

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

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Reserved on: 20th March, 2017

Decided on: 24th March, 2017

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CRL.M.C. 2454/2016 & Crl.M.A. 10521/2016 (stay)

MOHIT NAGAR

..... Petitioner

Represented by: Mr.Parth Goswami with
Mr.Hemant Raj, Advs.

versus

STATE & ANR

..... Respondents

Represented by: Mr.Ravi Nayak, APP for State.
Mr.Shrey Sharawat with
Ms.Kanishk Singh, Advs. for
respondent No.2.
Inspector Anil Malik, PS
Greater Kailash.

CORAM:

HON'BLE MS. JUSTICE MUKTA GUPTA

1. By the present petition the petitioner seeks quashing of FIR No. 135/2016 under Sections 376/506 IPC registered at PS Greater Kailash-I on the complaint of respondent No.2 and the consequent proceedings thereto including the charge-sheet filed.

2. The grounds pressed for quashing of the FIR and the proceedings pursuant thereto are that the respondent No.2 has lodged similar FIRs against other persons on the same modus-operandi, FIR was lodged malafidely with an intention to extort money and since at the time of registration of above-noted FIR the respondent No.2 was married as per her own showing there could be no promise to marry her and on the said pretext the petitioner could not have established physical relationship. It is further contended that the

respondent No.2 being an educated lady, mother of an eight year old daughter, married twice with a subsisting marriage, the allegations that sexual acts with the petitioner were on a false promise of marriage are belied on the face of it.

3. Before dealing with the facts of the present case it would be appropriate to note the law laid down by the Supreme Court in the decision reported as (2013) 3 SCC 330 Rajiv Thapar & Ors. Vs. Madan Lal Kapoor while laying down the guidelines for quashing of a FIR and the proceedings pursuant thereto in exercise of its power under Section 482 Cr.P.C. by the High Court, the Supreme Court delineated the steps to be taken to determine the veracity of prayer as under:

“29. The issue being examined in the instant case is the jurisdiction of the High Court under Section 482 CrPC, if it chooses to quash the initiation of the prosecution against an accused at the stage of issuing process, or at the stage of committal, or even at the stage of framing of charges. These are all stages before the commencement of the actual trial. The same parameters would naturally be available for later stages as well. The power vested in the High Court under Section 482 CrPC, at the stages referred to hereinabove, would have far-reaching consequences inasmuch as it would negate the prosecution's/complainant's case without allowing the prosecution/complainant to lead evidence. Such a determination must always be rendered with caution, care and circumspection. To invoke its inherent jurisdiction under Section 482 CrPC the High Court has to be fully satisfied that the material produced by the accused is such that would lead to the conclusion that his/their defence is based on sound, reasonable, and indubitable facts; the material produced is such as would rule out and displace the assertions contained in the charges levelled against the accused; and the material produced is such as would clearly reject and overrule the veracity of the allegations contained in the accusations levelled

by the prosecution/complainant. It should be sufficient to rule out, reject and discard the accusations levelled by the prosecution/complainant, without the necessity of recording any evidence. For this the material relied upon by the defence should not have been refuted, or alternatively, cannot be justifiably refuted, being material of sterling and impeccable quality. The material relied upon by the accused should be such as would persuade a reasonable person to dismiss and condemn the actual basis of the accusations as false. In such a situation, the judicial conscience of the High Court would persuade it to exercise its power under Section 482 CrPC to quash such criminal proceedings, for that would prevent abuse of process of the court, and secure the ends of justice.

30. Based on the factors canvassed in the foregoing paragraphs, we would delineate the following steps to determine the veracity of a prayer for quashment raised by an accused by invoking the power vested in the High Court under Section 482 CrPC:

30.1. Step one: whether the material relied upon by the accused is sound, reasonable, and indubitable i.e. the material is of sterling and impeccable quality?

30.2. Step two: whether the material relied upon by the accused would rule out the assertions contained in the charges levelled against the accused i.e. the material is sufficient to reject and overrule the factual assertions contained in the complaint i.e. the material is such as would persuade a reasonable person to dismiss and condemn the factual basis of the accusations as false?

30.3. Step three: whether the material relied upon by the accused has not been refuted by the prosecution/complainant; and/or the material is such that it cannot be justifiably refuted by the prosecution/complainant?

30.4. Step four: whether proceeding with the trial would result in an abuse of process of the court, and would not serve the ends of justice?

30.5. If the answer to all the steps is in the affirmative, the judicial conscience of the High Court should persuade it to quash such criminal proceedings in exercise of power vested in it under Section 482 CrPC. Such exercise of power, besides doing justice to the accused, would save precious court time, which would otherwise be wasted in holding such a trial (as well as proceedings arising therefrom) specially when it is clear that the same would not conclude in the conviction of the accused.”

4. Following the decision in Rajiv Thapar (supra) Supreme Court in the decision reported as (2013) 9 SCC 293 Prashant Bharti Vs. State (NCT of Delhi) dealing with a similar fact situation noting the facts of the complaint therein, material collected in investigation and placed by the accused therein quashed the FIR as under:

“23. The details in respect of each aspect of the matter, arising out of the complaints made by Priya on 16-2-2007 and 21-2-2007 have been examined in extensive detail in the foregoing paragraphs. We shall now determine whether the steps noticed by this Court in the judgment extracted hereinabove can be stated to have been satisfied. Insofar as the instant aspect of the matter is concerned, the factual details referred to in the foregoing paragraphs are being summarised hereafter:

23.1. Firstly, the appellant-accused was in Sector 37, Noida in the State of Uttar Pradesh on 15-2-2007. He was at Noida before 7.55 p.m. He, thereafter, remained at different places within Noida and then at Shakarpur, Ghaziabad, Patparganj, Jorbagh, etc. From 9.15 p.m. to 11.30 p.m. on 15-2-2007, he remained present at a marriage anniversary function celebrated at Rangoli Lawns at Ghaziabad, Uttar Pradesh. An affidavit to the aforesaid effect filed by the appellant-accused was found to be correct by the investigating officer on the basis of his mobile phone call details. The accused was therefore not at the place of occurrence, as alleged in the complaint dated 16-2-2007.

23.2. Secondly, verification of the mobile phone call details of the complainant/prosecutrix Priya revealed, that on 15-2-2007, no calls were made by the appellant-accused to the complainant/prosecutrix, and that, it was the complainant/prosecutrix who had made calls to him.

23.3. Thirdly, the complainant/prosecutrix, on and around the time referred to in the complaint dated 16-2-2007, was at different places of New Delhi i.e. in Defence Colony, Greater Kailash, Andrews Ganj and finally at Tughlaqabad Extension, as per the verification of the investigating officer on the basis of her mobile phone call details. The complainant was also not at the place of occurrence, as she herself alleged in the complaint dated 16-2-2007.

23.4. Fourthly, at the time when the complainant/prosecutrix alleged that the appellant-accused had misbehaved with her and had outraged her modesty on 15-2-2007 (as per her complaint dated 16-2-2007), she was actually in conversation with her friends (as per the verification made by the investigating officer on the basis of her mobile phone call details).

23.5. Fifthly, even though the complainant/prosecutrix had merely alleged in her complaint dated 16-2-2007 that the accused had outraged her modesty by touching her breasts, she had subsequently through a supplementary statement (made on 21-2-2007), levelled allegations against the accused for the offence of rape.

23.6. Sixthly, even though the complainant/prosecutrix was married to one Manoj Kumar Soni, s/o Seeta Ram Soni (as indicated in an affidavit appended to the Delhi Police format for information of tenants and duly verified by the investigating officer, wherein she had described herself as married), in the complaint made to the police (on 16-2-2007 and 21-2-2007), she had suggested that she was unmarried.

23.7. Seventhly, as per the judgment and decree of the Civil Judge (Senior Division), Kanpur (Rural) dated 23-9-2008, the complainant was married to Lalji Porwal on 14-6-2003. The aforesaid marriage subsisted till 23-9-2008. The allegations

made by the complainant dated 16-2-2007 and 21-2-2007 pertain to occurrences of 23-12-2006, 25-12-2006, 1-1-2007 and 15-2-2007 i.e. positively during the subsistence of her marriage with Lalji Porwal. Thereafter, the complainant Priya married another man Manoj on 30-9-2008. This is evidenced by a "certificate of marriage" dated 30-9-2008. In view of the aforesaid, it is apparent that the complainant could not have been induced into a physical relationship based on an assurance of marriage.

23.8. Eighthly, the physical relationship between the complainant and the accused was admittedly consensual. In her complaints Priya had however asserted, that her consent was based on a false assurance of marriage by the accused. Since the aspect of assurance stands falsified, the acknowledged consensual physical relationship between the parties would not constitute an offence under Section 376 IPC. Especially because the complainant was a major on the date of occurrences, which fact emerges from the "certificate of marriage" dated 30-9-2008, indicating her date of birth as 17-7-1986.

23.9. Ninthly, as per the medical report recorded by AIIMS dated 16-2-2007, the examination of the complainant did not evidence her having been poisoned. The instant allegation made by the complainant cannot now be established because even in the medical report dated 16-2-2007 it was observed that blood samples could not be sent for examination because of the intervening delay. For the same reason even the allegations levelled by the accused of having been administered some intoxicant in a cold drink (Pepsi) cannot now be established by cogent evidence.

23.10. Tenthly, the factual position indicated in the charge-sheet dated 28-6-2007, that despite best efforts made by the investigating officer, the police could not recover the container of the cold drink (Pepsi) or the glass from which the complainant had consumed the same. The allegations made by the complainant could not be verified even by the police from any direct or scientific evidence, is apparent from a perusal of the charge-sheet dated 28-6-2007.

23.11. Eleventhly, as per the medical report recorded by AIIMS dated 21-2-2007 the assertions made by the complainant that the accused had physical relations with her on 23-12-2006, 25-12-2006 and 1-1-2007, cannot likewise be verified as opined in the medical report, on account of delay between the dates of occurrences and her eventual medical examination on 21-2-2007. It was for this reason, that neither the vaginal smear was taken, nor her clothes were sent for forensic examination.

24. Most importantly, as against the aforesaid allegations, no pleadings whatsoever have been filed by the complainant. Even during the course of hearing, the material relied upon by the accused was not refuted. As a matter of fact, the complainant/prosecutrix had herself approached the High Court, with the prayer that the first information lodged by her, be quashed. It would therefore be legitimate to conclude, in the facts and circumstances of this case, that the material relied upon by the accused has not been refuted by the complainant/prosecutrix. Even in the charge-sheet dated 28-6-2007, (extracted above) the investigating officer has acknowledged, that he could not find any proof to substantiate the charges. The charge-sheet had been filed only on the basis of the statement of the complainant/prosecutrix under Section 164 CrPC.

25. Based on the holistic consideration of the facts and circumstances summarised in the foregoing two paragraphs; we are satisfied, that all the steps delineated by this Court in *Rajiv Thapar* case [*Rajiv Thapar v. Madan Lal Kapoor*, (2013) 3 SCC 330 : (2013) 3 SCC (Cri) 158] stand satisfied. All the steps can only be answered in the affirmative. We therefore have no hesitation whatsoever in concluding, that judicial conscience of the High Court ought to have persuaded it, on the basis of the material available before it, while passing the impugned order, to quash the criminal proceedings initiated against the appellant-accused, in exercise of the inherent powers vested with it under Section 482 CrPC. Accordingly, based on the conclusions drawn hereinabove, we are satisfied that the first information report registered under Sections 328, 354 and 376

of the Penal Code against the appellant-accused, and the consequential charge-sheet dated 28-6-2007, as also the framing of charges by the Additional Sessions Judge, New Delhi on 1-12-2008, deserves to be quashed. The same are accordingly quashed.”

5. The allegations of the respondent No.2 whose identity has been concealed in FIR No.135/2016 are:

“Complaint against Mohit Nagar of Rape. Respected Sir, This is to bring to your kind notice that I ‘GB’ D/o ‘B’ currently residing at GK-I S-331 2nd Floor New Delhi. I am a divorcee and a single mother of 8 years old daughter since I got divorced in 2012. I was looking to get settled again to provide a better life to me and my daughter. I met one Mohit Nagar at Shaadi.com on 8th of December 2015 at Defence Colony Market, New Delhi. On 20th/21st December, 2015 he came to my place at Kailash Colony and proposed to marry me. He also insisted on getting physically involved with me. I asked him to wait till we get married but he assured me that he will marry me soon. On such assurance and inducement and his promise to marry me, I agreed to have sexual intercourse with him. In the month of January, I asked him to marry me soon but on some pretext or other he kept on ignoring my requests. Mohit Nagar was frequently visiting my house and continued to have sexual intercourse with me while promising that he will marry me soon. It was in February 2016, he started ignoring me. And that is when I started pressurizing him to marry me because it had been two months now and he had been delaying it on some pretext or the other. On Sunday 3rd April, 2016, liked by my repeated request he threatened to kill my daughter and also refuse to marry me. He said that if I insist on marriage he will get my daughter killed. Since then he has been telling me that I am a useless person and I should go and commit suicide. On 4th April he threatened to put my number to various pimps. I feel very threatened for my daughter safety and my life along with the life of my daughter is under threat. He has committed rape on me by falsely promising to marry me and thereby inducing

me to have sexual intercourse with me multiple times. I request you to kindly take strict action against him and initiate the relevant criminal proceedings in the interest of justice.”

6. FIR No.135/2016 under Section 376/506 was lodged on 6th April, 2016. The petitioner has placed on record copy of FIR No.208/2015 lodged by respondent No.2 against one Naveen on 11th February, 2015 at PS New Ashok Nagar which reads as under:

“Sub: Regarding Sexual Harassment. Sir, Myself, ‘GB’ D/o ‘B’ Indirapuram, Ghaziabad. My age is 30 yrs. I am working in an educational institute. Through Shadi.com I came across Naveen Kumar Gautam S/o Bheem Raj Gautam resident of Chirag Delhi, 221 building, 2nd Floor, Near Darga. We started talking with each other and after that the person Naveen proposed me for marriage. In the 1st week of December 2014 Naveen asked me to come to New Ashok Nagar Metro Station from there he picked me and took me to an unknown flat in B-Block, New Ashok Nagar and there forcefully on the pretext of marriage he developed physical relation with me. When I scolded him for this act he gave assurance of marriage to me. After that he developed physical relation with me in my house also and also assurance for marriage. But now Naveen denied for marriage saying that he didn’t want to marry me now. And he just used me. Kindly take legal action against Naveen.”

7. The petitioner has also placed on record copy of petition for dissolution of marriage between Naveen and ‘GB’ being HMA No.244/16 dated 4th March, 2016. In the said petition under Section 13 B(1) of Hindu Marriage Act, 1955 (in short HM Act) for dissolution of marriage by mutual consent, the learned Principal Judge, Family Court, South, Saket after recording the statement of both Naveen and ‘GB’ noted that the marriage between the two was solemnized on 14th February, 2015 as per Hindu Rites and Customs and the parties are living separately since 20th February 2015

due to temperamental differences. As per the settlement Naveen agreed to pay a sum of ₹3 lakhs to 'GB' in full and final settlement of all her claims out of which 'GB' has received ₹2 lakhs and the balance amount of ₹1 lakh was to be paid at the time of recording of statement in second motion petition. Thus, on 9th March, 2016 only statement for first motion for divorce by mutual consent between Naveen and 'GB' was recorded and since no statement for second motion has been recorded till date, the marriage between Naveen and 'GB' subsists legally.

8. In the reply affidavit filed to the present petition by respondent No.2 the documents placed on record in the form of FIR No.138/2015 at New Ashok Nagar against Naveen and certified copy of the order dated 9th March, 2016 passed in HMA No. 244/16 are not disputed. Though orally stated by learned counsel for the respondent No.2 that the respondent No.2 came to know that Naveen was already married when he performed marriage with her and thus her marriage with Naveen was a nullity, however no such fact has been stated in the reply affidavit.

9. The whole basis of FIR No.135/2016 registered against the petitioner by the respondent No.2 is that on 8th December, 2015 they interacted at *shadi.com* and where after they met each other at Defence Colony market and the petitioner proposed to marry her and insisted on getting physically involved with her. It is the case of respondent No.2 that on the assurance, inducement and promise of marriage she agreed to have sexual intercourse with him. Admittedly, the marriage of respondent No.2 with Naveen had not been dissolved by decree of divorce nor was it declared a nullity when the alleged offence took place from December 2015 till 3rd April, 2016 where after the respondent No.2 lodged the above-noted FIR on 6th April, 2016.

When respondent No.2 could not have lawfully married the petitioner on 3rd April, 2016 her allegations that the petitioner played fraud on her in receiving her consent for marriage are unfounded. Thus, even taking the allegations on the face of it on the basis of documents of impeccable character in the form of FIR No.138/2015 lodged at New Ashok Nagar and order dated 9th March, 2016 passed in (HMA No.244/16) the ingredients of offence punishable under Section 376 IPC are not made out.

10. On the facts noted above which are not disputed by the respondent No.2 it is evident that:

“i) As per statement under Section 164 Cr.P.C. of the respondent No.2 recorded, her education qualification is MBA and she is doing the job of Government liaison. She has a daughter aged 8 years old.

ii) The allegations in FIR No.135/2016 registered at PS Greater Kailash-I against the petitioner relate to the period end of December 2015 to 4th April, 2016.

iii) Respondent No.2 had lodged FIR No.208/2015 against one Naveen on 11th February, 2015. After registration of FIR No.208/2015 against Naveen she married him on 14th February, 2015 and last resided with him on 20th February, 2015.

iv) The statement for first motion for grant of divorce by mutual consent and the order thereon was passed by the Principal Judge, Family Courts, South, Saket on 9th March, 2016 wherein in the statement of respondent No.2 there is an admission of marriage subsisting. Thus from end of December, 2015 till 4th April, 2016 even as per the respondent No.2 she had a valid subsisting marriage with Naveen.

v) Once as per the own showing respondent No.2 was having a subsisting marriage with Naveen at the time of alleged offence, she cannot claim that she was forced into sexual relationship on the pretext of marrying and her allegation stands falsified.

vi) In the statement recorded under Section 164 Cr.P.C. of the respondent No.2, the respondent No.2 categorically stated “I do not want to pursue with the case because the misunderstanding with the accused had been sorted out and we are going to get married very soon”.

vii) This statement of respondent No.2 was not recorded by the learned MM on 7th April, 2016 and recorded on 8th April, 2016 giving the respondent No.2 sufficient time to reflect and after assuring that she was under no pressure or threat.

viii) Allegations in respect of offence punishable under Section 506 IPC are vague and general in nature.”

11. The stand of respondent No.2 in the present petition is that after grant of bail, the petitioner refused to marry her. This cannot be ground to reject the petition filed by the petitioner if on undisputed facts and material collected during investigation, no case is made out against the petitioner to proceed further in the charge-sheet filed. Applying the test laid down by the Supreme Court in Rajiv Thapar (supra) it is a fit case where the FIR and the proceedings pursuant thereto are liable to be quashed to prevent the misuse of the criminal justice system and also to prevent the abuse of the process of the Court.

12. Consequently, FIR No. 135/2016 under Sections 376/506 IPC registered at PS Greater Kailash-I, Delhi and proceedings pursuant thereto are hereby quashed.

13. Petition and application are disposed of. Order dasti.

(MUKTA GUPTA)
JUDGE

MARCH 24, 2017
‘ga’