

Court No. - 27

Case :- APPLICATION U/S 482 No. - 646 of 2024

Applicant :- Pragat Gupta Alias Satyam

Opposite Party :- State Of U.P. Thru. Prin. Secy. Home Govt.
Civil Sectr. Lko. And Another

Counsel for Applicant :- Siddhartha Sinha

Counsel for Opposite Party :- G.A., Shishir Pradhan

Hon'ble Subhash Vidyarthi, J.

1. Heard Sri Siddhartha Sinha, the learned counsel for the applicant, Sri Akhilesh Kumar Vyas, the learned A.G.A. appearing on behalf of the State and Sri Shishir Pradhan, the learned counsel for the opposite party no.2.

2. By means of the instant application under Section 482 Cr.P.C. the applicant has sought quashing of the impugned order dated 17.07.2023, summoning the applicant to face trial and the entire proceedings of Complaint Case No.33 of 2019: Vinita Chaudhari Vs. Pragat Gupta, under Sections 493, 496 & 506 I.P.C. Police Station Bachhrawan, District Raebareli pending in the court of learned Civil Judge (Junior Division)/FTC-III, Raebareli.

3. The opposite party no.2 has filed a complaint dated 07.01.2019, under Sections 376, 506 I.P.C. stating that there was a friendship between the opposite party no.2 and the applicant. The applicant visited Raebareli thrice to meet the complainant and asked her to marry him. He went to the house of the complainant and expressed his desire to marry the complainant before her mother also. He gave copies of his educational

certificates to the complainant's mother and the complainant had given photocopies of her educational certificates to the applicant.

4. The applicant made a phone call to the complainant at about 2.00 p.m. on 14.05.2018 and called her to make her meet his parents. The complainant went to Bachhrawan by bus from where the applicant took her to a garage, put sindoor (Vermilion) on her head and said that very soon he will perform court marriage with her. In spite of the complainant's objection he forcibly raped her in garage. The applicant thereafter kept on avoiding to marry her on one pretext or the other and in the month of July he met the complainant at Raebareli and deleted whatsapp chat records from her mobile phone. When the complainant pressurized the applicant to marry her then on 28.08.2018 he stated that he would not continue any relation with her.

5. It is stated in the complainant that the complainant had earlier lodged an F.I.R. No.635 of 2018, under Sections 376, 506 I.P.C. in Police Station Bachhrawan. Her medico legal examination was conducted on 03.10.2018 and thereafter the police pressurized her to enter into a settlement but she declined the same. Thereafter, her statement was recorded before the Magistrate under Section 164 Cr.P.C. She stated that the police was not carrying out investigation in furtherance of the F.I.R. properly and was threatening her to file a final report in case she does not enter into a settlement and therefore she was filing complaint.

6. From the averments made in the complaint, it appears that the complainant was filed when the investigation in furtherance of an F.I.R. lodged by the complainant on same set of allegations was still pending.

7. In her statement recorded under Section 200 Cr.P.C. the complainant supported the complaint allegations and she stated that on 14.05.2018 the applicant had forcibly put sindoor on her head, raped her and promised to marry her but he did not marry her. She further stated that she knows the applicant for the past one and half years. She had made him meet her parents and the applicant had asked her parent about marrying her. Both of them used to talk to each other till 26.08.2018, on which date he told telephonically that he was severing his relations with the complainant.

8. The statements of the complainant's mother and uncle were recorded under Section 202 Cr.P.C. on 27.07.2019 and they reiterated the version of complaint. One Medical Officer of Community Health Centre, Bachhrawan was also examined as a witness and she had stated that she had medically examined the complainant on 03.10.2018 but as four and half months had elapsed since after the alleged incident she could not give any specific opinion regarding commission of rape. A Sub-Inspector was also examined by the complainant who had proved the F.I.R. lodged by the complainant.

9. The Station House Officer has submitted a report to the learned Additional Chief Judicial Magistrate stating that in the investigation conducted in furtherance of F.I.R. No.635 of 2018 filed by the complainant under Sections 376, 506 I.P.C. he had conducted the investigation and from the whatsapp chat record and the call detail records of the mobile phones of the complainant and the applicant, merely this much could be established that there was a love affair between them. No evidence could be collected regarding commission of rape or criminal intimidation. As per the call detail records, the

complainant's presence in the locality where the offence was allegedly committed could not be established on the date of the incident and even after the alleged date of incident the complainant continued to communicate with the applicant, from which it appears that there was a love affair between them.

10. On 11.10.2019, the complainant gave an application to the learned Judicial Magistrate requesting that the final report submitted by the Investigating Officer in furtherance of F.I.R. lodged by her and the complaint be consolidated. On 17.07.2023 the learned trial court passed an order summoning the applicant to face trial for the offences under Sections 493, 496 and 506 I.P.C.

11. While assailing the validity of the aforesaid order, Sri Siddharth Sinha, the learned counsel for the applicant submits that from the allegations levelled in the complaint or the statement of the complainant and other witnesses examined under Section 202 Cr.P.C., the ingredients of offences under Sections 493, 496 and 506 I.P.C. are not made out and therefore the summoning order is bad and is liable to be quashed.

12. Per contra, Sri Shishir Pradhan, the learned counsel for the opposite party no.2-complainant has submitted that the complainant had stated in her statement recorded under Section 200 Cr.P.C. that the applicant had put sindoor on her head which is sufficient to give rise to a belief in the mind of any Indian lady that she has got married to the person putting sindoor on her head. Therefore, the ingredients of Sections 493, 496 and 506 I.P.C. are made out. He has placed reliance on a judgment of the Hon'ble Supreme Court in the case of **Ram Chandra Bhagat Vs. State of Jharkhand : (2013) 1 SCC 562**, wherein the Hon'ble

Supreme Court has held that inducement by a person deceitfully to a woman to change her status from unmarried woman to a lawfully married woman and on that inducement making her cohabit with him in the belief that she is lawfully married to him is what constitutes an offence under Section 493 I.P.C.

13. I have considered the submissions made by parties counsel and gone through the material placed on record.

14. The applicant has been summoned to face trial under Sections 493, 496, 506 I.P.C. Section 493 I.P.C. reads as follows: -

“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.

15. So far as the law laid down in **Ram Chandra Bhagat** (Supra) relied upon by the learned counsel for the opposite party no.2 is concerned, in that case the Court had found that the appellant-accused had signed a form and had got the same signed by the complainant also for getting married. The aforesaid fact had made the complainant believe that the appellant-accused had married her and, therefore, she had started residing with him as his wife, without the appellant having actually married the complainant. The persons related to the complainant and the accused were also made to believe that the complainant was the wife of the appellant, though rituals necessary for Hindu marriage had never been performed and admittedly no marriage had taken place between the complainant and the appellant but

only on the basis of the documents signed by the complainant at the instance of the appellant-accused, the complainant was made to believe that she was a lawfully married wife of the appellant-accused. The complainant had started residing with the accused as she believed that she had lawfully married the appellant-accused and this fact was also reflected in the voters' list, which mentioned the name of the complainant as the wife of the appellant. As a result of the cohabitation, the complainant had given birth to two children. The appellant-accused had acknowledged the fact that the said two children were his children. Several ceremonies in relation to the birth of the children had also been performed by the appellant-accused. In the aforesaid factual background, the Hon'ble Supreme Court held that: -

“12. Thus, upon perusal of the evidence, we find that there was sufficient evidence to the effect that the appellant-accused has deceived the complainant, which ultimately resulted into a belief in the mind of the complainant that she was a lawfully married wife of the appellant-accused, though she was not. The aforestated evidence which has been found by all the courts below is sufficient to show that the complainant was made to believe by the deceitful act of the appellant-accused that she was lawfully married to the appellant-accused. The complainant had also cohabited with the appellant and had sexual intercourse with the appellant-accused and thereby she had given birth to two children also.

13. In the aforestated set of circumstances, when there is ample evidence to the effect that only on the deceitful representation of the appellant-accused the complainant believed herself to be a lawfully married wife of the appellant-accused and as she had cohabited with the appellant-accused, there cannot be any doubt with regard to commission of an offence under the provisions of Section 493 IPC.”

16. In the present case, although the complainant stated that the applicant had taken her to her garage and had forcibly put sindoor on her head, she has not stated that this act of the applicant had made her believe that she had become wife of the applicant, rather she categorically stated in the same breath that the applicant did not fulfill his promise of marrying her. There is absolutely no averment that the applicant and the complainant have at any point of time cohabited as husband and wife or that they have projected themselves as such to their relatives or to the society. The facts of the present case are in no way similar to the facts of **Ram Chandra Bhagat** (Supra) and, therefore, the principle of law laid down in that case would not apply to the present case.

17. In **Arun Singh v. State of U.P.**, (2020) 3 SCC 736, the Hon'ble Supreme Court referred to the judgment in the case of **Ram Chandra Bhagat** (Supra) and explained the essential ingredients to constitute the offence under Section 493 I.P.C. as follows: -

“19. A plain reading of the section goes to show that in order to constitute an offence under this section, it has to be demonstrated that a man has deceitfully caused any woman, who is not lawfully married to him, to believe that she is lawfully married wife and thereby to cohabit with him. In other words, the accused must induce a woman, not lawfully married to him, to believe that she is married to him and as a result of such misrepresentation, woman should believe that she was lawfully married to the man and thus there should be cohabitation or sexual intercourse.

* * *

21. The essence of an offence under Section 493 IPC is, therefore, practice of deception by a man on a woman as a consequence of which the woman is led to believe that she is lawfully married to him although she is not and then make her cohabit with him.

22. Deceit can be said to be a false statement of fact made by a person knowingly and recklessly with the intent that it shall be acted upon by another who on believing the same after having acted thereupon suffers an injury. It is an attempt to deceive and includes such declaration and statement that misleads others or causes him to believe which otherwise is false and incorrect.

23. In other words, to constitute an offence under Section 493 IPC, the allegations in the FIR must demonstrate that the appellant had practised deception on the daughter of the complainant causing a false belief of existence of lawful marriage and which led her to cohabit with him.”

18. As per the statement of the complainant herself, there was a loving relationship between her and the applicant. The applicant had met her mother and talked about marrying her. The applicant had called her to Bacchrawan to make her meet his parents but he took her to garage situated at some distance from his house, forcibly put sindoor on her head, raped her, promised to marry her and she went back home but the applicant did not marry her. The complaint nowhere stated that at any point of time the applicant had made her believe that she was lawfully married to him or that the applicant had made her go through the ceremony of being married. Therefore, ingredients essential for making out commission of offence under Section 493 I.P.C. are missing in the present case.

19. The applicant has also been summoned to face trial for offence under Section 496 I.P.C., which provides as follows: -

“496. Marriage ceremony fraudulently gone through without lawful marriage.—

Whoever, dishonestly or with a fraudulent intention, goes through the ceremony of being married, knowing that he is not thereby lawfully married, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine.”

20. The complainant does not allege that the applicant had gone through the ceremony of being married, rather she has specifically stated that the applicant did not marry her in spite of having promised to do so. Therefore, the ingredients of Section 496 I.P.C. are also not made out from the case set up by the complainant herself.

21. The next allegation is regarding commission of offence under Section 506 I.P.C., which reads as follows: -

506. Punishment for criminal intimidation.—

Whoever commits, the offence of criminal intimidation shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both; If threat be to cause death or grievous hurt, etc.— And if the threat be to cause death or grievous hurt, or to cause the destruction of any property by fire, or to cause an offence punishable with death or imprisonment for life, or with imprisonment for a term which may extend to seven years, or to impute, unchastity to a woman, shall be punished with imprisonment of either description for a term which may extend to seven years, or with fine, or with both.”

22. There is absolutely no averment made by the complainant or any other witness so as to even *prima facie* establish that the applicant had threatened the complainant that any injury to her person, reputation or property, or to the person or reputation of anyone in whom that person is interested, with intent to cause alarm to the complainant, or to do any act which she is not legally bound to do, or to omit to do any such act. Therefore, the commission of offence under Section 506 I.P.C. is also not made out against the applicant on the basis of the averments made by the complainant in and her witnesses.

23. From the foregoing discussion, it appears that the learned trial court has summoned the applicant to face the trial for the offences under Sections 493, 496, 506 I.P.C without taking into consideration the aforesaid aspects of the matter.

24. Resultantly, the application under Section 482 Cr.P.C. is **allowed.** The impugned order dated 17.07.2023, summoning the applicant to face trial and the entire proceedings of Complaint Case No.33 of 2019: Vinita Chaudhari Vs. Pragat Gupta, under Sections 493, 496 & 506 I.P.C. Police Station Bachhrawan, District Raebareli pending in the court of learned Civil Judge (Junior Division)/FTC-III, Raebareli are hereby quashed.

(Subhash Vidyarthi, J.)

Order Date - 09.02.2024

Ram.