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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ **CRL.M.C. 624/2018**
PRADEEP RAJBHAR & ORS

..... Petitioner

Through: Mr. Arun Kumar Tripathi, Adv.

versus

THE STATE GOVT OF NCT OF DELHI & ANR
Respondent

Through: Mr. Raghuvinder Varma, APP for
State.

CORAM:
HON'BLE MS. JUSTICE ANU MALHOTRA

ORDER

% **06.02.2018**

Vide the present petition, the petitioner seeks quashing of FIR No. 0341/2016, PS Kirti Nagar, under Sections 376 Indian Penal Code, 1860 and Section 5 & 6 of the Protection of Children From Sexual Offence Act, 2012 submitting to the effect that a settlement has been arrived at between the petitioner and the respondent no.2 inasmuch as the respondent no. 2 and the petitioner no.1 have since married on 29.01.2018.

It has been submitted on behalf of the petitioner and on behalf of the respondent no.2 that pursuant to proceedings recorded during the course of the testimony in camera proceedings before the learned ASJ-01, West, Special Court under POCSO Act, THC, Delhi on the date 20.01.2018, as it has been testified by the respondent no.2 that she wanted to marry the petitioner, proceedings were deferred on 20.01.2018 in view of the testimony of the witness and her mother and the accused and their counsel

i.e. the witness being the respondent no.2, her mother and the accused i.e. the petitioner no.1 herein and counsel who submitted that they wanted to

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seek the quashing of FIR in question before High Court of Delhi and that the petitioner no.1 and the respondent no.2 wanted to marry each other.

At the outset itself, on behalf of the State the prayer is vehemently opposed submitting *inter alia* to the effect that averments made in the FIR registered on the complainant of the respondent no.2 qua the alleged commission of the offences punishable under Section 376 Indian Penal Code, 1860 and Section 5 & 6 of the Protection of Children From Sexual Offences Act, 2012, which has been registered when the prosecutrix put forth her age as being 16 years have been reiterated by the prosecutrix through her statement under Section 164 Cr.PC, 1973 and also in the deposition in camera proceedings on 20.01.2018 and that the offences punishable under Section 376 Indian Penal Code, 1860 and Section 5 & 6 of the Protection of Children From Sexual Offences Act, 2012 are in relation to heinous offences and thus, the prayer made by the petitioner for compounding of the said offences apart from the alleged commission of offences punishable under Section 363/342/452/354D/506/509/109/323 Indian Penal Code, 1860 all consequently committed in the process of commission of the offence punishable under Section 376(2) Indian Penal Code, 1860 ought not to be quashed in view of the verdict of the Apex Court in ***Gian Singh vs. State of Punjab & Another***, (2012) 10 SCC 303.

Learned counsel for the petitioner was given an opportunity to respond to the verdict of this Court in Crl. M.C. 2206/2013 in ***Mayank Pandey Vs. State & Ors.*** dated 16.12.2013 and to the verdict of the Apex Court ***Shimbhu and Anr. Vs. State of Haryana 2013 (3) ACR 3517*** . On behalf of the petitioner it has been submitted that the ratio of the said

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verdicts are not applicable to the facts and circumstances of the instant case inasmuch as the proceedings in relation to the ***Shimbhu and Anr. Vs. State of Haryana*** are after a compromise between the parties post conviction and in the case in Crl. M.C. 2206/2013 in ***Mayank Pandey Vs. State & Ors.*** it was the petitioner therein who had sought quashing of FIR on the ground that no offence punishable under Section 376 Indian Penal Code, 1860 was made out.

It is essential to observe that as observed by the Apex Court in ***Gian Singh vs. State of Punjab & Another*** in relation to the offence punishable under Section 376 Indian Penal Code, 1860, the same falls in the category of heinous criminal offence and has serious impact on society. Furthermore, the verdict in Crl. M.C. 2206/2013 in ***Mayank Pandey Vs. State & Ors.*** is in relation to a petition filed by the petitioner therein under Section 482 Cr.PC, 1973 seeking quashing of FIR 100/2013 under Section 376 Indian Penal Code, 1860 registered at PS Malviya Nagar, District South, New Delhi on the ground that matter has been compromised and that the petitioner thereof and the respondent no.2, complainant thereof were living happily and had

been married and living as husband and wife with the marriage certificate along with photographs having been placed on the record of the said petition. It is apparent that the ratio of the verdict in Crl. M.C. 2206/2013 applies to the facts of the instant case.

It is essential to observe that vide the verdicts of the Apex Court in ***Pradeep Kumar @ Pradeep Kumar Verma Vs. State of Bihar and Anr. (2007) 7 SCC 413*** and also the verdict of this Court in ***Anil Kumar & Ors. Vs. State of NCT of Delhi in Crl. M.C. 3216/2012*** were in a joint petition under Section 376/420/34 Indian Penal Code, 1860 filed on the ground that

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the parties had entered into a marriage, was dismissed it having been observed to the effect that it was not a fit case where the Court should come to the rescue of a perverted person and give him a relief. The offence of rape is a crime against society. The FIR in such like cases if quashed, will only give an impetus to person like-minded to commit such offence and this was not a fit case where the Court ought to exercise its inherent power under Section 482 Cr.PC, 1973 and quash the proceedings.

As regards the submission made on behalf of the petitioner in relation to the verdict of the Apex Court in ***Shimbu and Anr. Vs. State of Haryana 2013 (3) ACR 3517***, the same undoubtedly relates to a case in which there was a compromise post-conviction but the observations in para-22 of the said verdict of the Apex Court are categorically to the effect that rape is a non-compoundable offence and it is an offence against the society and is not a matter to be left for the parties to compromise and settle inasmuch as the

Court cannot always assure that the consent given by the victim in compromising the case is a genuine consent, and that there is every chance that she might have been pressurized by the convicts or the trauma undergone by her all the years might have compelled her to opt for a compromise and by accepting the same, the same will put an additional burden on the victim and that the accused may use all his influence to pressurize for a compromise and that in such circumstance it would not be appropriate to allow the prayer made by the petitioner on the basis of compromise.

It is essential to advert, in the circumstances of the case, to the documents placed on record with the petition which is the certified copy of testimony of the prosecutrix dated 20.01.2018 in 'in-camera' proceedings before

the Court of ASJ-01, West, Special Court under POCSO Act, THC, Delhi. Without any observations on the veracity or otherwise of the said testimony which would be submitted for trial before the trial Court, it is essential to observe that the prosecutrix has testified to the effect that:

- 1. I am now 16 years old. I do not know my date of birth. My year of birth is mentioned as 2001 in my school record but I am not aware about the date and month. (The APP has pointed out that as per the school record of the prosecutrix, her date of birth is 22.02.2002)*
- 2. The incident took place in the year 2016. At the time, i was*

studying in class IX. When I used to go to school and return to my house from school, the accused Pradeep @ Pradeep Rajbhar used to follow me. At that time I was not knowing the same of accused. This continued for several days. I failed in one exam of IX class and then I stopped going school. I thought that accused would leave his act i.e. following me.

- 3. I do not remember the date and month of the incident. One day i was alone in the house. Accused Pradeep @ Pradeep Rajbhar entered my house. At that time, the main door of my house was lying opened. Accused Pradeep @ Pradeep Rajbhar was carrying a knife. He raped me on the point of knife. When I stated that I would inform about this act to my parents then he threatened me by saying that if I would disclose this incident to my parents then, he would kill my younger brother and throw him on the railway line.*

- 4. I have seen the Accused Pradeep @ Pradeep Rajbhar through the screen. He is the culprit who had raped me. (witness has correctly identified accused Pradeep @ Pradeep Rajbhar).*
- 5. After extending threats, Accused Pradeep @ Pradeep Rajbhar left my house. I did not inform about the above incident to anyone due to fear of accused.*
- 6. On 08.09.2016 at about 11.00 accused Pradeep @ Pradeep Rajbhar came near my house. At that time, I was standing outside*

my house, accused Pradeep @ Pradeep Rajbhar caught hold my hand and was forcibly taking towards his jhuggi. The paternal aunt (chichi) of accused was standing near the gate of her house.

7. I have seen the accused Meera through the screen. She is the culprit and I had seen her outside her house when accused was taking me towards his jhuggi. (witness has correctly identified accused Meera).

8. I told accused Meera to save me from accused Pradeep. On this accused Meera asked accused to take me to his house and she would see whatever happened (Isne Pradeep ko bola ki mujhe le jao, joh bhi hoga woh dekh legi).

9. Thereafter, accused Pradeep took me inside his jhuggi. Accused Pradeep was attempting to commit rape upon me but I resisted. Then, accused Pradeep went to the house of accused Meera and brought Vermillion (Sindoor) from there and put the same in the parting of my hairs. Then, accused Pradeep @ Pradeep Rajbhar told me that now he had married to me and he committed rape upon me. Then, accused Pradeep @ Pradeep Rajbhar left his jhuggi after bolting the door of the jhuggi from outside.

10. At about 8.00 pm father of the accused Pradeep @ Pradeep Rajbhar came to his jhuggi.

11. I have seen the accused Mahender through the screen. He is the father of the accused Pradeep @ Pradeep Rajbhar and he is also a culprit. (witness has correctly identified accused Mahender).

12.I stated to accused Mahender “dekho tumhare ladke ne ky kiya hai”. On this accused Mahender stated that he would see. Accused Mahender gave beatings to me and pushed me outside of his jhuggi. Someone informed my father and then he took me from there.

13.On the next day, accused Mahender called some people of the locality at temple. Accused Mahender asked my father to marry me to some man and then send me with him. My mother was weeping at that time. Accused Mahender send his son (accused Pradeep @ Pradeep Rajbhar) to Punjab. Accused Mahender started using unwanted language by saying to me and my parents that we belong to “Chamain” caste. I belong to Paswan caste. Then, I went to my house and called at number 181. After sometime police reached at my house. I informed all the facts which I have deposed today in the Court, to the police. My statement was recorded by the police.

14.(At this statement of the witness dated 09.09.2016 is shown to the witness and witness has read the same, then she is further examined.)

15.I have read my statement. It is the same statement which was made by me before the police. The statement is now Ex. PW2/A

which bears my signatures at point-A. The police took me to Acharya Bhikshu hospital situated in Moti Nagar for my medical

examination. My medical examination was conducted vide MLC Ex. PW2/B which bears my signature at point-A. The police also brought me to the Court. I informed all the facts to lady Judge.

16. At this stage, an envelope sealed with the seal of RAA and bearing the particulars of the case which is annexed in the judicial record and taken out and opened. It contains the statement u/s 164 Cr.PC of the witness, application of the Investigating Officer requesting for permission to record the statement and application of the Investigating Officer requesting for supply copy of the statement. The statement u/s 164 Cr.PC of the witness is shown to her and after she has seen and read the same and it is also read over to her, she is further examined.

17. I have read the statement and I say that this is the same statement which was made by me before the Lady Judge. The statement u/s 164 Cr.PC of the witness is now exhibited as Ex. PW2/C which bears my signatures at points A & B.

18. Accused Pradeep was arrested after about 5-6 days of registration of the case.

19. (At this stage, arrest memo and personal search memo of the accused Pradeep are shown to her and after showing the same and explaining the same to her, she is further examined.)

20. I have seen the arrest memo and personal search memo of accused Pradeep @ Pradeep Rajbhar and I say that these memos were signed by me at point-A. The arrest memo and personal search memo are now exhibited as Ex. PW2/D and Ex. PW2/E.

21. *At this stage, Addl. PP has requested to put some leading questions to the witness regarding some words stated by the witness during her statement u/s 164 Cr.PC and for seeking clarification regarding knowing the accused Pradeep @ Pradeep Rajbhar by her.*

22. *(At this stage, portion X1 to X2 of the statement recorded u/s 164 Cr.PC is shown to the witness and after the witness has read the same, she is further examined.)*

23. *It is correct that father of accused Pradeep stated that he would not permit me to become his daughter in law and also uttered the abuses mentioned therein.*

24. *(At this stage, portion X1 to X2 of the statement Ex. PW2/A is shown to the witness and after the witness has read the same, she is further examined.)*

25. *It is correct that I have stated to the police in my statement Ex. PW2/A that I was knowing accused Pradeep since 3 years and we were in love and wanted to marry.*

Q. During your statement you have deposed that you were not knowing the name of accused Pradeep @ Pradeep Rajbhar when he used to follow you on your way to school and in the statement Ex. PW2/A you had stated that you both were in love and wanted to marry. Which of your statement is correct ?

Ans. I wanted to marry him as no one will now marry me as he has spoiled my life.

The statement of the prosecutrix to the effect that the petitioner no.1 had allegedly raped her on the point of a knife and when she stated that she would inform about the act to her parents, she was threatened that if she

disclosed the facts to her parents, he would kill her younger brother and throw him on the railway line and she also stated thereafter that threats were extended to her by the petitioner after he left her house and thus she did not inform about the incident to anyone due to fear are significant, that she also stated to the effect that on another day, the petitioner came near her house when she was standing outside her house, he caught hold of her hand and was forcibly taking her towards his jhuggi. Where the paternal aunt (chachi), the petitioner no.3 was standing near the gate of her house and the said petitioner no.3 is indicated to have been identified by the respondent during the 'in-camera' proceedings and the prosecutrix has also stated to the effect that she had requested the petitioner no.3 to save her from the petitioner no.1, on which the petitioner no.3 asked the petitioner no.1 to take the respondent no.2 to his house and she i.e the petitioner no.3 would see whatever happened (*"Isne Pradeep ko bola ki mujhe le jao, joh bhi hoga woh dekh legi"*).

The respondent no.2 has testified to the effect that the petitioner no.1 took her inside his jhuggi and attempted to commit rape upon her but she resisted and then the petitioner went to his house and brought vermilion (Sindoor) from there and put the same in the parting of her hairs and told her that now he had married her and he committed rape upon her and thereafter he left his jhuggi after bolting the door of the jhuggi from outside.

The respondent no.2 has *inter alia* testified to the effect that she has seen the petitioner no.2 through the screen during the in-camera proceedings and testified to the petitioner no.2 being the father of the petitioner no. 2 and testified categorically to the effect that he was also a culprit stating to the effect that she has told the petitioner no.2 to see as to what his son had done to which the petitioner no.2 gave beatings to her and pushed her

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outside of his jhuggi and on the next day when the petitioner no.2 called some people of the locality to the temple and asked her father to marry her to a man and then send her with him and that the petitioner no.2 also used unwanted language in relation to the caste of the respondent no.2 and thereafter her statement has been recorded by the police, she was also taken to Acharya Bhikshu hospital, Moti Nagar and she was brought to the Court for the recording of her statement which was thus recorded under Section 164 of Cr.PC, 1972 is Ex. PW2/C.

Undoubtedly, in response to Question no.24, the respondent no.2 has stated that she knew the petitioner no.1 for three years and that they were in love and wanted to marry.

To a query put by the learned Trial Court to the effect that she had stated that she did not know the name of the petitioner when he used to follow her on her way to school and in Ex. PW2/A, to the police she stated that she knew the accused Pradeep @ Pradeep Rajbhar for three years and they were in love and also in her statement, she stated that she was in love and wanted to marry the petitioner and as to which of her statements was

correct, she stated that she was in love and wanted to marry the petitioner as no one would marry her now as he had spoiled her life.

On behalf of the State, it has been submitted that the submissions that have been made on behalf of the petitioner qua the stated factum of marriage between the petitioner no.1 and the respondent no.2 are also not in consonance with law inasmuch as the respondent no.2 has given her date of birth as being 22.02.2002 and even the petitioner no.1 was below the age of 21 years on the date of the stated marriage on 29.01.2018 and it is also submitted on behalf of the State that even as per the present petition at pages

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14-15 thereof, the petitioner no.1 had put forth his age as 20 years.

Taking apparently the facts and circumstances of the case into account, the allegations against the petitioner in relation to the alleged commission of offences punishable under Sections 376(2)/363/342/452/354D/506/509 r/w 109/323 Indian Penal Code, 1860 and Section 6 & 12 of POCSO Act, 2012 and the testimony of the prosecutrix, without any observations on the merits or demerits thereof on the veracity of the same as observed hereinabove in view of the verdict of this Court in Crl. M.C. 2206/2013 in ***Mayank Pandey Vs. State & Ors.*** and in ***Anil Kumar & Ors. Vs. State of NCT of Delhi*** in Crl. M.C. 3216/2012 and the verdict of the Apex Court in ***Gian Singh vs. State of Punjab & Another*** and observations in para-22 of the verdict of Apex Court in ***Shimbhu and Anr. Vs. State of Haryana*** it is essential to observe that this is not a fit case for grant of prayer made by the petitioner seeking quashing of

FIR 2341/2016, PS Kirti Nagar, Delhi nor of any consequential order in relation thereto and thus the petition is dismissed.

ANU MALHOTRA, J

FEBRUARY 06, 2018

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