IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CRM A-1224-MA of 2018
Date of Decision : July 02, 2018

State of Haryana

.....Applicant

VERSUS

Sohan Sharma

.....Respondent

CORAM: HON'BLE MR. JUSTICE T.P.S. MANN
HON'BLE MR. JUSTICE FATEHDEEP SINGH

Present : Dr. Sushil Gautam, Deputy A.G., Haryana.

T.P.S. MANN, J.

The State of Haryana has filed the present application under Section 378(3) Cr.P.C. for grant of leave to appeal against the judgment dated 28.3.2018 passed by learned Additional Sessions Judge, Kaithal whereby the respondent-accused stood acquitted of the charges under Sections 376 and 417 IPC.

According to the prosecution, on 4.4.2016, the prosecutrix presented an application to the Inspector General, Kaithal alleging therein that she was resident of Sector-19 Part II Urban Estate, Kaithal and working as a JBT Teacher. The accused had come in her contact about three years ago. He had introduced himself as a businessman and started talking with her on telephone. After sometime, he borrowed Rs. 10,00,000/- and some ornaments from her on the pretext that he needed money for his business. When she asked him to return her money and jewellery, he sought some time. During this period, he told that his wife had died and offered to marry her. On the proposal of his marriage from his side, she asked him to wait for some time. The accused kept on insisting upon her and developed physical relations with her on the pretext of marriage. He committed a fraud upon her by telling her that he wanted to purchase a house at Panchkula for her as he was unable to live without her and they both would reside together at Panchkula. He asked her to transfer her house situated at Kaithal in his favour in order to raise funds for purchasing house at Panchkula. He got sale-deed of house executed from her fraudulently. The accused violated her person and blackmailed her emotionally on the pretext of marriage. She purchased a Verna car for Rs.9,00,000/- on his asking after taking loan from IDBI bank. He took Rs.1,00,000/- from her with promise to return the same soon. The accused had taken approximately Rs.50,00,000/- from her on the pretext of marriage and got her house transferred in his name. When she asked him to marry her and return her money, he told her that he could not marry her as he was already married. He had violated her person repeatedly and also committed fraud upon her in connivance with his wife.

After going through the evidence brought on record by the prosecution and hearing rival submissions advanced by learned counsel for the parties, the trial Court reached the conclusion that the prosecution had failed to prove the guilt of the accused beyond reasonable doubt. Accordingly, the accused was acquitted of the charges levelled against him by giving him the benefit of doubt.

This Court has heard learned State counsel and also perused the impugned judgment of acquittal.

In her affidavit Ex. PW10/A, PW10 Dr. Hamita Gupta, who had conducted medico-legal examination of the prosecutrix, deposed that the victim was 45 years old female and having one son of 17 years of age. In the complaint submitted by the prosecutrix before the Inspector General, she had mentioned that she was a divorcee and working as a JBT Teacher. The accused had come in her contract and started talking with her. He borrowed Rs.10,00,000/- and Rs.1,00,000/- from her. He also started visiting and developed physical relations on the pretext of marriage. He committed fraud upon her and got her house transferred in his name on the pretext of raising funds to purchase a house at Panchkula in her name. She also purchased a Verna car on loan and gave Rs.1,00,000/- to him on his asking. The accused, thus, committed a fraud of Rs.50,00,000/- and got transferred the house of the victim in his name and violated her person repeatedly on the pretext of marriage but neither he solemnized marriage with her nor returned the aforementioned amount and ornaments to her.

In her statement recorded under Section 164 Cr.P.C., she had no where alleged that the accused had borrowed Rs.10,00,000/- and ornaments from her but levelled a new allegation that after about 1½ months, she came to Zirakpur on the asking of the accused, who took her to Morni in a car where they stayed in a hotel and the accused raped her. When she resisted, he told her that there was nothing wrong in it as they would get married soon.

The prosecutrix and the accused had met in the year 2013. The accused used to go to her house, stay with her and violate her person till 2016 on the pretext of marriage. She is not a simple lady. Rather, she is educated, a Government employee and a divorcee. She has also one son about 17 years' old from her previous husband. Thus, she was aware about what she was indulging in and being mature knew about the morality and complications attached.

After submission of the application Ex.PG by the victim but before registration of the case, an enquiry was conducted by the Superintendent of Police, Kaithal in which statements of the victim and the accused were recorded. After concluding the enquiry, the Senior superintendent of Police wrote a letter to the District Attorney for legal opinion. In the said letter

Ex.PLL, it was mentioned that the 17 years' old son of the victim had also participated in the enquiry and stated that his mother used to live with the accused with her own consent and will. At the time of hearing of the bail application of the accused, she stated that she had compromised the matter. During her cross-examination, she also stated that she used to call the accused even after his bail in this case. Thus, it cannot be said that the prosecutrix had given consent under any misconception of fact.

As regards the allegations of cheating, it is the version of the prosecutrix that the accused borrowed Rs.10,00,000/- and some ornaments from her for the purpose of his business; that on the asking of the accused, the prosecutrix purchased a Verna car after taking loan from IDBI bank and the accused used the car; and the accused took Rs.1,00,000/- in cash after getting her house transferred in his name fraudulently vide sale-deed dated 20.10.2014.

PW9 Raj Karan, Chief Manager, SBI, Guhla produced record of loan of the accused. He further deposed that photocopies of agreement Ex.PO, conveyance deed Ex.PP, demand draft Ex.PQ and statements of account of victim Exs.PR and PS were handed over to the Investigating Officer. During his cross-examination, he stated that the agreement was entered into between the parties on 29.9.2014 and the sale-deed executed on

29.10.2014 for a consideration of Rs.40,00,000/-. He further stated that demand draft Ex.PQ was issued by the bank in favour of the prosecutrix and the same was credited in her account. He further stated that the accused had paid the installments upto 31.3.2016. In view of the same, the testimony of PW9 Raj Karan, clearly belies the case of the prosecutrix that the accused cheated her by inducing her to transfer the ownership of the house in question in his favour. The prosecutrix did not produce any evidence to establish that the accused borrowed Rs.10,00,000/- and Rs.1,00,000/- and ornaments from the prosecutrix. Even no time, date or month of the said loan was given by the victim. In the absence of cogent evidence, the version of the prosecutrix regarding advancing the loan of Rs.11,00,000/- and ornaments cannot be believed.

In view of the above, no case is made out for any interference in the impugned judgment of acquittal. The application is without any merit and, therefore, dismissed.

(T.P.S. MANN)
JUDGE

July 02, 2018
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(FATEHDEEP SINGH)
JUDGE

Whether speaking/reasoned : Yes/No
Whether Reportable : Yes/No