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

% Judgment delivered on: 26.10.2018

+ CRL.REV.P. 360/2017 & CrI. M.A. 8084/2017

HEENA Petitioner

versus

STATE GOVT. NCT OF DELHI & ORS. Respondents

+ CRL.REV.P. 555/2017 & CrI. M.A. 12186/2017

THE STATE GOVT OF NCT OF DELHI Petitioner

versus

ROHIT KUMAR TOMAR & ORS Respondents

Advocates who appeared in this case:

For the Petitioners : Mr. Sandeep Das with Ms. Mehak Khurana, Advs.
(CrI. Rev. P. 360/2017)
Mr. Hirein Sharma, Addl. PP for the State with
Insp. Sushila (CrI. Rev. P. 555/2017)

For the Respondents : Mr. Hirein Sharma, Addl. PP for the State with
Insp. Sushila (CrI. Rev. P. 360/2017)
Mr. D.S. Kohli and Mr. Raghav Mehdiratta, Advs.
for R-2 (CrI. Rev. P. 360/2017)
Mr. D.S. Kohli and Mr. Raghav Mehdiratta, Advs.
for R-1 (CrI. Rev. P. 555/2017)

CORAM:

HON'BLE MR. JUSTICE SANJEEV SACHDEVA

ORDER

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26.10.2018

SANJEEV SACHDEVA, J. (ORAL)

1. The petitioner in Crl. Rev. P. 360/2017 is the prosecutrix on whose complaint subject FIR No. 29 of 2016 under Section 354/406/34 read with Sections 3 and 4 of Dowry Prohibition Act was registered. Subsequently, after the statement of the prosecutrix was recorded under Section 164 Cr. P.C., Section 376 IPC was added.
2. Prosecutrix filed Crl. Rev. P. 360/2017 impugning the order dated 30.01.2017 whereby the trial court has discharged the accused of all offences.
3. Crl. Rev. P. 555 of 2017 has been filed by the State impugning said order on charge dated 30.01.2017, whereby the accused were discharged.
4. Pending the present proceedings, the prosecutrix as well as the accused have entered into a settlement whereby the parties have agreed to settle all their disputes subject matter of the present FIR as also other civil and criminal litigations pending between them.
5. Prosecutrix is also present in Court in person and is also represented by her counsel. She submits that she has settled the disputes with the respondent as also his family and does not wish to press her petition any further and is satisfied with the order of the trial court whereby the accused have been discharged of all offences under the subject FIR. Settlement agreement has been filed, same is taken

on record.

6. Learned Addl. PP contends that there is sufficient material to frame a charge against the accused and the trial court erred in discharging the accused.

7. Even though, the petitioner has settled with the respondents. Since the State has impugned order discharging the accused of all offences, I propose to consider the impugned order dated 30.01.2017 on merits.

8. The allegations in the FIR are that the father of the prosecutrix came in contact with respondent no. 1 (hereinafter referred to as 'Boy') and his family through one common mediator. Subsequently the families met and it was agreed that they shall get married. Ring-cum-engagement ceremony was also organized in the presence of friends and family. It is alleged that substantial amount of money was spent for making the said arrangements.

9. It is contended that subsequently the Boy came to the house of the prosecutrix along with a friend for giving a marriage card of his friend and requested her to meet him separately in a room. It is alleged that in the room, he misbehaved with her and wanted to establish physical relationship, to which she refused, on which he left. Thereafter, once again it is alleged that he met her on the engagement of his friend on 30.04.2014 and publicly hugged her and showed

intimacy. Thereafter it is contended that demands for dowry were made as also for provision of a car which were not satisfied. Subsequently, it is alleged that, the boy refused to marry her on the ground that he was already married.

10. On this complaint, subject FIR was registered. Subsequently, the statement of girl was recorded under Section 164 Cr. P.C., wherein she contended that on 30.04.2014, when he had met her at the Ring-cum-engagement ceremony of his friend, he had taken her to the parking lot of the hotel and committed the offence of rape on her, as defined under Section 375(b) of the IPC, by fingering her.

11. After investigation chargesheet was filed under Sections 354/406/376/34 read with Sections 3 and 4 of the Dowry Prohibition Act.

12. Trial court by the impugned order dated 30.10.2017 held that no offence was made out and there was substantial unexplained delay in lodging of the complaint and contradictory statements were made by the prosecutrix and that there was no allegations of demand of dowry or entrustment.

13. The prosecutrix in her statement under Section 164 Cr. P.C., based on which chargesheet was filed under Section 376 IPC, stated that the subject offence was committed on 30.04.2014 in the parking lot of the hotel Radisson Blu.

14. As the Boy was a serving officer, first complaint, in the form of a legal notice was sent by the prosecutrix, to the Air Force authorities on 30.10.2015 and thereafter a complaint was made on 16.12.2015 to police authorities. In both the complaints, in paragraph 12 with regard to the incident of 30.04.2014, she stated as under: -

“That on dated 30.04.2014, complainant met with accused no. 1 in the Lagan /Sagaai of his friend Gaurav and he was publicly hugging and moving with complainant and showing intimacy and introducing her to others in the Lagan/Sagaai of his friend Gaurav”.

15. In both the legal notice to the Air Force authorities and the complaint to the police authorities, the prosecutrix was silent about any incident of the offence of rape. She has merely stated that *he was publicly hugging and moving with complainant and showing intimacy and introducing her to others in the Lagan/Sagaai of his friend Gaurav.*

16. On the said complaint to the Police Authorities, subject FIR was registered. In her initial statement under Section 161 Cr. P.C. given on 12.01.2016, she confirmed her earlier version given to the police, based on which the FIR was registered. She once again did not state anything about the alleged offence of rape. Subsequently on 14.01.2016 in her statement under Section 164 Cr. P.C. the allegations with regard to commission of offence under Section 375(b) were introduced.

17. It was alleged that the offence happened in the parking lot of the Hotel Radisson Blu, in a car. Trial Court noticed that at the time of consideration of the application for bail, the court had noticed the statement of the security officer of the hotel, who had stated that the parking was in the basement and only valet parking was permitted in the basement and no private person could drive a car to the parking lot.

18. Trial court in the impugned order as noticed above referred to the contradictions as also the fact that in the entire complaint as well as the statement recorded under Section 164 Cr. P.C. and also the supplementary statements there was no specific averment of demand of dowry against any of the accused.

19. Trial Court on perusal of the records is of the view that no offence under Sections 3 and 4 of the Dowry Prohibition Act is made out. Further the trial court noticed that there were no allegations of entrustment of any property to the Boy or his family. Accordingly, the trial court was of the view that prima facie no offence under Section 406 IPC is made out against them.

20. The Trial Court has held as under: -

“21. In the entire complaint as well as in the statement of the prosecutrix recorded u/s 164 Cr. P.C. and the other supplementary statements, there is no specific averment of demand of dowry against accused no. 2 to 5 at any point of time. The only allegation of the

prosecutrix is that on 20/09/15 the accused persons particularly parents, sister Meenakashi and her husband Pankaj came to the parental home of complainant in order to see the hotel which was to be booked for the marriage on 22/02/2016, between the complainant and accused no. 1. As per the choice of the parents and other relatives of accused no.1, the Centaur Hotel, IGI Airport, New Delhi was booked and an amount of Rs. 25,000/- was paid by brother of the complainant on dated 10/08/2015 and "Band" was also booked. Apart from this, there is no allegations levelled by the prosecutrix-complainant against accused no. 2 to 5 of making any demand. Even in this paragraph there is no allegation made against accused no. 2 to 5 regarding demand of dowry. The only allegation against accused no. 3 to 5 is that they have come to see the hotel on 20/09/15 whereas the hotel had already been booked on 10/08/15. It has no where been alleged by the prosecutrix that after seeing the hotel on 20/09/15, accused no. 2 to 5 have raised any demand, further or had not liked the place, which has been booked for the marriage. Therefore, I am of the opinion that no prima facie case is made out against accused no. 2 to 5 in respect to the demand of dowry. Hence, accused no. 2 to 5 are discharged for the offence u/s 3 and 4 of Dowry Prohibition Act.

24. In the entire complaint made by the prosecutrix, it has no where been alleged by prosecutrix that any property or article was ever entrusted to the accused no. 2 to 5 or for that matter to accused no. 1. It has only been averred by the complainant that on the occasion of engagement ceremony, certain gifts were given to accused persons and other family members. It is common knowledge that gifts given to a person are never

considered to an “entrustment” made in favour of that person. Once the article is admitted to have been given to the accused persons as gift, it cannot be said that same were entrusted by the complainant or her family to them for safe keeping or that accused persons have misappropriated the same for their own use. Admittedly, gifts sweets etc. were given to accused no. 1 to 5 and their family members for their use and hence, I am of the opinion that allegation levelled against accused persons does not fall within the purview of section 405 IPC. Hence no prima facie case u/s 406 IPC is made out against accused no. 2 to 5. Hence accused no. 2 to 5 are discharged for the offence u/s 406 IPC as well as under section 3 and 4 of Dowry Prohibition Act.

26. As regards the offence under section 406 IPC, I have already discussed in detail about requirement of section 406 IPC and the allegations levelled by the prosecutrix qua that section, while discussing the facts of the case in respect to accused no. 2 to 5. Similarly, as against accused no. 1, there is no allegation of entrustment of any property, there is only averment that certain gifts were given to him on the occasions of engagement ceremony, therefore, I am of the opinion that ingredients of section 405 IPC are not made out prima facie in this case. Further, it is the case of the Accused No. 1, Rohit Kumar Tomar that amount of Rs. 5.5 lacs have already been deposited by way of FDR by the accused no. 1 as per the directions of the Hon’ble High Court of Delhi in lieu of the articles given to accused persons. Hence, I am of the opinion that no prima facie case u/s 406 IPC is made out against accused no. 1.

27. As regards section 3 and 4 of Dowry Prohibition

Act, there is no single word or allegation against accused no. 1 in respect to the section 3 and 4 of Dowry Prohibition Act. There is no “demand of dowry” alleged against accused no. 1. Therefore, I am of the opinion that no prima facie case under section 3 and 4 of Dowry Prohibition Act is made out against accused no. 1, hence accused no. 1 is discharged for the offence under section 3 and 4 of Dowry Prohibition Act.

28. There are two incidents which have been alleged against accused-one is dated 26/04/2014 and other incident is dated 30/04/2014. The complaint had been drafted by the complainant on 16/12/15 which is detailed typed complaint but the same was given to DCP (West), Delhi on 30/12/2015 and finally FIR was lodged on 16/01/2016. Thus, there is gap of almost two years in the date of commission of alleged offence and the lodging of present FIR.

29. In the complaint dated 16/12/2015, complainant had stated that on 26/04/15, accused no. 1 had visited her house with his friend and accused no. 1 caught hold of hand of complainant and put his hand on her breast and asked sexual favour from her but complainant refused the same reiterating that they should not have physical relationship unless they are married. The accused no. 1 was very much excited and he took out his mobile phone and shown some inappropriate /porn photographs to complainant in order to instigate her to have sexual favour from her. But, no incident other than this has happened on that day.

30. These are the allegations which can at best, fall within the definition of “outraging the modesty of woman” as provided under section 354 IPC. Therefore, offence under section 354 IPC has been added in the charge sheet. However, subsequently while statement of

the prosecutrix was being recorded under section 164 Cr. P.C., she had elaborated the incident of 26/04/2014 and had stated different facts than the facts stated by her in the complaint. Although even those facts fall within the purview of section 354 IPC.

31. At this stage, it is important to consider the provision of section 354 IPC, which provides that, “whoever assaults or uses criminal force to any woman”, intending to outrage or knowing it to be likely that he will thereby outrage her modesty, (shall be punished with imprisonment or either description for a term which shall not be less than one year but which may extend to five years and shall also liable to fine).

33. It is needless to say that both accused no. 1 Rohit Kumar Tomar and prosecutrix were well educated, mature persons, coupled with the fact that they both were engaged at the time of alleged incident of 26/04/2014. It cannot be presumed by any stretch of imagination that kissing or hugging a person, you are already engaged with will be the culpable intention of ‘outraging modesty’. In the modern society, this is becoming an acceptable behaviour of engaged persons & thus to my opinion does not fall within the definition of section 354 IPC. The allegation levelled by prosecutrix in statement u/s 164 Cr. P.C. are completely contradictory to her first statement, hence are suspicious and not fit for reliance as per the judgment of Prashant Bhaskar Vs. State, as mentioned above.

34. As regards the section 376 IPC, it has been stated by the prosecutrix in her complaint that on 30/04/2014, complainant met with accused no. 1 in the Lagan/Sagaai

of his friend Gaurav and “he was publicly hugging and moving with complainant and showing intimacy and introducing her to others in the Lagan/Sagaai of his friend Gaurav”. In her complaint, complainant has nowhere mentioned about any wrongful act committed by the accused on 30/04/2014. The allegations levelled by the complainant in the complaint against accused no. 1 in respect to 30/04/2014 is that he was hugging and moving with complainant and showing intimacy and introducing her to others. There is no even a whisper in the complaint that accused no. 1 had one any act towards commission of physical assault against the complainant.

35. Whereas in the statement of the prosecutrix, recorded under section 164 Cr. P.C., she has levelled allegations against accused no. 1 of ‘fingering’ and this incident is stated to have taken place in the ‘car’ on 30/04/2014. Later on, during hearing of the bail application of the accused no. 1 before Hon’ble High Court of Delhi, it was stated by the prosecution i.e. by complainant vide her letter dated 06/02/2016 that incident dated 30/04/2014 had taken place in the ‘parking of Radisson Blu Hotel’. This fact was directed to be verified by the IO, by the orders of Hon’ble High Court and on this, report was submitted by the official of the Radisson Blue Hotel that in the hotel, customers/guests are not allowed to enter in the parking as valet services has been provided for the car parking. Thus, it was clear that no such incident could have taken place in the parking of hotel.

37. Considering the judgments mentioned above, as held by Hon’ble Supreme Court as well as by Hon’ble High Court of Delhi, and the principles laid down by these judgments that it is the duty of the court to sift the evidence, and to see that in case two views are equally possible, and the Judge is satisfied that the evidence

produced before him while gives rise to some suspicion but not grave suspicion against the accused, the court will be fully within his right to discharge the accused. Applying these principles to the facts and circumstances of the case in hand, I am of the opinion that there is no strong prima facie case made out against accused no. 1 of offence either under section 354 IPC or section 376 IPC, as firstly there is delay of two years in lodging the complaint by the prosecutrix and secondly there are contradictory statements made by the prosecutrix and thirdly in the complaint lodged by the prosecutrix, on which FIR has been registered, it has nowhere been stated by the prosecutrix that accused no. 1 ever tried to commit any offence against her on 30/04/2014. Mere allegations of publicly hugging and moving with the complainant and showing intimacy and introducing her to others in the Lagan/Sagaai of his friend Gaurav, knowing fully well that accused no. 1 and prosecutrix were already engaged and they were attending marriage ceremony of his friend of accused no. 1, (possible that they might exhibit some intimacy towards each other considering the fact that both of them are highly educated persons) cannot be considered to be an offence under Section 354 IPC or 376 IPC.

(underlining supplied)

21. In so far as the Boy is concerned, the trial court noticed that only allegations of giving certain gifts on occasion of Ring-cum-engagement ceremony were levelled. The Boy in terms of orders of this court sought to deposit an amount of Rs. 5.5 lakhs with this court. Subsequently said amount of Rs. 5.5 lakhs have been given to the prosecutrix towards the amount spent in the engagement function and the gifts given. Further, Trial court on perusal of the records has found

that the allegations under Section 376 and 354 IPC were also not made out in the facts and circumstances of the case.

22. Records of the case as also the police records have been perused. Learned APP has not been able to point out to any material to show that the Trial Court has committed any error in discharging the accused. There is unexplained delay in lodging the complaint, there are contradictory statement made by the prosecutrix. Record does not show any allegation of demand of dowry by any of the accused persons and there is also no entrustment. There is no error in the Trial Court holding that prima facie, no case is made out against accused persons for any of the offences for which they were charge sheeted. Accordingly, there is no infirmity in the view taken by the trial court in discharging the respondents. There is no material to raise grave suspicion against the accused of having committed the offences as alleged.

23. Further, it may also be seen that parties have since settled all their disputes and the prosecutrix does not wish to prosecute the complaint any further and she has even withdrawn her challenge to the impugned order. All litigations between the parties, civil and criminal, have been settled and parties do not wish to prosecute their respective cases.

24. In view of the facts and circumstances of the case as noticed above and also the fact that prosecutrix does not wish to prosecute her

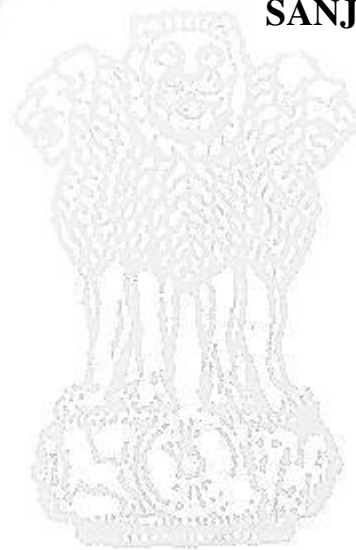
complaint, I find no merit in the petitions. Accordingly, the Revision Petition, filed by the prosecutrix (Crl. Rev. P. 360/2017), is dismissed as withdrawn and the Revision Petition, filed by the State (Crl. Rev. P. 555/2017), is dismissed. There shall be no order as to costs.

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

OCTOBER 26, 2018

‘rs’

SANJEEV SACHDEVA, J



भारतमेव जयते