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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
% *Judgment Delivered on : August 9th 2011*
+ **CRL.M.C. 2572/2011**

BIJENDER & ANR. Petitioners
Through : Mr.Akil Rataeeya , Adv.
versus

STATE & ANR. Respondent
Through : Ms.Ritu Gauba, APP for
State/respondent No.1 with SI
Laxmi Narain, PS Bawana in
person.
Respondent No.2 in person with
her father Shri Girvar Singh.

CORAM:
HON'BLE MR. JUSTICE SURESH KAIT

1. Whether the Reporters of local papers may be allowed to see the judgment? NO
2. To be referred to the Reporter or not? NO
3. Whether the judgment should be reported in the Digest? NO

SURESH KAIT, J. (Oral)

1. On 08.07.2011 the FIR No.230/2011 was registered against the petitioners on the complaint of respondent No.2 under Section 365/342/506/376/34 Indian Penal Code, 1860 at police station Bawna.

2. The allegation made in the complaint is:-

“After completing B.A., respondent No.2 used to attend Nursery Teacher Training (NTT) Diploma Course, there two boys, used to follow her on their bike and in the bus. While following at times, they also used to visit the village of respondent No.2, she knew them by face.”

3. On 02.06.2011, in the morning at about 05:00AM, when she went outside for natural call as some masonry work was being carried out in her house; a white colour car came from which a boy got down and he held her mouth shut and forcibly put her on the back seat of the car and further closed the window of the back seat. Other boy seated in the driver's seat drove the car and drove towards Bahadurgarh (Haryana). While, on their way when they found the railway gate closed, they spoke to each other that they had reached Bahadurgarh (Haryana), they took her to some secluded area where there were few houses and she was locked inside one of the rooms. She came to know the names of boys, as they were calling each other by their names. Rajesh was the name of the boy

who pushed her into the car and Bijender was driving the car. They were using the name of each other's fathers and that is how she came to know that Bijender's father's name is Shri Fateh Singh and Shri Krishan Singh is Rajesh's father and both are resident of village Parnala, Bahadurgarh, Haryana. Bijender did the wrong act with her several times, while threatening her for life. Rajesh used to visit the room to deliver food. Bijender used to bolt the door while going out of the room. On 07.07.2011, when Bijender went out, she pulled the door and found the bolt to be opened and on that instance, she ran away. She inquired from few people about any location from where she could get a bus to Delhi. The people informed her about Tikri Border, where, she reached after walking about one hour. From there, she boarded a bus towards Bahadurgarh and then to Narela and thereafter, she reached her house in Bawana and informed the entire episode to her family members.

4. Learned counsel for the petitioners submits that the petitioners and the respondent No. 2 knew each other prior to

the incident. To this effect, he has filed the photographs dated 26.05.2011 as annexure B at page Nos. 27 & 28 of the petition.

5. Learned counsel for the petitioners mentioned that neither they abducted respondent No.2 nor committed rape or threatened her. To this effect, learned counsel for petitioners has filed the affidavit of respondent No.2 sworn on 04.08.2011, attested by the Oath Commissioner which reads as under:-

"1. That I am the respondent No.2 in the above said petition and conversant with the facts and circumstances of the case, as such competent to swear the present affidavit.

2. That I am the complainant and on my complaint the present FIR bearing No.230/2011 was registered by the P.S. Bawana, Delhi.

3. That the complaint made to the police station Bawana, was made under pressure of the society and now the deponent do not want to pursue the case.

4. That the contents of the present affidavit has been read over and explained to me in vernacular and the same are true and correct”.

6. Instant case was also taken up yesterday i.e. on 08.08.2011, respondent no. 2 was personally present in the court with her father. So is the position today and the respondent No. 2 submits that on 25.06.2011 she went with petitioner No. 1 with her free will, as she knew him for the last four years. She knew him from the time when she was pursuing the Nursery Teacher Training (NTT) Diploma course from Nilothi, Nangloi, Delhi. Respondent No. 2 has further submitted that during her stay with petitioner No.1 at Bahadurgarh in a hotel, they had sexual intercourse with consent, as she had started liking him and presumed petitioner No.1 to be unmarried and thereafter, they both will marry each other. She never asked petitioner No.1 about his marital status. However, she came to know about petitioner No. 1's marriage and having a family with two children, during their stay at the hotel. On realizing bitter truth, she came back to her house, however, she had no explanation to support her

staying away from her house, therefore she cooked a false story to protect her image and narrated it to her family members and accordingly the present FIR was registered.

7. Ld. APP for the State submits that present case is of rape and punishable under Section 376 Indian Penal Code. Further, it is submitted that medical examination of the girl was conducted on the same day, but the result is still awaited. The statement of the respondent No.2 was recorded under Section 164 Cr. P. C. before the Id. Magistrate on the next day, wherein respondent No. 2 has supported the contents of the FIR registered and further submits that this FIR should not be quashed in these circumstances.

8. Respondent No.2 is personally present in the Court with her father Shri Girvar Singh and submits that her age is 25 years. She has completed B.A. course and NTT Diploma course. She has to settle down in her career as well as in her matrimonial life, therefore, her conscious has been shaken and she has now realized her mistake in lodging the present case against the petitioners. She further submits that, though the

affidavit has already been filed; in addition thereto, the Court may also record her statement to this effect. She further prayed in this case that the FIR may be quashed, so that she can concentrate on her career and may marry on finding proper match.

9. At the request of respondent No.2, her statement has been recorded on oath separately.

10. Learned counsel for petitioners has relied upon the judgment of this Court in case of **Harish Kumar vs. State 2010 (4) JCC 2371** wherein case under Section 376/493 Indian Penal Code was registered and the allegations made by the prosecutrix in her complaint to the police were as under:-

"1. The present petition has been filed by the petitioner under Section 482 Cr.P.C. for quashing of F.I.R. No.314 of 2006 registered at Police Station Bhajanpura against the petitioner under Sections 376/493 IPC. The allegations made by the prosecutrix in her complaint to the police are as under:-

Opposite to our house in Bhajanpura, there was house of Sh.Ramdhan and I and my family used to

visit house of Sh. Ramdhan as a neighbourer. Accused Harish also used to visit house of Sh. Ramdhan since he was a cousin of Sh. Ramdhan. Harish started expressing his love for me but I did not give positive response. However, after sometime, I fell in love with Harish and Harish started assuring me that he would marry me. About four years back (from the date of filing complaint), Harish was alone at Sh. Ramdhan's house and I was also there when Harish put vermillion in my hair and assured me that when time comes, he would marry me and thereafter, he started having intercourse with me. This continued for about four years. I did not tell anybody at my home about this relationship. For the last one month, I was telling Harish that he should tell his relatives about the marriage so that we could live together. Since then Harish neither talks to me nor he want to live with me. Harish had been having intercourse with me on the promise of marriage. Action should be taken against Harish as per law.

2. On the basis of above statement of prosecutrix, a case under section 376/493 IPC was registered against the accused. The statement makes it apparent that the prosecutrix was aware that she

was not married to Harish and marriage between her and Harish was yet to take place. She had developed intimacy and she herself was in love with Harish and she and Harish with consent of each other were enjoying each other's body and having sexual relationship. Since it is a case of obvious consent of the prosecutrix, who was aware that no marriage had taken place and marriage between parties was yet to take place, no case either under Section 376 or 493 IPC is made out." Accordingly, the FIR was quashed.

11. The present case is of a peculiar nature. I have come across several cases where at the later stage, the prosecutrix becomes hostile after being influenced by the accused or his family members, during trial or sometimes manage to get affidavits filed in their support. In those circumstances, the Courts have a very narrow margin to convict the accused.

12. Here, in, the instant case, respondent No.2/the prosecutrix is personally present in the court with her father, yesterday i.e. 08.08.2011 and today also they jointly prayed

that this case may be quashed, so that she can settle down in her career and life.

13. I note that the prosecutrix is staying in a village Nangli Thakaran, PS Bawana, Delhi. Her father is handicapped and working as LDC in a Department of Central Government. Additionally, if the aforesaid statement is made before the Ld.Trial Court, it would serve no purpose, atmost the Court can take action against the prosecutrix for giving false information and this will also serve no purpose.

14. Needless to state that position of women in the society is at the lower level. They have been oppressed and depressed from centuries together. And if she is from the humble family, then her condition would be worse. She would have no courage to stand, for her rights. Sometimes, they are trapped in the shackles of Society and whereby commit mistakes. However the situation of men is otherwise.

15. Both the petitioners are personally present in the Court with their counsel, Mr.Akil Rataeeya, Advocate. Learned counsel for petitioners, on instructions submits that if the

complainant has realized her mistake and made her statement in Court today, then the petitioners will not take any advantage of this statement in any manner.

16. Under the peculiar circumstances of this case, I do not recommend to prosecute the respondent No.2 for giving false information.

17. In the interest of justice, and especially for the welfare of the respondent No.2/complainant, I quash the present FIR No.230/2011 registered against the petitioners under Section 365/342/506/376/34 Indian Penal Code, 1860 at police station Bawna and the proceedings emanating therefrom, if any.

18. No doubt, petitioner No.1 was having extra-material relationship with respondent No. 2 despite having a family. Though, the act committed was with the consent as per the statement of respondent No. 2 recorded on oath. He has realized his mistake and has come forward to donate an amount of Rs.1,00,000/- (Rupees One Lac) to be given to some welfare organization. I appreciate for this gesture.

19. Accordingly, I direct, half of the amount i.e. ₹ 50,000/- to be deposited in favour of 'Delhi Legal Services Authority' and the balance amount of ₹ 50,000/- shall be deposited with 'Nirmal Chaya' at Tihar Road, Mayapuri. The above amount be deposited within two weeks from today and proof thereof be placed on the record.

20. Accordingly, Criminal M.C. No.2572/2011 is allowed.

21. Dasti.

SURESH KAIT, J

August 09th 2011

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