation to the victim but at the same time a false allegation of rape can cause equal distress, humiliation and damage to the accused as well. The accused must also be protected against the possibility of false implication. There is no presumption or any basis for assuming that the statement of such a witness is always correct or without any embellishment or exaggeration. And there is no mere case of threatening u/s. 506 of IPC.<sup>85</sup>

[¶65] And if any person has been acquitted u/s 506 of IPC then the maximum award of prosecution given to that person would be fine and an imprisonment of six months.<sup>86</sup> But this should be proved beyond reasonable doubt that there is no one except the accused for the guilt of the offence. The evidence should be coherent and trustworthy.<sup>87</sup>

[¶66] Even the prosecution of providing the gist for threatening is not been clearly showed up in the case.<sup>88</sup> Under this the threat is intended to have upon the mind of the person threatened. And mere vague allegation will not find the ingredients u/ss. 506 of IPC.

[¶67] The ingredients for the offence u/ss. 506 of IPC and 323 of IPC are no fully satisfied because the case is entirely based on circumstantial evidence where it is very difficult to find that whether the accused will be guilty of the offence of threatening or not.<sup>89</sup> Because the evidence is unclear and not trustworthy.<sup>89</sup>

[¶68] But as an instance, if the magistrate look into the background of the case, the entire case is not having a chain of link of evidence which is complete. One on the other hand there is something which is missing upon the case.<sup>90</sup> And the whole case is entirely based on oral conduct of the appellant, NGOs and medias.<sup>91</sup>

[¶69] And eventually, if there is no clear evidence and the facts and reports are based on the side of respondent then the prosecutrix appeal should be beyond any reasonable doubt should be quashed.<sup>92</sup>

---

85. Raju V. State of UP 2<sup>nd</sup> Feb, 2010

86. State V. Ache Lal 9<sup>th</sup> Nov, 2012

87. refer issue 1

88. s. 506 of IPC

89. refer para 1 and 2

90. refer para 5 and 8

91. refer issue 2.1.

92. S. 106 of IEA

[2.3.1.] No maintenance of section 506 of IPC

[¶70] The gist of the offence under Section 506 IPC is that the threat is intended to have upon the mind of the person threatened. Mere vague allegation will not satisfy the essential ingredients of Section 506 IPC.<sup>93</sup> And in this regard there won't any maintainability of s. 506 of IPC.

[¶71] And if the evidences are clearly then the accused respondent shall be prosecuted only up to six months and with fine. But since, there is nothing such documents to prove that the accused respondent is guilty of the offence.<sup>94</sup> And under such circumstances, there won't be any liability of finding the guilt of the accused u/s of CrPC since he found himself as innocent and was put under false allegations made by the appellant.<sup>95</sup>

[¶72] Even the evidences are made false by the appellant. And the oral conduct of the appellant is totally unclear without any reason u/s 464 and 465 of IPC. Respondent didn't make any forged documents and was not proved clearly by the appellant.<sup>96</sup>

[¶73] And for finding the guilt of the accused u/s 506 and 464 of IPC, there should be clear call records, call documents etc for proving the guilt of the accused. These were not taken under the consideration by the appellant.<sup>97</sup>

[¶74] Because according to these ss. the forged documents and call recordings should be made with some intention.<sup>98</sup> There must be some false intention for the purpose of doing wrong. But this was not shown by the appellant. Because only by oral conduct that the respondent accused called up the victims family to take up the case is not sufficient. On what basis threatening has been formulated has to be revealed by the appellant since, all the records and evidences are on the basis of respondent.<sup>99</sup>

93. Satnam Singh V. State of Punjab and anr 23<sup>rd</sup> Aug, 2013

94. Syed Salim v. MJ Simon and ors 22<sup>nd</sup> March, 1990

95. S. 313 of CrPC

96. Mr Mk Razdhan V The state and shri Indukant Dixit 3<sup>rd</sup> March, 2008

97. Chhotu Khan V the state 6<sup>th</sup> Jan, 2012

98. Narendra Kumar and ors V. state and ors 13<sup>th</sup> Jan, 2004

99. S. 506 of IPC and S. 313 od IPC (refer issue 1 and 2)

[2.3.2.] Phone records and call records not found.

[¶75] It is to be submitted before the honble' HC that, as per the facts and evidences found there is no such evidence found which shows that the respondent has threatened the victim or has made any forged call or made any forged document.<sup>100</sup> Because the case is based on circumstantial evidence

[¶76] On behalf of the State, it has been vehemently argued that certainly there is no evidence against the respondent to make out a case but there was a legal obligation on part of applicant to give information of offence to the police concerned and for this reason, the present application cannot be allowed as prima face a case for offence punishable is made out against the respondent.<sup>101</sup>

[¶77] And therefore, if we keep the rest of the evidence on the other side still the evidence of phone records and other documents are not coming under consideration of clear evidence u/ss. 506, 464, 375 of IPC respectively. And there is no account of guilt found on the basis of such evidence where only oral conduct is present.<sup>102</sup>

### **[3.] Whether PIL is maintainable?**

[¶78] It is to be humbly submitted before the honble' HC that if on the side of respondent we think, then PIL would be maintainable since, the appellant has put false allegation on respondent and so, it defame the name and dignity of the respondent and his campaign.<sup>103</sup> And therefore, under this scenario it is a clear case of breach of const. remedies and provisions because it is abridging the rights.<sup>104</sup>

[¶79] But if we think on the side of appellant, then PIL won't be applicable. Because no evidence has proved the guilt of the accused respondent and has neither defame the name of appellant. But because of which the name of the respondent got defame.<sup>105</sup> And it is unfair for the candidate to make a false averment in the application form and then to claim the equitable relief on such falsehood.<sup>106</sup>

100. UC Parikh V. State of UP and anr 27<sup>th</sup> Oct, 2016

101. State V. Ashok Kumar 11<sup>th</sup> July, 2012

102. S. 106 OF IEA

103. PIL cases in India

104. Indian const. law and philosophy

105. Mehsana district central V. State of Gujrat 28<sup>th</sup> Jan, 2004

106. Kum. Jayashree Zine and ors V. Maharastra Public Service 19<sup>th</sup> June, 2008



[¶80] It is submitted that, PIL on the side of appellant won't be held liable because appellant with false implication went till HC seeking for her rights which was not at all abridged. But she couldn't become the superior of the Canadians she just thought of defaming the name. and under PIL a person whose rights has been abridged can seek directly HC or SC accordingly for their justice.<sup>107</sup> But the appellant rights has not been infringed by looking into the case and evidence. But the respondent rights and liabilities under their campaign and even his name in front of his devotees got infringed.<sup>108</sup>

[¶81] The writ petition must fully satisfy that the plea is on the basis of infringement of rights of the citizens. Otherwise, it won't get applicable under W.P.<sup>109</sup> In the India legal system, you can file or draft a writ petition under A. 226 in the High Court and under Article 32 of the Indian Constitution in the Supreme Court. A. 32 and A. 226 of the Indian constitution elaborate on the process and meaning of the writ petition.<sup>110</sup>

[¶82] Writ in India is the formal order of the court directing the authorities if there is a violation of the Fundamental Rights by a government authority or body. A W.P. in the Supreme Court under Article 32 of the Indian Constitution, whereas can file the writ petition in High Court under Article 226 of the Indian constitution. You can also file W.P for a civil or a criminal act.<sup>111</sup> Under it habeas corpus can be maintainable as to examine the legality and illegality of the prosecutrix and the respondent on their evidentiary records.

### **[3.1.] Article 32 is not maintainable.**

[¶83] Article 32 of the const. is maintainable is maintainable only when any rights or liberties of the citizens got infringed. Here the false allegation against respondent under rape of children and women and even threatening defame the rights and liberties of the respondent and not of the appellant.<sup>112</sup> And so, the appeal for PIL by the appellant is not maintainable.

[¶84] Even though W.P would be granted if it is proved beyond the reasonable doubt that the respondent accused is guilty of the offence framed against him. Otherwise not.<sup>113</sup> But to protect them under such sense, a. 32 plays a vital role.

107. aa. 32 and 226 of Indian Const.

108. Indian Const. law and philosophy

109. W.P and criminal law

110. Right to Const. remedies

111. Public Interest Litigation

112. POSCO Act, 2012

113. PIL cases in India

### **[3.2.] Court is not bound to upheld the case.**

[¶85] It is to be submitted before the honble HC that; the court is not bound to uphold the case under PIL. Since, PIL has to be granted when the rights of the prosecutrix is been abridged but here there is no such evidence or witness which shows that the rights of the appellant is infringed. Even though it is a criminal case still W.P is allowed but only when there is an infringement caused.<sup>114</sup>

[¶86] And similarly, the court is bund to go ahead with the FIR and CBI report.<sup>115</sup> And the reports of the CBI and FIR reveal that there is no such evidence found which can prove the guilt of the accused respondent. Eventually, the rights of the respondent has been defamed. And so, the court should take granted of the respondent who has actually provided with all such documents and evidence relevant for his innocence.<sup>116</sup>

[¶87] A petition file u/a. 226 of Indian Const. is not actually maintainable on the grounds of proving the guilt of the accused respondent.<sup>117</sup> In day-to-day life there is no such cause of breach of any rights. But some how or the other it is that process which come across every day.<sup>118</sup>

[3.2.1.] Article 226 is not maintainable.

[¶88] Constitutional remedies” is envisaged in our Indian Constitution under article 32 in Part III. Every citizen of India is guaranteed five fundamental rights, in totality it’s six but if any of the five fundamental rights are violated then the sixth fundamental right ensures people and protects other fundamental rights from being violated.<sup>119</sup>

[¶89] People have the right to move the Court by appropriate proceedings for the enforcement of their rights granted by part III of the Indian Constitution. In other words, one can move to enforce his/her right to the apex court in way of proper proceedings is assured.<sup>120</sup>

---

114. W.P and criminal law

115. Quashing and clubbing of FIR

116. A. 226 of Indian Const.

117. Right to const. remedies

118. aa. 32 and 226 of Indian. Const.

119. Indian Const. law and philosophy

120. PIL cases in India

[¶90] A. 226 gives the power to HC to proceed with PIL. But in this case PIL is filed by the appellant which should be quashed. There is no prove beyond reasonable doubt that the appellant right was anyhow defamed in anyway. The evidences which were proved by the appellant are not coherent which is not sufficient to find the guilt of the accused respondent only on the basis of oral conduct.

[¶91] Where a writ petition has been filed against the appellant party an interim order by way of injunction or stay has been passed against respondent without-<sup>121</sup> Providing to such parties, copies of the petition and all documents in support thereof. Giving such a party an opportunity to be heard. If such appellant party moves an application for removing the interim order and gives a copy of such application to the respondent, the Court is required to decide such application within two weeks from the date on which such application is filed or on the date on which the copy of such application is provided to another side whichever is later.

[¶92] And under circumstances, a. 226 won't be held maintainable. Here, the principle laid down that the respondent rights are getting infringed by false allegation made against him. And none of the other party has to do with it. And appeal a PIL for rights is just inconsistent as per the circumstantial evidence found.<sup>122</sup>

[¶93] It is to be submitted that the respondent is living a delicacy life for 18 years of age and now he is 35 years of age. And his religious group has changed many people life. People are willing to spend their lives under his campaign. He has asked permission for uphold religious group from the religious authorities and he has got that too. And suddenly after so many years if such false allegation will come up will definitely defame the name of the religion and his religious campaign.<sup>123</sup>

[¶94] The court should see in depth the facts and evidences produced by the respondent and the oral conduct of the prosecutrix. Its cross examination could lead to the justification of further story of the case indeed.

---

121. A. 226 of Indian Const.

122. PIL cases in India

123. Religious leader under POSCO Act

### **[3.3.] Freedom to live with dignity and honour.**

[¶95] It is to be submitted before the honble' HC that, the respondent's freedom to live with dignity and honour has been abridged.<sup>124</sup> The religious group which he was running is getting defame by false allegation framed against his work and his campaign by the appellant.

[¶96] And the things which were not done by the respondent, when there was no clear truth behind the facts and circumstances, then putting false allegation is a mere case of defaming the dignity of the person.<sup>125</sup> In this society people has their own right and honour to live with dignity and fame. The work they do has to be respected by others. And if any such circumstances arises then without coherent evidence and circumstance no person including medias and NGOs should pin point the work, institution, campaign or name of the person in public.<sup>126</sup>

[¶97] PIL can only be further considered on the side of appellant if the rights and liberties of the appellant are clearly destroyed beyond reasonable doubts. But this was not the scenario here. The rights and dignity of the respondent was being abridged by medias and appellant. They just tried to defame the name of his religious group because she was not able to be the superior lady of his campaign. Here's, found a clear case of motive behind it.

[¶98] For any act to be done, there must be knowledge and motive behind the act to be done. It is clearly revealing that the motive of defaming the name of the respondent campaign and intention of abridging his religious power with a knowledge of can't becoming the superior all comes under a sequence of evidence with facts and records provided by the respondent.<sup>127</sup>

---

124. A. 21 of the Indian Const.

125. Right to Const. remedies

126. S. 106 of IEA (refer issue 1 and 2)

127. Public Interest Litigation

## PRAYER

---

Wherefore in the light of the issues raised, argument advanced and authorities cited, it is humbly prayed that this Honble' Court may be pleased to adjudge and declare:

1. The case is based on circumstantial evidence
2. The respondent is innocent from the charges of ss. 375 and 376 of IPC
3. Provision for ss. 161, 169, 313 of CrPC was set aside.
4. Forged documents and materials were incorrect. It was on the basis of records by investigating officer.
5. Police officials were not biased.
6. S. 506 of threatening the victim and her family is out of evidentiary documents.

AND PASS ANY OTHER ORDER OR DIRECTION THAT THIS HON'BLE COURT MAY DEEMED IN THE INTEREST OF JUSTICE, EQUITY AND GOOD CONSCIENCE.

ALL OF WHICH HUMBLY PRAYED

COUNSELS FOR THE RESPONDENT