

IN THE HIGH COURT OF MADHYA PRADESH: BENCH AT INDORE.

SINGLE BENCH : HON'BLE SHRI JUSTICE ALOK VERMA

CRIMINAL REVISION NO.341 OF 2015

Smt.Ranjeet Kaur (Rani Tuteja)

Vs.

State of Madhya Pradesh

Shri V.K.Jain, learned counsel for the applicant.

Shri Amit Sisodiya, learned Dy.Govt.Advocate for respondent/State.

ORDER

(Passed on this 1st day of July, 2015)

This criminal revision under Section 397 read with Section 401 Cr.P.C. is directed against the order passed by the learned I Additional Sessions Judge, Mandsaur in S.T.No.222/2014 dated 27.01.2015.

2. The relevant facts are that the present applicant Smt. Ranjeet Kaur @ Rani Tuteja is a woman and facing trial in the aforementioned session case. She filed an application under Section 227 of Cr.P.C. that she was falsely implicated in the case. As per the prosecution story, the present applicant alongwith her brother went

to the house of the prosecutrix. It is alleged that her brother gave the prosecutrix some liquid to drink and after drinking the liquid the prosecutrix felt hypnotized and when she regained consciousness she felt that during the stage of hypnotism, rape was committed on her. The real fact of the case are that the brother of the present applicant and the prosecutrix got married in Arya Samaj Mandir on 07.05.2007. As the present applicant was also present when the marriage took place and she appears in the photographs also, she is falsely implicated.

3. Learned counsel for the applicant places reliance on the judgment of Hon'ble the Apex Court in the case of **Priya Patel Vs. State of M.P. AIR 2006 (SC) 2639** in which it was held that woman cannot be charged under Section 376 of IPC for committing rape. According to the definition given in Section 375 of IPC only a man can commit rape on a woman. The Hon'ble Apex Court further observed in para 6 that :-

"6. The Explanation only indicates that when one or more persons act in furtherance of their common intention to rape a woman, each person of the group shall be deemed to have committed gang rape. By operation of the deeming provision, a person who has not actually committed rape is deemed to have committed rape even if only one of the group in furtherance of the common intention has committed rape. "Common intention" is dealt with in Section 34 IPC and provides that when a criminal act is done by several persons in furtherance of the common intention of all, each of such persons is liable for that act in the

same manner as if it was done by him alone. "Common intention" denotes action in concert and necessarily postulates a pre-arranged plan, a prior meeting of minds and an element of participation in action. The acts may be different and vary in character, but must be actuated by the same common intention, which is different from same intention or similar intention. The sine qua non for bringing in application of Section 34 IPC that the act must be done in furtherance of the common intention to do a criminal act. The expression "in furtherance of their common intention" as appearing in the Explanation to Section 376(2) relates to intention to commit rape. A woman cannot be said to have an intention to commit rape. Therefore, the counsel for the appellant is right in her submission that the appellant cannot be prosecuted for alleged commission of the offence punishable under Section 376(2)(g)."

4. Applying the principles of law laid down by the Apex Court, it is apparent that even with the aid of Section 34 IPC, woman cannot be charged under Section 376 read with Section 34 of IPC. In this view of the matter, the impugned order passed by the learned Additional Sessions Judge appears to be not according to law and liable to be set aside. However, it is apparent that Hon'ble Apex Court left the residual question whether a woman can be charged for abatement in this judgment, therefore, the Court is at liberty to decide the matter afresh, after hearing the accused and if in the opinion of the Court the applicant can be charged for commission of offence, the Court is at liberty to do so.

5. With direction and observation as above, this revision is allowed. The impugned order dated 27.01.2015 is set aside. The applicant is directed to appear before the trial Judge and take part in the proceedings.

C.C.as per rules.

(ALOK VERMA)
JUDGE

RJ

