

In the High Court of Punjab and Haryana at Chandigarh

**Crl. Misc. No. M-30534 of 2017
Date of Decision: 23.2.2018**

Baljeet Kumar Rao

.....Petitioner

Versus

State of Haryana and another

.....Respondents

CORAM: HON'BLE MRS. JUSTICE ANITA CHAUDHRY

Present: Mr. K.S.Khehar, Advocate
for the petitioner.

Mr. Arun Kumar, AAG, Haryana

Mr. Vivek Suri, Advocate
for respondent No. 2.

ANITA CHAUDHRY, J

The instant petition is for quashing of FIR No. 84 dated 19.5.2017 registered under Sections 376, 506 IPC, Police Station Kalka, District Panchkula (Annexure P-1) and all the consequent proceedings arising out of the same.

Following facts emerge from the record.

Ritu Kaushal gave a complaint that she was in a 10 year relationship with the petitioner and he had allured her and had been raping her since 2006. The allegations were that he took her to different places/ farm houses and was raped. The allegations are that she was given juice on one occasion which was laced with sedatives. She fell unconscious. The accused took photographs and had been showing it to her and had threatened to put them on the internet. It was also alleged that she gave

birth to a child in 2009 and the child was now six years old and the accused used to take up quarrels and was threatening to kill her. On 8.10.2016, the complainant went to the office of the accused where he, his wife and four women were present who gave her a beating and threatened to kill her.

The police held an enquiry. Both the sides were called. Their statements were recorded. The investigating officer made its recommendation for filing the complaint.

Another complaint was given to Chief Minister's office which was enquired into. It was found that both the complainant and the accused were married and had children and earlier they were on good terms with each other and they used to work together in the same office. It was reported that no cognizable offence was found to have been committed. The report was submitted to the Commissioner of Police. The complaint was filed. Not satisfied, the complainant approached the CM Window and gave another complaint on 8.12.2016 which was enquired into by the DCP, Panchkula and it was reported that no cognizable offence was made out. Subsequently, the police filed challan (Annexure P-5) in June 2017. It was also mentioned that an application had been moved in the Court for conducting DNA test, that application was pending.

The petitioner seeks quashing of the FIR on the plea that false allegations have been levelled and the complainant was habitual in filing false complaints and a similar complaint had been made by her against one Narinder Puri and the FIR was cancelled. It was pleaded that various enquiries were held and the police officials had found that no cognizable offence was made out but still challan has been filed.

Reply has been filed by the State counsel as well as by the

complaint.

I have bestowed considerable thought to the respective submissions made on behalf of both the parties.

A perusal of the first information report and the other material available on record, the following facts are revealed:-

1. The complainant is a married woman separated from her husband though not divorced.
2. She has accepted her physical relationship with the petitioner for the last 10 years.
3. During this period of 10 years, there was no complaint.
4. The first episode took place in 2006. The FIR has been lodged in 2017.
5. The allegations are that the accused had taken some obscene photographs and was blackmailing her and had allured her into marriage. The allegations were made that she had conceived a child in 2009 and the promise of marriage continued.
6. The accused started quarreling with her and gave threats to kill her.

A bare perusal of the facts in the FIR reflects that the marriage of the complainant was subsisting when she entered into a relationship with the petitioner. She was not divorced. There are no allegations that she was kept as a wife by the petitioner. She has admitted to the relationship which was consensual. The FIR had been lodged 11 years after the first misadventure. Both the complainant and the petitioner are major. There are no allegations that physical relation was induced on account of extraneous

consideration and the allegations *per se* do not attract the provisions of Section 376 IPC.

In ***Deepa Bajwa versus State, 115 (2004) DLT 202***, it was observed that a complaint, on the basis of which the complainant seeks registration of an F.I.R., must disclose essential ingredients of the offence and in case a complaint lacks or is wanting in any of the essential ingredients, the lacuna or deficiency cannot be filled up by obtaining additional complaint or supplementary statement and thereafter proceed to register the F.I.R. If such a course is permitted, it would give undue latitude as well as opportunity to unscrupulous complainants to nail others by hook or by crook in spite of the fact that their initial complaint does not make out the offence complained of. Such a course would be utter abuse of the process of law. First version as disclosed in a complaint is always important for adjudicating as to whether an accused has committed an offence or not.

In the first version disclosed in the complaint, the complainant did not mention that she was married or separated or that she had taken a divorce. The complainant had taken a plea that some objectional photographs were taken and he was misusing the same and had promised marriage. Obviously, an inducement for marriage is understandable if the same is made to an unmarried person. Admittedly, the complainant was already married and she has two children who are teenagers. The petitioner is also married and has children. All the essential facts were not disclosed by the complainant. She was clearly aware of the fact that during the subsistence of a valid marriage, she was entering into another relationship. That being so, there was no question of anyone being in a position to induce her into a physical relationship under the assurance of marriage.

In *Prashant Bharti versus State of NCT of Delhi* reported in (2013) 9 SCC 293, substantially similar facts were involved where plea taken by the complainant was that she was induced into a physical relationship by the accused on the assurance that he would marry her. In that case also, the facts revealed that the complainant/prosecutrix was married to one "X" when she had physical relation with the accused on the basis of false promise to marry her. It was held that in such a fact situation, the assertion made by the complainant/prosecutrix that the Appellant-accused had physical relations with her on the assurance that he would marry her, is per se false and, as such, unacceptable. She, more than anybody else, was clearly aware of the fact that she had a subsisting valid marriage with "X". Accordingly, there was no question of anyone being in a position to induce her into a physical relationship under an assurance of marriage. The facts clearly emerge that the complainant was in a relationship of adultery with the Appellant-accused, while she was validly married to her previous husband "X". In the aforesaid view of the matter, the assertion made by the complainant/prosecutrix, that she was induced to a physical relationship by "X", the Appellant-accused, on the basis of a promise to marry her, stands irrefutably falsified.

In *Alok Kumar versus State, 2010(4) JCC 2385* also the plea of inducement to have physical relation on the assurance of marriage was taken and the FIR was quashed and it was observed as under:-

" 6. From the allegations made by the complainant, it is apparent that when the complainant started 'live-in-relationship' with the petitioner, the petitioner had not even divorced his previous wife though it seems was living separate from her. The complainant was having a child while the petitioner was also having a child. 'Live-in-relationship is a

walk-in and walk-out relationship. There are no strings attached to this relationship, neither this relationship creates any legal bond between the parties. It is a contract of living together which is renewed every day by the parties and can be terminated by either of the parties without consent of the other party and one party can walk out at will at any time. Those, who do not want to enter into this kind of relationship of walk-in and walk-out, they enter into a relationship of marriage, where the bond between the parties has legal implications and obligations and cannot be broken by either party at will. Thus, people who chose to have 'live-in-relationship' cannot complain of infidelity or immorality as live-in-relationships are also known to have been between married man and unmarried woman or between a married woman and an unmarried man."

In ***Harish Kumar versus State, Crl. M.C. 3877/2009*** also substantially similar facts were involved and the FIR u/s 376/593 IPC was registered which was quashed by observing that the relationship between the two was consensual.

In ***Deelip Singh @ Dilip Kumar versus State of Bihar, (2005)***

1 SCC 88, it was held that consent given by a woman believing the man's promise to marry her would fall within the expression "without her consent" only if it is established that from the very inception, the man never really intended to marry her and the promise was a mere hoax. Since it is a case of obvious consent of the prosecutrix, who was aware that no marriage had taken place, no case u/s 376 IPC is made out.

In ***Rajiv Thapar and others versus Madan Lal Kapoor 2013***

(3) SCC (Crl) 158, the Hon'ble Supreme Court was dealing with the proposition of law pertaining to quashing of criminal proceedings initiated

against the accused in a petition filed under Section 482 Cr.P.C., *inter alia* it was held as under:-

“22. The issue being examined in the instant case is the jurisdiction of the High Court under Section 482 of the Cr.P.C., 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 of the Cr.P.C., 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 of the Cr.P.C. 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](#) of the Cr.P.C. to quash such criminal proceedings, for that would prevent abuse of process of the court, and secure the ends of justice.”

Counsel for respondent No. 2 had relied upon ***State of Telangana versus Habib Abdullah Jeelani and others 2017(2) SCC 779*** and ***Rajiv Thapar and others versus Madan Lal Kapoor (supra)*** and the submission was that since challan had been filed and it is for the trial Court to examine and the correctness of allegations cannot be gone into in a petition filed under Section 482 Cr.P.C.

The complainant alleges that she came in contact with the petitioner over 11 years ago and was in a relationship since 2006. They had physical relations as well. The complainant is already married and has two children. The relationship started during the subsistence of the marriage. Even the accused is married. None of the parties had approached the Court for divorce. Their marriage has not been dissolved. The allegations of the complainant that her objectionable photographs were taken could not be substantiated as during investigation, no such photographs were recovered. Keeping in view the fact that both the complainant and the petitioner were married and their marriage was still subsisting, therefore, the complainant could not have been induced into any physical relationship based on assurance of marriage. Their relationship if, was consensual, the allegation that she was induced with the promise of marriage stands falsified. The acknowledged consensual physical relationship does not constitute the offence under Section 376 IPC because both the parties were married.

In view of the facts and circumstances summarized above, it is

a fit case where the powers under Section 482 Cr.P.C. should be exercised and the FIR should be quashed to prevent the misuse of criminal justice for personal vengeance.

Accordingly, the petition is allowed and FIR No. 84 dated 19.5.2017 registered under Sections 376, 506 IPC, Police Station Kalka, District Panchkula (Annexure P-1) and the consequential proceedings emanating therefrom are quashed.

(ANITA CHAUDHRY)
JUDGE

February 23, 2018
Gurpreet

Whether speaking/reasoned : Yes
Whether reportable : Yes