

GAHC010232792017



THE GAUHATI HIGH COURT
(HIGH COURT OF ASSAM, NAGALAND, MIZORAM AND ARUNACHAL PRADESH)

Case No. : Crl.Pet./126/2017

PARTHA SAHA
S/O SRI GURU DAS SAHA R/O KALAHBHNGA, WARD NO. 8, P.S. BARPETA
ROAD, DIST. BARPETA, ASSAM.

VERSUS

THE STATE OF ASSAM and ANR.

2:DIPIKA BARMAN
D/O JATINDRA BARMAN R/O BARMANPARA
WARD NO. 8
P.S. BARPETA ROAD
DIST. BARPETA
ASSAM
PIN - 781315

Advocate for the Petitioner : MR.D SAIKIA

Advocate for the Respondent :

BEFORE
HONOURABLE MRS. JUSTICE SUSMITA PHUKAN KHAUND

JUDGMENT

Date : 14-11-2023

Heard Mr S M Abdullah P, learned counsel for the petitioner and Mr R R Kaushik

learned Additional Public Prosecutor, for the State of Assam.

2. The petitioner has filed his application under Section 482 of the Code of Criminal Procedure 1973 ('CrPC', for short), seeking quashing of the entire criminal proceeding of G R Case No. 5418 of 2016, arising out of Barpeta Road PS. Case No. 452 of 2016, registered under Sections 420/376/120(B)/323/506/34 of the Indian Penal Code (IPC for short) and also the charge sheet being C S No. 286 of 2016 dated 31.12.2016. The case is pending in the Court of the learned Chief Judicial Magistrate (CJM for short) at Barpeta. The State of Assam and the informant are arrayed as respondent No. 1 and respondent No. 2 respectively.

3. The FIR unfolds that for the last three years, since 22.10.2016, the informant X was in love with the petitioner Sri Partha Saha. The petitioner induced the informant into physical relationship with false promises of marriage. On 16.10.2016, the petitioner took the informant to Guwahati, promising to marry her at Kamakhya Mandir and he kept her in Assam Lodge, by introducing themselves to be husband and wife. On the same day at about 02:30 pm, the police raided the lodge and took them into custody. The police from the Jalukbari Police Station raided the lodge and took them into custody. In the Jalukbari Police Station, the petitioner in presence of the police personnel and the family members of the informant, promised to marry the informant. However, on 17.10.2016, the accused No. 2, Bhambal Saha, in collusion with the petitioner, hatched up a conspiracy and the petitioner fled away without marrying the informant. On 22.10.2016, the informant went to the petitioner's house but Bhambal Saha rebuked the informant and slapped her in presence of the petitioner and his father Guru Das Saha, who is also arrayed as accused No. 3 in the FIR. Bhambal Saha, accused No. 2 also tugged at the informant's hair and dragged her out of the petitioner's house. An FIR regarding this incident was lodged by the informant-respondent No. 2 herein,

and investigation commenced. The IO submitted charge sheet against the petitioner, whereas the other accused named in the FIR were not sent up for trial.

4. It is contended by the learned counsel for the petitioner that he is erroneously booked under Section 376 IPC. He has admitted of a love relationship between him and the respondent No. 2 and he also admitted that he proposed marriage to respondent No. 2, but differences cropped up between him and the respondent No. 2 and their relationship turned sour. In order to compel the petitioner to marry her, the informant lodged a false FIR against him. The petitioner was a student at the time, he promised to marry the informant, but now due to some unavoidable circumstances, the petitioner is not willing to marry the informant and he ought not to be coerced by a false case to marry the informant.

5. The petitioner had also preferred an anticipatory bail petition being AB No. 969 of 2016 and the learned Sessions Judge, Barpeta was pleased to grant him the privilege of bail, considering the nature and circumstances of this case. It is averred that after the lodgement of the FIR, the informant was taken for medical examination, but no adverse report was submitted by the Medical Officer.

6. The petitioner has filed an affidavit marked as Annexure-5, wherein the informant has sworn in that she has settled the dispute with the petitioner. The criminal case was initiated due to a misunderstanding between her and the petitioner and in presence of respectable citizens, they have settled their dispute amicably. The informant has stated in the affidavit that she is not willing to proceed with the case being G R Case No. 5418 of 2016.

7. The order in this case dated 30.05.2018 reflects that notice was served on respondent No. 2. The order dated 05.02.2020 also reflects that the respondent No. 2 was not

represented. The respondent No. 2 was continuously not represented and this case proceeded and the learned Additional Public Prosecutor was heard on behalf of respondent No. 1. It is submitted by the learned Additional Public Prosecutor that the victim was a consenting party and she proceeded up to Guwahati, to solemnize her marriage in the Kamakhya Temple. It is not alleged through the FIR that her consent was obtained by misconception of facts or false promises of marriage. On the fateful day, i.e., when the petitioner and the victim was apprehended by Police in the lodge (hotel), differences arose between the parties.

8. I have considered the submissions at the Bar with circumspection.

9. It is apparent that differences erupted, after the petitioner and the victim were apprehended by the Police in the Assam Lodge. The victim, i.e., the respondent No. 2 failed to appear, but her affidavit has been annexed as Annexure-5. Through her affidavit she has expressed her willingness to withdraw the case, but as this case was registered under Section 420/376 IPC, withdrawal of the case at the Police Station was not possible. The learned counsel for the petitioner has relied on the decision of Hon'ble the Supreme Court in ***Pramod Suryabhan Pawar –vs- State of Maharashtra & another;*** reported in **(2019) 9 SCC 608** in connection with Criminal Appeal No. 1165 of 2019, decided on 21.08.2019, wherein it has been observed that-

“19. The allegations in the FIR indicate that in November 2009 the complainant initially refused to engage in sexual relations with the accused, but on the promise of marriage, he established sexual relations. However, the FIR includes a reference to several other allegations that are relevant for the present purpose. They are as

follows: (i) The complainant and the appellant knew each other since 1998 and were intimate since 2004; (ii) The complainant and the appellant met regularly, travelled great distances to meet each other, resided in each other's houses on multiple occasions, engaged in sexual intercourse regularly over a course of five years and on multiple occasions visited the hospital jointly to check whether the complainant was pregnant; and (iii) The appellant expressed his reservations about marrying the complainant on 31 January 2014. This led to arguments between them. Despite this, the appellant and the complainant continued to engage in sexual intercourse until March 2015. The appellant is a Deputy Commandant in the CRPF while the complainant is an Assistant Commissioner of Sales Tax.

20. The allegations in the FIR do not on their face indicate that the promise by the appellant was false, or that the complainant engaged in sexual relations on the basis of this promise. There is no allegation in the FIR that when the appellant promised to marry the complainant, it was done in bad faith or with the intention to deceive her. The appellant's failure in 2016 to fulfil his promise made in 2008 cannot be construed to mean the promise itself was false. The allegations in the FIR indicate that the complainant was aware that there existed obstacles to marrying the appellant since 2008, and that she and the appellant continued to engage in sexual relations long after their getting married had become a disputed matter. Even thereafter, the complainant travelled to visit and reside with the appellant at his postings and allowed him to spend his weekends at her residence. The allegations in the FIR belie the case that she was deceived by the appellant's promise of marriage. Therefore, even if the facts set out in the complainant's statements are accepted in totality, no offence under

Section 375 of the IPC has occurred."

10. The appellant, Pramod Surya Bhan Pawar was exonerated from the charges under Section 376 IPC.

11. Learned counsel for the petitioner also relied on the decision of the Hon'ble Supreme Court in ***Sonu @ Subhash Kumar –vs- State of Uttar Pradesh***, reported in **AIR 2021 SC 1405**, wherein it was held and observed that-

"Where the promise to marry is false and the intention of the maker at the time of making the promise itself was not to abide by it but to deceive the woman to convince her to engage in sexual relations, there is a "misconception of fact" that vitiates the woman's "consent". On the other hand, a breach of a promise cannot be said to be a false promise. To establish a false promise, the maker of the promise should have had no intention of upholding his word at the time of giving it..."

10. Further, the Court has observed: "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."

11. Bearing in mind the tests which have been enunciated in the above decision, we are of the view that even assuming that all the allegations in the FIR are correct for

the purposes of considering the application for quashing under Section 482 of CrPC, no offence has been established. There is no allegation to the effect that the promise to marry given to the second respondent was false at the inception. On the contrary, it would appear from the contents of the FIR that there was a subsequent refusal on the part of the appellant to marry the second respondent which gave rise to the registration of the FIR. On these facts, we are of the view that the High Court was in error in declining to entertain the petition under Section 482 of CrPC on the basis that it was only the evidence at trial which would lead to a determination as to whether an offence was established.

12. For the above reasons, we allow the appeal and set aside the impugned judgment and order of the High Court dated 26 September 2019. In view of the reasons which have been adduced earlier, the charge sheet dated 25 April 2018, which has been filed in pursuance of the investigation which took place, shall stand quashed. The order of the trial Court dated 3 October 2018 taking cognizance shall accordingly stand quashed and set aside.

12. In the instant case too, the FIR does not reveal that from the inception the petitioner had no intention to marry the victim. The petitioner was a student at the time he got closely acquainted to the victim-respondent No. 2, herein. The split between the petitioner and the victim was a subsequent development. Differences arose when the family members of the petitioner stepped in. Finally, matters became worse when the victim went to the petitioner's house to be accepted as his wife as she was under the delusion that she was the petitioner's wife. She was driven out of the petitioner's house, not by the petitioner, but by the elders of his family. This is not a case of procuring consent by misconception of facts. In the instant

case, the FIR does not transpire that the petitioner falsely promised to marry the victim – respondent No. 2 herein. Both the petitioner and the victim travelled upto Guwahati from Barpeta to solemnise their marriage at Kamakhya Mandir and they were stayed in a hotel. The intentions of the petitioner is clear. Unfortunately there was a raid in the hotel, and both the petitioner and the respondent No. 2 were taken into custody as they falsely posed as husband and wife. At this juncture there was interference from the family members of the petitioner and dispute erupted between the parties and differences arose between the petitioner and the respondent No. 2. This incident followed by the interference of the family members incited the split between the parties. The refusal of the petitioner to marry the respondent No. 2 is a subsequent development. At present, the victim is also not willing to proceed with the case. Further proceeding will indeed be an abuse of the process of the Court. Possibility of conviction also appears to be remote and bleak.

13. In the light of the decision of the Hon'ble Supreme Court in ***Sonu @ Subhash Kumar (supra)***, and the decision in the case of ***Pramod Suryabhan Pawar (supra)***, the present petition is allowed. The entire proceeding of GR Case No. 5418 by 2016, along with the Charge Sheet No. 286 of 2016, dated 31.12.2016 is hereby set aside and quashed.

JUDGE

Comparing Assistant