

*** IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ Crl. Rev.P. No. 366/2008

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Reserved on: 12th December, 2011
Decided on: 5th January, 2012

CHANCHAL

..... Petitioner

Through: Mr. Vijay Singla, Mr. Sonu Kirar,
Mr. Pankaj Saini, Advs.

versus

STATE & ANR

..... Respondents

Through: Mr. Mukesh Gupta, APP for State
with SI Vikram Dahiya PS Timar Pur.
Mr. Rabindra Singh, Adv. for R-2.

Coram:

HON'BLE MS. JUSTICE MUKTA GUPTA

1. By the present revision petition, the Petitioner lays a challenge to the order dated 5th March, 2008 passed by the Learned Additional Sessions Judge whereby he did not frame a charge under Section 376 IPC against Respondent No.2 and sent the matter back for trial to the Learned Metropolitan Magistrate.

2. The brief facts of the prosecution case are that the prosecutrix Chanchal and Respondent No.2 Manoj were engaged on 25th January, 2005 with the consent of the families as they were in love with each other. However, since the parents of Manoj were not satisfied with the dowry articles they broke off the engagement. Thereafter Manoj visited the prosecutrix and told her that he was still in love with her and will marry her very soon. Believing Manoj the prosecutrix had sexual relations with him.

She even had to get an abortion on 2nd May, 2007. The prosecutrix then continued to pressurize him to marry her and therefore on 16th May, 2007 Manoj married the prosecutrix. Manoj continued to have sexual relations with the prosecutrix but did not take her to the matrimonial home. On 18th June, 2007 when the prosecutrix pressed Manoj to take her to the matrimonial home he told her about being married to one Nirmala since 9th May, 2007. The prosecutrix therefore on the same day made a written complaint to the police and vide DD No. 13-A, FIR was registered against Manoj under Sections 376/493/494/406 IPC. The prosecutrix was medically examined on that very day. After completion of investigation the Police filed charge-sheet on 30th August, 2007 before Learned Metropolitan Magistrate who committed it to the learned Additional Sessions Judge. The Learned Additional Sessions Judge vide order dated 5th March 2008 held that from the facts of the prosecution case, no case for framing a charge against Manoj under Section 376 IPC is made out. The said order is impugned in this petition.

3. The learned counsel for the Petitioner contends that the Respondent No.2 had dishonest intention at the time of having sexual intercourse with the Petitioner as he did not intimate her of his earlier marriage and therefore the said act falls under the fourth description in prescribed Section 375 IPC. He states that the sexual intercourse even prior to the marriage was obtained by promising to marry the Petitioner and therefore her consent was also obtained by fraud under misconception of facts invalidating the consent obtained. The learned counsel places reliance upon *Nikhil Parasar Vs. The State Govt. NCT of Delhi Bail Application No. 1754/2009, Salekha Khatoon*

Vs. State of Bihar 1989 CrLJ 202, Yedla Srinivasa Rao Vs. State of AP (2007) ACR 43 SC, Sanatan Ghosh Vs. State 1987 (1) Crimes 157, Pradeep Kumar @ Pradeep Kr. Verma Vs. State of Bihar 2007 (4) RCR (Cr.) 51, State of Rajasthan Vs. Kishan Lal 2002 SCC (Cr.) 1149, Jayanti Rani Panda 1884 CrLJ 1535 (Cal).

4. Learned counsel for the Petitioner further contends that whether the intention of the Respondent No.2 was malafide or bonafide can only be determined after appreciation of evidence led during trial. To show the intention of the Respondent No.2, learned counsel for the Petitioner points out that the Respondent No.2 had declared himself to be a bachelor in the marriage certificate annexed. He further states that it is settled principle that at the stage of framing charge in case two views are possible then the Courts should adopt the view supporting the prosecution. Reliance is placed upon *State Vs. Siddarth Vashisth @ Manu Sharma & Ors. 2001 (90) DLT 548, Mathura Dass & Ors. Vs. State 2003 (3) JCC 639, Farida Dar Vs. State 2001 (91) DLT 531, Romesh Sharma Vs. State 2001 (89) DLT 480.*

5. Per contra learned counsel for the Respondent No.2 relying upon *Uday Vs. State of Karnataka 2003 (2) SCALE 329* contends that the essential ingredient for applicability of Section 90 IPC for offence defined under Section 375 IPC i.e. misconception of facts is not made out. He states that there had been an engagement, but it was broken and thereafter they lived in a new house. Further, even if it is taken that the Respondent No.2 had promised to marry the Petitioner, at a later stage he fulfilled the promise by marrying her. Further reliance is placed upon *Pradeep (supra)* wherein it was held that to hold the accused guilty for the offence of rape it has to be

established that accused from the very beginning had no intention to marry the prosecutrix. He argues that since the Respondent No.2 in fact married the Petitioner he cannot be held guilty of committing rape.

6. I have heard learned counsels for the parties. It may be noted at this stage that Respondent No.2 has not disputed the fact that there were sexual relations between him and the Petitioner. The said sexual relations are even supported by the medical certificate dated 2nd May, 2007 confirming the abortion and the medical examination which was conducted on 18th June, 2007. The allegations of rape in this case are twofold. The first allegation which is covered under the second description prescribed in Section 375 r/w 90 IPC arises when the Respondent No.2 obtained the consent of the Petitioner for sexual relations in lieu of marriage till 9th May, 2007 and the second allegation which is covered under the fourth description prescribed in Section the 375 IPC wherein the Petitioner had sexual relations with the Respondent No.2 after 16th May, 2007 thinking him to be her lawfully wedded husband.

7. Learned counsel for the Respondent No.2 has relied upon *Pradeep (supra)*. In the said case the Hon'ble Supreme Court had remitted the case back to the High Court to deal with the matter more elaborately. Their Lordships observed that in a case where the accused had no intention to marry the prosecutrix from very inception an offence under Section 376 IPC is made out. Even in the present case, from the statements of the witnesses recorded during investigation, prima facie it is apparent that Respondent No.2 had no intention to marry the Petitioner and married the Petitioner only after marrying someone else.

8. The learned counsel for the Respondent No.2 argues that since he actually married the Petitioner, it cannot be said that he did not intend to marry her, to constitute misconception of facts. Since the Respondent No.2 had married one Nirmala before marrying the Petitioner, the marriage of the Petitioner and Respondent No.2 was not lawful. The fourth explanation to Section 375 IPC contemplates a situation where the consent of the woman is taken on her believing to be lawfully married.

9. Reliance on *Uday (supra)* is also misconceived as the said decision was rendered in an appeal when the evidence had been led. The present case however is at the stage of framing of charge. At this stage the Court is only to see whether on the uncontroverted facts, there is a strong suspicion against the accused for having committed the offence.

10. Considering the facts of the present case the Respondent No.2 is liable to be charged for offence under Section 376 IPC. Accordingly, it is directed that the case file be sent back to the Learned Additional Sessions Judge for framing of charge under Section 376 IPC and other charges made out against the Respondent No.2.

11. Petition is disposed of accordingly.

(MUKTA GUPTA)
JUDGE

JANUARY 5, 2012
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