

GAHC010289082019



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

Case No. : Crl.Pet./1403/2019

PANKAJ KHATANIAR @ KATANIAR
S/O SHRI NABIN KHATANIAR, R/O VILL-DHUPGURI (BHOMTALA), P.O.-
CHATIANTALI, P.S.-LAHARIGHAT, DIST-MORIGAON, ASSAM, PIN-782127

VERSUS

THE STATE OF ASSAM AND ANR.
REPRESENTED BY THE PUBLIC PROSECUTOR, ASSAM

2:SMTI MAYA BORDOLOI
D/O LATE KHUDIRAM BORDOLOI
R/O VILL-DHUPGURI BHUNTALA
P.O.-CHATIANTALI
P.S.-LAHARIGHAT
DIST-MORIGAON
ASSAM
PIN-78212

Advocate for the Petitioner : MR. A K PURKAYASTHA

Advocate for the Respondent : PP, ASSAM

BEFORE
THE HON'BLE MR JUSTICE ARUN DEV CHOUDHURY

For the Petitioners :Mr. AK Purkayastha, Advocate

For the Respondents : Mr. J Ahmed, Advocate
Mr. MP Goswami, Additional PP

Date of Hearing : 13.09.2023

Date of Judgement : 13.09.2023

JUDGEMENT & ORDER (ORAL)

1. Heard Mr. AK Purkayastha, learned counsel for the petitioner. Also heard Mr. MP Goswami, learned Additional Public Prosecutor, Assam and Mr. J Ahmed, learned counsel for the respondent No. 2.
2. The present application is filed under Section 482 Cr.P.C. praying for quashing of criminal proceeding being GR case No. 713/2017 registered under Section 493/376/420/34 IPC.
3. The prosecution was launched on the basis of FIR lodged by the informant/ respondent No. 2 before the learned Court of CJM, Morigaon, which in turn forwarded to the O/C, Laharighat PS for registering a case under appropriate section. Accordingly, Laharighat PS case No. 103/2017 under Section 493/376/420/34 IPC was registered.
4. The averments made in the FIR are to the following facts:
 - I. The informant is the sister-in-law of the accused/ petitioner.
 - II. Taking opportunity of illness of her elder sister, the accused/ petitioner promised to marry her since last three years.
 - III. Taking advantage of such promise, the accused had sexual intercourse with her against her will.
 - IV. The accused promised that marriage will be solemnized in the

Month of May, 2016. However, in the month of May, 2016, marriage was not solemnized and the accused promised that the marriage will be solemnized in the month of April, 2017, However, on 24.02.2017, the accused married another girl.

V. Accordingly, the FIR was lodged on 03.03.2017.

5. Statement of the victim was also recorded under Section 164 Cr.P.C., which is to the following effect:

I. That the victim has been in love with the accused since last three years.

II. The family member of the accused came to the house of the victim and had ring ceremony fixing the date of marriage to be solemnized in the month of April, 2017.

III. However, instead of marrying the victim, the accused, Pankaj Khataniar had married another girl.

IV. The accused with promise to marry the victim had physical relation with her.

6. Perused the statement of the victim, which is recorded by the police under Section 161 Cr.P.C., which discloses the followings:

I. The accused is the brother-in-law of the victim.

II. The accused married elder sister of the victim 12 years back.

III. The victim had been in love with the accused for last three years.

IV. Her elder sister expired on 12.02.2017 and after ritual of the decease were over, accused did not marry her and married another girl.

- V. After knowing the aforesaid fact, the victim entered the house of the accused and then the accused left his residence with his wife and she was still living in the house of the accused with her brother and sister-in-law
7. On the basis of the aforesaid material, the investigating officer filed charge-sheet against the present accused under Section 493/376/420 IPC. The aforesaid charge-sheet is under challenged.
8. Mr. Purakayastha, learned counsel for the petitioner while pressing for quashment of the aforesaid proceeding submits that there is no whisper either in the FIR or in the statement recorded under Section 161 or under Section 164 of the victim which discloses that there was any initial deception in the mind of the present petitioner to have a sexual intercourse and to make a false promise. Therefore mere breaking of a promise even if any shall not constitute any offence under Section 420 IPC inasmuch as such consensual sex cannot be treated as an offence under Section 376 IPC. Therefore, even if the entire material on record i.e. the FIR, statement of the victim recorded under Section 164 Cr.P.C. and her statement recorded under Section 161 Cr.P.C. taken as a whole to be correct, no case either Section 493 IPC or 376 IPC or 420 is made out. Accordingly, he submits that in the event if the trial is allowed, the petitioner will suffer immense and will have to face a trial which is having no bases.
9. Per contra Mr. Ahmed, learned counsel for the respondent No. 2 relying on judgment of Hon'ble Apex court in the case of ***Ramveer Upadhyay another vs. State of UP and another*** reported in ***2022 SCC OnLine SC 484*** submits that where the is promise or not and whether the

consent was given on the basis of false promise is a subject matter of trial and such determination cannot be made in exercise of power under Section 482 Cr.P.C. inasmuch as the investigating authority has already filed charge-sheet in the case on the basis of the material collected.

10. The power of this court under Section 482 Cr.P.C. for quashment of FIR as well as charge-sheet has been dealt by the Hon'ble Apex Court on different occasions and most celebrated judgment is the ***State of Haryana and Ors vs. Bhajanlal and Ors. reported in 1992 (suplii) 1 SCC 335***. At paragraph 102, the Hon'ble Apex Court laid down the following proposition for exercise of power under Section 482 Cr.P.C. for quashment of FIR as well as charge-sheet in criminal proceeding, which is quoted hereinbelow:

“8.1. In the exercise of the extra-ordinary power under [Article 226](#) or the inherent powers under [Section 482](#) of the Code of Criminal Procedure, the following categories of cases are given by way of illustration wherein such power could be exercised either to prevent abuse of the process of any Court or otherwise to secure the ends of justice, though it may not be possible to lay down any precise, clearly defined and sufficiently channelised and inflexible guide- i7 myriad kinds of cases wherein such power should be exercised:

(a) where the allegations made in the First Information Report or the complaint, even if they are taken at their face value and accepted in their entirety do not prima facie constitute any offence or make out a case against the accused;

(b) where the allegations in the First Information Report and other materials, if any, accompanying the F.I.R. do not disclose a cognizable offence, justifying an investigation by police officers under [Section 156\(1\)](#) of the Code except under an order of a Magistrate within the purview of [Section 155\(2\)](#) of the Code;

(c) where the uncontroverted allegations made in the FIR or 'complaint and the evidence collected in support of the same do not disclose the commission of any offence and make out a case against the accused;

(d) where the allegations in the FIR do not constitute a cognizable offence but constitute only a non-cognizable offence, no investigation is permitted by a police officer without an order of a Magistrate as contemplated under [Section 155\(2\)](#) of the Code;

(e) where the allegations made in the FIR or complaint are so absurd and inherently improbable on the basis of which no prudent person can ever reach a just conclusion that there is sufficient ground for proceeding against the accused;

(f) where there is an express legal bar engrafted in any of the provisions of the Code or the concerned Act (under which a criminal proceeding is instituted) to the institution and continuance of the proceedings and/or where there is a specific provision in the Code or the concerned Act, providing efficacious redress for the grievance of the aggrieved party;

(g) 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.”

11. The Hon'ble Apex court in the case of ***Pramod Suryabhan Pawar Vs. State of Maharashtra and Anr. reported in (2019) 9 SCC 608*** while dealing with the scope and content of concept so far to Section 376 IPC and the explanation to thereunder and the implication of Section 90 with respect to Section 375 laid down the following proposition of law:

- I. Though Section 90 IPC does not define the term 'consent', consent based on a 'miss-conception of fact is not a consent in the eye of law'.
- II. Thus in case of a woman engaging in sexual relation on false promise to marry her consent is based on miss-conception of fact and such sexual act will amount to rape.
- III. Where promise to marry is false and the intention of maker at the time of making promise itself was not abide by it but to deceive woman to convince her to engage in sexual relation, there is a misconception of fact that vitiate woman concept.
- IV. A breach of promise cannot be said to be a false promise specially in the concept of promise to marry and there is distinction between false promise given on the understanding by the maker that it will be broken and the breach of promise which is made in good faith but subsequently not fulfilled.

- V. To establish false promise, the maker of promise should have no intention of upholding his word at the time of giving it.

12. While dealing with the issue of when quashment of an allegation of rape based on false promise to marry in exercise of the power under Section 482 Cr.P.C., the Hon'ble Apex Court in case of Pramod Suryabhan Pawar (supra) laid down the following proposition:

- I. The FIR should on the face of it reflects that promise of the accused was false or that the informant engaged in sexual relation on the basis of such promise.

13. Now coming to the present case the following facts are discernible:

- I. From the FIR, the statement recorded under Section 164 Cr.P.C. and the statement recorded under Section 161 Cr.P.C. during the course of investigation that she maintained a love relation with the accused during the subsistence of the marriage of the accused with her elder sister and there was a promise of marriage during that period itself.
- II. Therefore, it is clear that the petitioner was well aware of the fact that such promise to marry made during the subsistence of valid marriage of the accused.
- III. The averment made in the FIR, statement recorded under 164 Cr.P.C. and Section 161 Cr.P.C. do not on their faces indicate that the promise by the petitioner was false or that the informant engaged in sexual relation on the basis of such promise in fact it was stated in the statement recorded under Section 161 Cr.P.C. that the ring

ceremony was done after the death of her elder sister which clearly shows that there was no deviation from any promise that alleged to have been done.

IV. Therefore, in view of the aforesaid it cannot be said that accused had an initial deception in his mind not to marry the victim.

14. Therefore, in the considered opinion of this court on the face of the material as collected by the investigation authority no case either under Section 493 or Section 376 or Section 420 IPC is made out.

15. Accordingly, the present criminal petition stands allowed by setting aside and quashing entire proceeding of criminal proceeding being GR case No. 713/2017 registered under Section 493/376/420/34 IPC.

16. LCR be sent back.

JUDGE

Comparing Assistant