



2024 : DHC : 3880



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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
Date of decision: 08.05.2024

+ CRL.M.C. 4974/2022 & CrI.M.A. 19888/2022
HEMANT KUMAR Petitioner
Through: Mr.Ashwini Kumar,
Mr.Khowaja Siddiqui, Advs

versus

STATE OF NCT OF DELHI & ANR. Respondents
Through: Mr. Shoaib Haider, APP with
SI Jatin Kaushik.
Mr.I.A. Hashmi, Adv. for R-2.

CORAM:
HON'BLE MR. JUSTICE NAVIN CHAWLA

NAVIN CHAWLA, J. (ORAL)

1. This petition has been filed under Section 482 of the Code of Criminal Procedure, 1973 (in short, 'Cr.P.C.') praying for quashing of FIR No.751/2020 registered at Police Station: Raj Park, Outer District, Delhi under Sections 376/313/506/406 of the Indian Penal Code, 1860 (in short, 'IPC').

Factual Matrix:

2. The above FIR was registered on the complaint of the respondent no.2 stating therein that she was a Yoga Teacher and through her yoga classes, she was sustaining herself, her widow mother, and her brother. It is alleged that in September, 2019, she came in contact with the petitioner at the yoga center. It is alleged that



discovery, the petitioner was granted bail by an Order dated 12.11.2020 by the learned Additional Sessions Judge -02 (NDPS), North-West District, Rohini Courts, Delhi (hereinafter referred to as the 'ASJ').

5. The learned Additional Sessions Judge, Special Fast Track Court, North-West District, Rohini Courts, Delhi (hereinafter referred to as the 'Trial Court') vide Order dated 25.04.2022, has framed charges against the petitioner under Sections 376(2)(n)/313/506 of the IPC. However, the learned Trial Court has not framed a charge against the petitioner under Section 406 of the IPC.

Submissions of the Learned Counsel for the Petitioner:

6. The learned counsel for the petitioner submits that the relationship between the parties was consensual in nature. He submits that, in fact, it was the complainant who had concealed the fact of her previous marriage from the petitioner. He submits that the parties were adult at the time of the incident and only because, as per her allegations, the petitioner later did not agree to marry the complainant, the petitioner cannot be charged under Section 376 of the IPC. He submits that the alleged miscarriage/abortion were also, as per the allegations, in January, 2020 and June, 2020, while the complaint has been made in the month of October, 2020. He submits that in the complaint, it is mentioned that even after the abovementioned abortion, the parties had a good relationship and in fact, had a physical relationship. He submits that this itself falsifies the stand of the respondent no.2/complainant, and, in any case, the charge under Section 313 of the IPC cannot be made out. He submits that the same



is again a mere concoction and has no legs to stand.

Submissions of the Learned Counsel for the Respondent no.2 and the Learned APP:

7. On the other hand, the learned counsel for the respondent no.2 submits that though the respondent no.2 was earlier married, the said marriage has been dissolved in accordance with the local customs by the Village Panchayat. He submits that the charges having already been framed, the submission made by the learned counsel for the petitioner can be adjudicated only in trial and should not be a ground to quash the subject FIR at this stage.

8. The learned APP also supports the submissions made by the learned counsel for the respondent no.2.

Analysis & Findings:

9. I have considered the submissions made by the learned counsels for the parties.

10. It is not in dispute that the parties had met on a social media platform and then became friends and had made physical relations with each other. The case of the prosecution hinges around the fact that the petitioner had made sexual/physical relations with the respondent no.2 on the false promise of marriage.

11. During the course of the investigation, it has been found out that the respondent no.2 was already married at the time of the alleged relationship, and even had two children out of the said marriage. This fact of her previous marriage has been concealed by her in the complaint before the police as also at the time of filing of the charge sheet. The said fact came out only after the learned ASJ, on



09.11.2020, in the bail application filed by the petitioner herein, had directed the IO to file a detailed report regarding the said issue. On the next date of hearing, the learned ASJ while granting Bail to the petitioner herein, had observed as under:

“In compliance of the previous directions, reply has been filed on behalf of IO wherein it is submitted that notice under Section 91 Cr.P.C was served upon/issued to the Election Commission and as per directions, the IO went to the house of alleged concerned namely Sonia Singh, W/o Sh. Depak at Mangolpuri and during investigation/interrogation made from Dayawati who is the mother in law of alleged Sonia Singh and stated that Ms. Sonia is her daughter-in-law who got married with his son Deepak, approximate 11-12 years ago. Sonia have two children, one girl aged 11 years and one boy aged 7 years from her son Deepak. She also stated that Sonia had left her house along with her children. She also undertakes to appear before this Court on the next date of hearing

It is also reported in the reply that when the IO contacted Sonia through mobile phone, she stated that she got her Corona test done, as such, she could not meet the IO and also showed her inability to appear before the Court on 12.11.2020.

Ld. APP has opposed the bail application in continuation of his previous submission made on the last dates of hearing.

Today, IO ASI Sheetal is also present along with Dayawati, mother-in-law of Sonia, who further submitted that she can identify her daughter-in-law.

Upon this submission, when the mother-in-law has been asked to identify the prosecutrix who had already joined the proceedings along with her counsel through video conferencing, then the prosecutrix has been identified by Dayawati and stated that



she is the same Sonia who is the wife of her son Deepak.

This submission is counter opposed by Ld. Counsel for the complainant/prosecutrix who undertook that the husband of Sonia will file his affidavit qua the fact that the prosecutrix, who is present with him is not his wife Sonia. Now, it is also submitted that threats are being constantly received by the complainant/prosecutrix.

In view of the above submissions, I am of the considered view that for considering the bail application, two important parameters are to be taken into consideration i.e. the chance of tampering the evidence and chance of escaping from jurisdiction of the Court. In the present case, the applicant/accused is a government servant, as such, there is no chance of his escaping from the jurisdiction of the Court and further, since the statement under Section 164 Cr.P.C has also been recorded and nothing has to be recovered, as such, no further investigation is required to be made from the applicant/accused who is in J.C since 20.10.2020. In view of the above mentioned submissions, I am also of the considered view that since during hearing, Dayawati also identified the prosecutrix, who had appeared along with her counsel, as such, prima facie it is established that the prosecutrix Sonia is the wife of Deepak who has two children....”

12. It is to be noted that the learned counsel for the respondent no.2 has not disputed the fact that the respondent no.2/complainant was married at the time of the incident. Though he has sought to contend that the said marriage of the respondent no.2 has been dissolved in accordance with the local customs and by the Village Panchayat, however, he has not filed any proof whatsoever in support of the said contention before this Court even though the notice of this petition has



been issued on 07.12.2022 and the learned counsel for the respondent no.2 has been regularly appearing since 12.01.2023.

13. While quashing an FIR, *inter alia*, under Section 376 of the IPC the Supreme Court in ***Pramod Suryabhan Pawar v. State of Maharashtra & Anr.***, (2019) 9 SCC 608 has also summarised the legal position in relation to consent and has held as under:

“17. In Uday v. State of Karnataka, (2003) 4 SCC 46 the complainant was a college-going student when the accused promised to marry her. In the complainant's statement, she admitted that she was aware that there would be significant opposition from both the complainant's and accused's families to the proposed marriage. She engaged in sexual intercourse with the accused but nonetheless kept the relationship secret from her family. The Court observed that in these circumstances the accused's promise to marry the complainant was not of immediate relevance to the complainant's decision to engage in sexual intercourse with the accused, which was motivated by other factors :

“25. There is yet another difficulty which faces the prosecution in this case. In a case of this nature two conditions must be fulfilled for the application of Section 90 IPC. Firstly, it must be shown that the consent was given under a misconception of fact. Secondly, it must be proved that the person who obtained the consent knew, or had reason to believe that the consent was given in consequence of such misconception. We have serious doubts that the promise to marry induced the prosecutrix to consent to having sexual intercourse with the appellant. She knew, as we have observed earlier, that her marriage with the appellant was difficult on account of caste considerations. The proposal was bound to meet with stiff



opposition from members of both families. There was therefore a distinct possibility, of which she was clearly conscious, that the marriage may not take place at all despite the promise of the appellant. The question still remains whether even if it were so, the appellant knew, or had reason to believe, that the prosecutrix had consented to having sexual intercourse with him only as a consequence of her belief, based on his promise, that they will get married in due course. There is hardly any evidence to prove this fact. On the contrary, the circumstances of the case tend to support the conclusion that the appellant had reason to believe that the consent given by the prosecutrix was the result of their deep love for each other. It is not disputed that they were deeply in love. They met often, and it does appear that the prosecutrix permitted him liberties which, if at all, are permitted only to a person with whom one is in deep love. It is also not without significance that the prosecutrix stealthily went out with the appellant to a lonely place at 12 o'clock in the night. It usually happens in such cases, when two young persons are madly in love, that they promise to each other several times that come what may, they will get married.”

(emphasis supplied)

18. To summarise the legal position that emerges from the above cases, the “consent” of a woman with respect to Section 375 must involve an active and reasoned deliberation towards the proposed act. To establish whether the “consent” was vitiated by a “misconception of fact” arising out of a promise to marry, two propositions must be established. The promise of marriage must have been a false promise, given in bad faith and with no intention of being adhered to at the time it was given. The false promise itself



must be of immediate relevance, or bear a direct nexus to the woman's decision to engage in the sexual act.”

14. In ***Dhruvaram Murlidhar Sonar v. State of Maharashtra***, (2019) 18 SCC 191, the Supreme Court has pointed out the distinction between the offence of rape and consensual sex between two adults. It was held as under:

“23. Thus, there is a clear distinction between rape and consensual sex. The court, in such cases, must very carefully examine whether the complainant had actually wanted to marry the victim or had mala fide motives and had made a false promise to this effect only to satisfy his lust, as the latter falls within the ambit of cheating or deception. There is also a distinction between mere breach of a promise and not fulfilling a false promise. If the accused has not made the promise with the sole intention to seduce the prosecutrix to indulge in sexual acts, such an act would not amount to rape. There may be a case where the prosecutrix agrees to have sexual intercourse on account of her love and passion for the accused and not solely on account of the misconception created by accused, or where an accused, on account of circumstances which he could not have foreseen or which were beyond his control, was unable to marry her despite having every intention to do. Such cases must be treated differently. If the complainant had any mala fide intention and if he had clandestine motives, it is a clear case of rape. The acknowledged consensual physical relationship between the parties would not constitute an offence under Section 376 IPC.”

15. Recently, the Supreme Court in ***XXXX v. State of M.P. & Anr.***, (2024) 3 SCC 496, while dealing with a similar set of facts and relying



on the earlier judgment in *Naim Ahamed v. State (NCT of Delhi)*, 2023 SCC OnLine SC 89, has quashed an FIR under Section 376(2)(n) of the IPC and has held as under:

“12. From the contents of the complaint, on the basis of which FIR was got registered and the statement got recorded by the complainant, it is evident that there was no promise to marry initially when the relations between the parties started in the year 2017. In any case, even on the dates when the complainant alleges that the parties had physical relations, she was already married. She falsely claimed that divorce from her earlier marriage took place on 10-12-2018. However, the fact remains that decree of divorce was passed only on 13-1-2021. It is not a case where the complainant was of an immature age who could not foresee her welfare and take right decision. She was a grown up lady about ten years elder to the appellant. She was matured and intelligent enough to understand the consequences of the moral and immoral acts for which she consented during subsistence of her earlier marriage. In fact, it was a case of betraying her husband. It is the admitted case of the prosecutrix that even after the appellant shifted to Maharashtra for his job, he used to come and stay with the family and they were living as husband and wife. It was also the stand taken by the appellant that he had advanced loan of Rs 1,00,000 to the prosecutrix through banking channel which was not returned back.

13. Similar issue was considered by this Court in Naim Ahamed case [Naim Ahamed v. State (NCT of Delhi), 2023 SCC OnLine SC 89 on almost identical facts where the prosecutrix herself was already a married woman having three children. The complaint of alleged rape on false promise of marriage was made five years after they had started having relations. She even got pregnant from



the loins of the accused. Therein she got divorce from her existing marriage much after the relations between the parties started. This Court found that there cannot be any stretch of imagination that the prosecutrix had given her consent for sexual relationship under misconception. The accused was not held to be guilty. Relevant para 22 thereof is extracted below:

“22. In the instant case, the prosecutrix who herself was a married woman having three children, could not be said to have acted under the alleged false promise given by the appellant or under the misconception of fact while giving the consent to have sexual relationship with the appellant. Undisputedly, she continued to have such relationship with him at least for about five years till she gave complaint in the year 2015. Even if the allegations made by her in her deposition before the court, are taken on their face value, then also to construe such allegations as “rape” by the appellant, would be stretching the case too far. The prosecutrix being a married woman and the mother of three children was matured and intelligent enough to understand the significance and the consequences of the moral or immoral quality of act she was consenting to. Even otherwise, if her entire conduct during the course of such relationship with the accused, is closely seen, it appears that she had betrayed her husband and three children by having relationship with the accused, for whom she had developed liking for him. She had gone to stay with him during the subsistence of her marriage with her husband, to live a better life with the accused. Till the time she was impregnated by the accused in the year 2011, and she gave birth to a male child through the loin of the accused, she did not have any complaint against the accused of



he having given false promise to marry her or having cheated her. She also visited the native place of the accused in the year 2012 and came to know that he was a married man having children also, still she continued to live with the accused at another premises without any grievance. She even obtained divorce from her husband by mutual consent in 2014, leaving her three children with her husband. It was only in the year 2015 when some disputes must have taken place between them, that she filed the present complaint. The accused in his further statement recorded under Section 313CrPC had stated that she had filed the complaint as he refused to fulfil her demand to pay her huge amount. Thus, having regard to the facts and circumstances of the case, it could not be said by any stretch of imagination that the prosecutrix had given her consent for the sexual relationship with the appellant under the misconception of fact, so as to hold the appellant guilty of having committed rape within the meaning of Section 375IPC.”

The aforesaid arguments squarely cover the legal issue raised by the appellant.

16. In the present case, it is to be noted that the respondent no.2 has concealed the fact of her previous marriage not only from the petitioner but also from the police while the subject FIR got registered. The petitioner was granted bail only when the mother-in-law of the respondent no.2 has identified her before the learned ASJ. It is also not disputed that both the petitioner as well as the respondent no.2 are Hindus and they cannot perform a second marriage during the lifetime of their spouse or till the respondent no. 2 is divorced from



her husband in accordance with the Hindu Marriage Act, 1955.

17. In view of the above, the consent of the respondent no.2 for the physical relationship/sexual acts cannot be said to be based on a false promise of marriage. It is also not the case of the consent having been obtained on misconception of any fact.

18. This Court in its observations also draws support from the fact that the miscarriage/abortion alleged by the respondent no.2 happened in the months of January, 2020 and June, 2020, while the complaint in question has been filed on 20.10.2020. The respondent no.2 herself has stated in the FIR that the petitioner and she were involved in the physical/sexual acts even after the miscarriage/abortion. Coupled with this is the fact that the respondent no.2 has also submitted forged documents in relation to her identification to the police authorities.

19. In my opinion, the continuation of the proceedings in the present FIR would be gross abuse of the process of law. It is also to be kept in mind that the mere pendency of a case accusing a person of a criminal offence can attach stigma and cause embarrassment.

20. The Supreme Court in *State of Haryana & Ors. v. Bhajan Lal & Ors.*, 1992 Supp (1) SCC 335 has held that criminal proceedings can be quashed where a criminal proceeding is manifestly attended with mala fide and/or where the proceeding is maliciously instituted with an ulterior motive for wreaking vengeance on the accused and with a view to spite him due to private and personal grudge.

21. Recently, the Supreme Court in *Achin Gupta v. State of Haryana & Anr.*, 2024 SCC OnLine SC 759, has held that when an accused comes before the High Court, invoking either the inherent

