

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

% Judgment delivered on: 21.12.2018

+ CRL.M.C. 3033/2018

ROHIT KUMAR Petitioner

versus

THE STATE (GOVT OF NCT OF DELHI) & ANR..... Respondents

Advocates who appeared in this case:

For the Petitioner : Mr.Nusrat Hossain, Adv.
with petitioner in person

For the Respondent : Ms. Neelam Sharma, APP
SI Manisha Sharma, PS Aman Vihar.

CORAM:-

HON'BLE MR. JUSTICE SANJEEV SACHDEVA

JUDGMENT

SANJEEV SACHDEVA, J.

1. Petitioner seeks quashing of FIR 58/2016 under Section 376/354D/366 IPC, Police Station Aman Vihar.
2. The allegations in the FIR are that the prosecutrix/respondent No.2 became friends with the petitioner. Their friendship continued for 4 – 5 months where after the petitioner is alleged to have proposed and express his love for her.
3. It is alleged that on false promise of marriage, the petitioner made physical relationship with her on 15.11.2015 and thereafter also

they continued to make physical relationship. Petitioner is thereafter alleged to have refused to marry her consequent to which the subject FIR was registered.

4. As per the statement under section 164 CrPC, the version of complainant/Respondent No.2 is that the Petitioner used to follow her when she used to go for her computer class and forcefully tried talking to her. He expressed his love for her and his desire to marry her. The friendship between the parties grew and every time they met he insisted to have sexual relations with her on the pretext of marrying her. However, the Petitioner one day informed the complainant that he did not want to talk to her and doesn't want to marry her. Respondent No.2 consumed excessive pills and was taken to the hospital by the Petitioner after which he turned off his phone and was not traceable by the Respondent No.2. The parents of Respondent No.2 went to the house of the Petitioner for giving a proposal of marriage however it was declined.

5. Petitioner was thereafter arrested on 11.01.2016. Petitioner was released on bail on 27.09.2016. Subsequently, respondent No.2 and petitioner got married on 14.10.2016. Parties have been living together since then.

6. Respondent No. 2 has filed her affidavit in support of the petition and had also appeared in person before the court on 04.10.2018 and stated that she had married the petitioner without

coercion and free will and is residing with him.

7. Petitioner has sought quashing of the subject FIR based on the settlement.

8. Reliance is placed on the Judgment of the Supreme Court of India in *Deepak Gulati v. State of Haryana*, (2013) 7 SCC 675 wherein the Supreme court observed that:

“19. This Court considered the issue involved herein at length in Uday v. State of Karnataka [Uday v. State of Karnataka, (2003) 4 SCC 46 : 2003 SCC (Cri) 775 : AIR 2003 SC 1639] , Deelip Singh v. State of Bihar [Deelip Singh v. State of Bihar, (2005) 1 SCC 88 : 2005 SCC (Cri) 253 : AIR 2005 SC 203] , Yedla Srinivasa Rao v. State of A.P. [(2006) 11 SCC 615 : (2007) 1 SCC (Cri) 557] and Pradeep Kumar v. State of Bihar [Pradeep Kumar v. State of Bihar, (2007) 7 SCC 413 : (2007) 3 SCC (Cri) 407 : AIR 2007 SC 3059] and came to the conclusion that in the event that the accused’s promise is not false and has not been made with the sole intention to seduce the prosecutrix to indulge in sexual acts, such an act(s) would not amount to rape. Thus, the same would only hold that where the prosecutrix, under a misconception of fact to the extent that the accused is likely to marry her, submits to the lust of the accused, such a fraudulent act cannot be said to be consensual, so far as the offence of the accused is concerned.”

“21. Consent may be express or implied, coerced or misguided, obtained willingly or through deceit. Consent is an act of reason, accompanied by deliberation, the mind weighing, as in a balance, the good and evil on each side. There is a clear distinction between rape and consensual sex and in a case like this, the court must very carefully examine whether the accused had actually wanted to marry the victim, or had mala fide motives, and had made a false promise to this effect only to satisfy his lust, as the latter falls within the ambit of cheating or deception. 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. An accused can be convicted for rape only if the court reaches a conclusion that the intention of the accused was mala fide, and that he had clandestine motives.”

(underlining supplied)

9. Thus in terms of the law as laid down by the Supreme Court of India in *Deepak Gulati (supra)* the court has to examine whether at an

early stage a false promise of marriage was made by the accused; and whether the consent involved was given after wholly understanding the nature and consequences of sexual indulgence. The court drew a distinction between 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.

10. The Supreme Court held that an accused can be convicted for rape only if the court reaches a conclusion that the intention of the accused was mala fide, and that he had clandestine motives.

11. In my view, the 'Court' referred to by the Supreme Court would be the Trial Court, which can form an opinion based on the evidence led before it as to whether the intention of the accused was bonafide or malafide.

12. The Supreme Court in *Gian Singh Vs State of Punjab and Another*, (2012)10 SCC 303 held:

“61. The position that emerges from the above discussion can be summarised thus: the power of the High Court in quashing a criminal proceeding or FIR or complaint in exercise of its inherent jurisdiction is distinct and different from the power given to a criminal

court for compounding the offences under Section 320 of the Code. Inherent power is of wide plenitude with no statutory limitation but it has to be exercised in accord with the guideline engrafted in such power viz.: (i) to secure the ends of justice, or (ii) to prevent abuse of the process of any court. In what cases power to quash the criminal proceeding or complaint or FIR may be exercised where the offender and the victim have settled their dispute would depend on the facts and circumstances of each case and no category can be prescribed. However, before exercise of such power, the High Court must have due regard to the nature and gravity of the crime. Heinous and serious offences of mental depravity or offences like murder, rape, dacoity, etc. cannot be fittingly quashed even though the victim or victim's family and the offender have settled the dispute. Such offences are not private in nature and have a serious impact on society. Similarly, any compromise between the victim and the offender in relation to the offences under special statutes like the Prevention of Corruption Act or the offences committed by public servants while working in that capacity, etc.; cannot provide for any basis for quashing criminal proceedings involving such offences. But the criminal cases having overwhelmingly and predominatingly civil flavour stand on a different footing for the purposes of quashing, particularly the offences arising from commercial, financial, mercantile, civil, partnership or such like transactions or the offences arising out of matrimony relating to dowry, etc. or the family disputes where the wrong is basically private or personal in nature and the parties have resolved their entire dispute. In this category of cases, the High Court may quash the criminal proceedings if in its view, because of the compromise between the offender and the victim, the possibility of conviction is remote and bleak and continuation of the criminal case would put the accused

to great oppression and prejudice and extreme injustice would be caused to him by not quashing the criminal case despite full and complete settlement and compromise with the victim. In other words, the High Court must consider whether it would be unfair or contrary to the interest of justice to continue with the criminal proceeding or continuation of the criminal proceeding would tantamount to abuse of process of law despite settlement and compromise between the victim and the wrongdoer and whether to secure the ends of justice, it is appropriate that the criminal case is put to an end and if the answer to the above question(s) is in the affirmative, the High Court shall be well within its jurisdiction to quash the criminal proceeding.”

13. In terms of *Gian Singh (supra)* cases of Heinous and serious offences of mental depravity or offences like murder, rape, dacoity, etc. cannot be fittingly quashed even though the victim or victim's family and the offender have settled the dispute as such offences are not private in nature and have a serious impact on society.

14. Since parties have married each other and are living together as Husband and wife since 14.10.2016 and the prosecutrix has also given an affidavit supporting the quashing, court may have sympathy for the parties as declining to quash the FIR may have the effect of disrupting their marital relationship, however as the allegation against the petitioner is of having committed the offence of Rape under Section 376 IPC, in view of the judgment of the Supreme Court in *Gian Singh (Supra)*, the present case does not qualify for quashing of the FIR.

15. In view of the above, the Petition is dismissed.

16. It is clarified that it would be open to the Trial Court to consider, based on the evidence before it, as to whether the facts of the case are covered by the judgment of the Supreme Court in *Deepak Gulati (supra)* i.e. as to whether the promise of the petitioner was bonafide or malafide, without being influenced by anything stated in this Judgment.

17. Order *Dasti* under the Signatures of Court Master.

SANJEEV SACHDEVA, J

DECEMBER 21, 2018

HJ