

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

% Judgment delivered on: 30th October 2018

+ **CRL. REV. P. 487/2016**

MARY MANUEL

.... Petitioner

Versus

STATE & ORS.

.... Respondents

Advocates who appeared in this case:

For the Petitioner : Ms.Bhakti Pasrija Sethi, Advocate

For the Respondent : Mr.Raghuvinder Verma, APP for the State
Mr.Rajeev Sirohi, Advocate for R-2 & R-3

CORAM:-

HON'BLE MR JUSTICE SANJEEV SACHDEVA

JUDGEMENT

SANJEEV SACHDEVA, J

1. Petitioner impugns order dated 01.07.2016, whereby the Additional Sessions Judge held that *prima-facie* no charge is made out against Respondent No.2 and discharged him of all the charges. However, framed charges against Respondent No.3 for the offences punishable under section 417/376/313 IPC, while discharging him for the offences punishable under section 420/403/506/34 IPC.

2. Petitioner filed a complaint on 25.03.2004 alleging that Respondent no. 2 introduced the Petitioner to Respondent No.3 six years ago, in the month of December 1998. It is alleged that

Respondent No. 2 represented to her that Respondent No.3 was unmarried.

3. It is submitted that the friendship between Petitioner and Respondent No.3 grew and in December 2002 he proposed to marry her which was accepted by her. It is alleged that Respondent No.3 frequently visited the house of the Petitioner and she was induced into having sexual relationship with him on the false promise to marry.

4. It is alleged that she became pregnant in March 2003 and thereafter, requested Respondent No.3 to marry her. However Respondent No.3 informed her that he was already married having married one Smt. Nisha Miranda on 29.09.1999.

5. It is alleged that in April 2003, Respondent No.2 & 3 informed petitioner that divorce proceeding between Respondent No.3 and his wife were pending and the wife of Respondent No.3 had demanded Rs. 2,50,000 as alimony. It is alleged that she was compelled to arrange for the said amount as she wanted to marry Respondent No.3.

6. It is also contended that the Petitioner arranged Rs.1,30,000/- through her friend – Mr. Prem Singh and gave the said amount to Respondent No.3 on 16.04.2003 which was acknowledged by him as loan with an interest of Rs 12% per annum. It is alleged that the balance amount of Rs. 1,20,000/- was given to Respondent No.3 in cash in May 2003. After receiving the said amounts, Respondent No.3 started misbehaving with the Petitioner and physically beat her up on

29.05.2003 as a result she was rushed to the hospital where she had to get the fetus aborted on 30.05.2003.

7. Subsequently, Petitioner learnt that Respondent No.3 and his wife got divorced on 30.06.2003 after paying alimony of Rs 2,50,000 as per agreement dated 19.04.2003. It is alleged that Respondent No.2, on behalf of Respondent No.3, further demanded Rs 20,000 to pay balance amount towards lawyer's fee which was also given by the Petitioner through a blank cheque dated 10.07.2003 to Respondent No.2. However, it is contended that the said cheque was encashed in the account of one *Benita* on 27.08.2003, who is alleged to be the niece of Respondent No.2.

8. It is further alleged that the petitioner was informed by Respondent No.2 that the said amount would stand as a loan for Medical Expenses, and that he would repay the same. However, Respondent No.2 failed to pay back the money.

9. Petitioner sent a legal notice dated 23.03.2004 to Respondent No.2 demanding repayment of Rs.20,000/- with interest at the rate of 12% per annum w.e.f. 10.07.2003. However, the same was not complied with.

10. After coming to know that Respondent No.3 and his wife were divorced, Petitioner again requested him to marry her however he refused. Consequently, a complaint was made by the Petitioner against the Respondents to the Police Authorities.

11. Complaint under section 200 Cr.P.C. was also filed in the Court of Additional Chief Metropolitan Magistrate alleging commission of offences under section 420, 403 read with section 506 IPC. On an order passed under section 156(3) Cr.P.C. directions were issued for registration of FIR under sections 420, 403 read with 506 IPC. Consequently, subject FIR No. 736 of 2004 was registered under sections 420, 403 and 506 IPC Police Station Kalkaji. After investigation Charge Sheet was filed against both the accused persons under sections 420, 403 and 506 IPC.

12. The Metropolitan Magistrate by order dated 24.11.2015 held that prima facie offence u/s 420/403/506/34 IPC was made out against both the accused persons *Michael* and *Francis*. Prima facie offence u/s 376/315 IPC was made out against the accused *Francis*. The case was thereafter committed to the Court of Sessions vide order dated 30.11.2015.

13. By the impugned order dated 01.07.2016, the Additional Sessions Judge discharged Respondent No.2 *Michael* of all the offences, *inter-alia*, on the ground that it was alleged by the Petitioner that Respondent No.2 had introduced Respondent No.3 to the Petitioner six years ago representing him as unmarried. However, as per the marriage certificate placed on record, Respondent No.3 got married on 29.09.1999, which showed that when Respondent No.2 introduced Respondent No.3 to the Petitioner i.e. in the year 1998, Respondent No.3 was unmarried. Further the Additional Sessions

Judge noted that legal notice dated 23.03.2004 sent by the Petitioner did not mention that Respondent No.2 had represented that Respondent No.3 was unmarried.

14. It is further noted, that it was alleged in the notice that Respondent No.2 had taken a short-term loan of Rs. 20,000/- for medical expenses which contradicted the contention of the Petitioner made in the second complaint dated 25.03.2004 that said amount was taken to pay the balance amount of lawyer's fee in the divorce proceeding of Respondent No.3. Even in the first complaint given to the Crime against Women Cell on 01.08.2003, the Petitioner did not mention anything about Respondent No.2. Further the Session Judge noticed that the alleged blank cheque issued by the Petitioner was in the name of one Benita and not in the name of Respondent No.2.

15. Further, it is noted that during pendency of the Complaint, parties tried to settle their dispute and Respondent No.3 had agreed to make the payment of Rs.1,20,000/-to the Petitioner and Rs 1,30,000/- to one Mr. Prem Singh. Consequently Respondent No.3 was released on interim bail by order dated 26.10.2004. However, the Petitioner refused to quash the complaint on the ground that Rs 20,000/- taken by Respondent No.2 was not paid back. Respondent No. 2 had offered to pay Rs 10,000 to the Petitioner and Consequently, the matter was referred to the Lok Adalat but could not be settled.

16. Respondent had thereafter approached the High Court, by separate petitions seeking quashing of the subject FIR, which petitions were allowed on the ground of alleged settlement by the Petitioner. However, in appeal filed by the Petitioner, disputing the settlement, the orders of the High Court, quashing the FIR, were set aside and the matter was remitted to the Trial Court.

17. It may further be noticed that prior to the filing of the complaint under section 200 Cr.P.C., petitioner had lodged a complaint dated 01.08.2003 with the Crime against Women Cell, Nanak Pura. In the complaint given to Crime against Women Cell, petitioner had not made any allegations against *Michael*. In her subsequent complaint there were improvements in her story.

18. In the FIR, it was alleged that on 10.07.2003, Michael came and asked for Rs. 20,000/- to be paid to the lawyer as professional fee in the divorce petition filed by the co-accused Francis and she gave a cheque of Rs. 20,000/- to him dated 10.07.2003. In the legal notice dated 23.03.2004 sent by petitioner through her counsel, it was stated that she had given a loan of Rs. 20,000/- to the Michael to meet medical expenses. The cheque was issued in the name of *Benita*, the niece of Michael and not in the name of *Michael*

19. For framing a charge not only suspicions but grave suspicion, of the accused having committed the offence, is required. Clearly no

offence under sections 417, 376, 313, 420, 403, 506 IPC is made out against *Michael*.

20. On perusal of the record, I satisfied that there is no material to raise grave suspicion of *Michael* having committed an offence under sections 417, 376, 313, 420, 403, 506 IPC and Francis having committed an offence under sections 420, 403, 506 IPC. I find no infirmity in the view taken by the Trial Court. The Petition is accordingly dismissed. There shall be no orders as to costs.

21. It is clarified that as there is no challenge by *Francis* to the order framing charge against him of having committed an offence under sections 417, 376, 313 IPC, I have neither considered nor commented on the merits of the said charge.

22. Order *Dasti* under signatures of Court Master.

OCTOBER 30, 2018
HJ

SANJEEV SACHDEVA, J