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

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Judgment delivered on: 12.02.2018

+ CRL.M.C. 4363/2017

RAHUL MISHRA

..... Petitioner

versus

STATE GOVT OF NCT OF DELHI & ORS

..... Respondents

Advocates who appeared in this case:

For the Petitioner : Mr. P.N. Parashar, Advocate.

For the Respondent : Mr. Akshai Malik, APP for the State.
Mr. Ajit Amar, Advocate for the
respondent No.2 with respondent
No.2 in person.
SI Nirmala Singh, PS Govind Puri.

CORAM:-

HON'BLE MR JUSTICE SANJEEV SACHDEVA

JUDGMENT

12.02.2018

SANJEEV SACHDEVA, J. (ORAL)

CRL.M.C. 4363/2017 & CrI.M.A.17509/2017 (stay)

1. The petitioner seeks quashing of FIR No.245/2017 under Section 376 IPC, Police Station Govind Puri.

2. It is alleged in the FIR that the physical relationship was made by the petitioner with respondent No.2 on the false pretext of marriage. It is contended by the learned counsel for the petitioner that the complaint filed by the respondent No.2 was because of a misunderstanding. It is contended that the respondent No.2 was already married and her marriage was subsisting when the alleged physical relationship was stated to have been made. It is contended that the respondent No.2 is even now residing with her earlier husband and family.

3. Reliance is placed on an affidavit of the respondent No.2, which is filed before the District Judge, wherein, it is confirmed that she was married in the year 2000 and her marriage is subsisting.

4. Learned counsel for the petitioner places reliance on the decision of a Coordinate Bench of this Court in *Mohit Nagar vs. State & Anr.: 2016 (2) JCC 200*, wherein, the Coordinate Bench has held that where the complainant was already having a subsisting marriage, an offence under section 376 IPC would not be made out solely on the ground of having relationship on the false pretext of marriage and the proceedings are liable to be quashed.

5. The respondent No.2 is present in person, represented by a counsel and is identified by the Investigating Officer. She confirms her affidavit dated 14.07.2017, which was filed before the Trial Court, wherein, it is stated that she is married to Kunwarpal Singh with

whom she got married in the year 2000 and her marriage is still subsisting. It is stated in the affidavit that she was aware that even the petitioner was married, and the subject FIR was registered because of a misunderstanding.

6. In the present case, admittedly, at the time when the alleged physical relationship is stated to have been made, both the petitioner and the respondent No.2 were married and knew about the respective marriages of each other.

7. The judgment in the case of *Mohit Nagar (supra)* squarely applies to the facts of the present case. Since the respective marriages of the complainant and the accused were subsisting and within the knowledge of both, there could be no question of making physical relationship on the false promise of marriage. Admittedly the relationship was consensual. The complainant who was married at the relevant point of time cannot be permitted to contend that her consent was not free, and it was obtained on a false promise of marriage. She out of her own free consent entered into a relationship with the petitioner. Clearly the offence under section 376 IPC is not made out.

8. In the view of the above, the present FIR and the consequent proceedings emanating therefrom are liable to be quashed.

9. Accordingly, FIR No.245/2017 under Section 376 IPC, Police Station Govind Puri and the consequent proceedings emanating

therefrom are quashed.

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

FEBRUARY 12, 2018
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SANJEEV SACHDEVA, J

