

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

% Decided on: 25th April, 2018

+ **W.P.(CRL) 1885/2017**

MOHIT NARULA

..... Petitioner

Represented by: Dr. Anil Kumar Gupta, Mr.
R.K. Arora, Mr. Sanjela Gupta,
Advocates.

versus

STATE OF NCT OF DELHI & ANR

..... Respondent

Represented by: Mr. Ashish Aggarwal, ASC for
the State.
Mr. K.K. Jha, Mr. Manish
Kumar, Advocates for R-2
along with R-2 in person.
ASI Sukhda, PS Uttam Nagar.

CORAM:

HON'BLE MS. JUSTICE MUKTA GUPTA

MUKTA GUPTA, J. (ORAL)

1. By this petition, the petitioner seeks quashing of FIR No. 258/2017 under Section 376 IPC registered at PS Uttam Nagar.
2. In the above noted FIR the allegations of respondent No. 2 was that she was earlier residing with her mother and brother and her marriage was solemnized on 11th May, 2005 with one Gaurav when she was aged 18 years. However, behaviour of her husband was not good and he used to beat her. Since 18th January, 2010 she has been residing with her mother and brother. On 7th July, 2014 she talked to the petitioner on mobile phone and thereafter their friendship developed and they started meeting each other. Petitioner expressed his desire to marry the complainant and the complainant disclosed to him everything about her previous marriage to

which the petitioner had no objection. Thus the petitioner started visiting her house and she started visiting the house of the petitioner.

3. It is the case of the complainant that the petitioner started making physical relations with the complainant on the false promise of marrying her. The petitioner took her out of Delhi to Amritsar, Patiala and Manali many times on the promise of marriage where they stayed in the hotel and had physical relations and also at hotel Radisson Blu, Paschim vihar. In the month of September, 2015 when the complainant became pregnant, she disclosed this fact to the petitioner who advised her to get the abortion done because it would take some time for marrying her, as his parents were not agreeable. When he stop talking to her, the complainant went to the house of the petitioner where his mother told her that they would marry her to the petitioner but they needed some more time as their house was under construction.

4. It is further alleged that on 26th November, 2016 petitioner called the complainant at his house in the absence of his family and had physical relationship and respondent No.2 became pregnant second time. When she informed this fact on the whatsapp, he disclosed this fact to the family members saying that they would solemnize the marriage but she was advised to get the abortion done. The petitioner is stated to have given her some medicines to consume and assured that the marriage would be performed in April, 2017. On 24th January, 2017 the petitioner and respondent No. 2 went to Manali where the room had been already booked and they had physical relationship. After 23rd March, 2017, the petitioner stopped taking her calls. On 2nd May, 2017 when she made the phone call to the petitioner, he stated that he would not marry her. When she stated that she would lodge a report

against him at the police station on which he got annoyed.

5. Thus in nutshell the allegations of the complainant are that on the false promise of marriage relationship were established by the petitioner with her and twice her abortion was got done.

6. The statement of the prosecutrix was recorded under Section 164 Cr.P.C and after investigation charge sheet for offence punishable under Section 376 IPC has been filed.

7. On a query put to learned ASC relating to the two abortion it is informed that during the course of investigation no material could be found to substantiate that the respondent No. 2 was pregnant twice or that any abortion was got conducted. Therefore charge sheet has been filed only for offence punishable under Section 376 IPC.

8. Learned counsel for respondent No. 2 states that in fact on 18th January, 2010 when the respondent No. 2 left the matrimonial home there was an agreement between her and her husband for dissolution of the marriage.

9. Admittedly even as per the prosecutrix/respondent No. 2 when the false promise of marriage was made she was already married, had children and no legal divorce had been granted. As per the supplementary statement recorded of the respondent No. 2 it is obvious that she was aware that there was no legal divorce between her and her husband.

10. In fact the petitioner has now placed on record documents which show that statements of first motion for divorce by mutual consent between the respondent No. 2 and her husband, have now been recorded in January, 2018. Thus during the subsistence of her earlier marriage there could have been no false promise to marry the complainant.

11. Supreme Court in the decision reported as (2013) 3 SCC 330 Rajiv Thapar & Ors. Vs. Madan Lal Kapoor laid down the guidelines for quashing of FIR by the Court in exercise of its jurisdiction under Section 482 Cr.P.C. and 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.”

12. The abovenoted decision of the Supreme Court was further reiterated in (2013) 9 SCC 293 Prashant Bharti Vs. State (NCT of Delhi) wherein on a similar fact situation, the Hon’ble Supreme Court quashing the FIR therein noted 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.”

13. In view of the admitted situation in the FIR and the supplementary statement of the complainant recorded during the course of the investigation that the complainant had not legally divorced from her husband, this Court finds that during the subsistence of the earlier marriage there could be no promise of marriage to the respondent No. 2 and her allegations that fraud was played on her for receiving consent for sex cannot be substantiated.

14. Consequently FIR No. 258/2017 under Section 376 IPC and proceedings thereto are quashed.

15. Petition is disposed of.

16. Order dasti.

(MUKTA GUPTA)
JUDGE

APRIL 25, 2018
'yo'