

Court No. - 89

Case :- APPLICATION U/S 482 No. - 40088 of 2023

Applicant :- Mohd. Rizwan

Opposite Party :- State of U.P. and Another

Counsel for Applicant :- Vivek Kumar Singh

Counsel for Opposite Party :- G.A.

Hon'ble Deepak Verma,J.

1. Heard learned counsel for the applicant; learned A.G.A. for the State and perused the record.

2. The present 482 Cr.P.C. application has been filed to quash the charge sheet dated 10.12.2022; cognizance order dated 24.04.2023 as well as entire proceedings of Crl. Case No.696 of 2023 (State Vs. Rizwan) arising out of Case Crime No.189 of 2022, under Sections 417, 493 I.P.C., P.S. Gaura Badshahpur, District Jaunpur.

3. Counsel for the applicant submits that no offence against the applicant is disclosed and the present prosecution has been instituted with a malafide intention for the purposes of harassment. On perusal of statement of victim recorded under Sections 161 Cr.P.C. and 164 Cr.P.C. and the F.I.R., it is apparent that victim herself went with the applicant; lived with the him and made physical relationship with the applicant. He next submits that victim was minor at the time of incident and allegation against the applicant is also not supported by medical examination report. No case under Section 376 I.P.C. is made out. In support of his submission counsel for the applicant has placed reliance upon paragraphs no. 14 and 16 of the judgment of Apex Court in **Pramod Suryabhan Pawar Vs. The State of Maharashtra and another**. The Hon. Apex Court while discussing the dispute has observed that:

"14. In the present case, the "misconception of fact" alleged by the complainant is the appellant's promise to marry her. Specifically in the context of a promise to marry, this Court has observed that there is a distinction between a false promise given on the understanding by the maker that it will be broken, and the breach of a promise which is made in good faith but subsequently not fulfilled. In Anurag Soni v State of Chhattisgarh⁹, this Court held:

"37. The sum and substance of the aforesaid decisions would be that if it is established and proved that from the inception the accused who gave the promise to the prosecutrix to marry, did not have any intention to marry and

the prosecutrix gave the consent for sexual intercourse on such an assurance by the accused that he would marry her, such a consent can be said to be a consent obtained on a misconception of fact as per [Section 90](#) of the IPC and, in such a case, such a consent would not excuse the offender and such an offender can be said to have committed the rape as defined under [Sections 375](#) of the IPC and can be convicted for the offence under [Section 376](#) of the IPC.”

16. 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. The “consent” of a woman under [Section 375](#) is vitiated on the ground of a “misconception of fact” where such misconception was the basis for her choosing to engage in the said act. In Deepak Gulati this Court observed:

“21. ... There is a distinction between the mere breach of a promise, and not fulfilling a false promise. Thus, the court must examine whether there was made, at an early stage a false promise of marriage by the accused; and whether the consent involved was given after wholly understanding the nature and consequences of sexual indulgence. There may be a case where the prosecutrix agrees to have sexual intercourse on account of her love and passion for the accused, and not solely on account of misrepresentation made to her by the accused, or where an accused on account of circumstances which he could not have foreseen, or which were beyond his control, was unable to marry her, despite having every intention to do so. Such cases must be treated differently.”

4. Counsel for the applicant submits that evidence collected during investigation and in view of the judgment of Apex Court in Pramod Suryabhan Pawar (supra), no offence is made out against the applicant under Sections 417 and 493 I.P.C.

5. Learned A.G.A. vehemently opposed the prayer for quashing the proceedings of the aforesaid case and submitted that from perusal of Section 493 I.P.C. and contents of F.I.R., prima facie offence against the applicant is made out. The Investigating Officer has rightly submitted the charge sheet under Section 493 I.P.C. It has been next submitted that the counsel for the applicant has placed reliance over the judgment of Hon. Apex Court in which the court has discussed the offence under Sections 375 and 376 I.P.C. whereas in the instant matter, dispute relates to offence under Section 493 I.P.C. The learned Magistrate has rightly summoned the applicant in the aforesaid case.

6. Section 493 I.P.C. reads as under:

"493.Cohabitation caused by a man deceitfully inducing a belief of lawful marriage.—Every man who by deceit causes any woman who is not lawfully married to him to believe that she is lawfully married to him and to cohabit or have sexual intercourse with him in that belief, shall be punished with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine."

7. From the perusal of Section 493 I.P.C and the statement of victim recorded under Section 161 Cr.P.C. and 164 Cr.P.C., prima facie offence under section 493 I.P.C. is made out against the applicant and the learned Magistrate has rightly summoned the applicant in the offence under Sections 417 and 493 I.P.C. The reliance placed upon the judgment of Apex Court in **Pramod Suryabhan Pawar** (supra) by the counsel for the applicant is not applicable in the present case. Hon. Apex Court has discussed the offence relating to Section 375 and 376 I.P.C. In the instant matter F.I.R. has been registered under Sections 366, 376, 314 and 120-B I.P.C. and the Investigating Officer after investigation submitted charge sheet under Sections 417 and 493 I.P.C. The summoning order does not require any interference, at this stage, and in view of Apex Court Judgment, material on record and looking into the facts of the case, at this stage, it cannot be said that no offence is made out against the applicant. All the submissions made at the bar relate to the disputed questions of fact, which cannot be adjudicated upon by this Court under Section 482 Cr.P.C. No ground for quashing the proceedings of the aforesaid case, is made out which may call for any interference by this Court in exercise of its inherent power under Section 482 Cr.P.C.

8. The present application under Section 482 Cr.P.C. lacks merit and is, accordingly, **dismissed**.

Order Date :- 5.12.2023

Meenu Singh