

HIGH COURT OF CHHATTISGARH, BILASPUR**CRMP No. 911 of 2018**

Saiyyad Mujeeb @ Bhuru S/o Saiyyad Islam Aged About 33 Years R/o-
Nawapara Khurd, P.S. Sakti, District- Janjgir Champa, Chhattisgarh.

--- Petitioner**Versus**

1. State of Chhattisgarh Through- The Station House Officer, Police Station- Sakti, District- Janjgir-Champa, Chhattisgarh.
2. Gausiya Khan D/o Munna Khan Aged About 25 Years R/o- Budhwari Bazar, Ward No. 6, House No. 49, Sakti, Janjgir-Champa, , District : Janjgir-Champa, Chhattisgarh

Respondents

For the applicant	:	Mr. Rahul Tamaskar, Advocate.
For the State	:	Mr. Chandresh Shrivastava, Dy.A.G.
For respondent No.2	:	Mr. Vivek Shrivastava, Advocate

Hon'ble Shri Justice Goutam Bhaduri**Order on Board****22.1.2019**

1. The present petition is against the quashing of FIR. It is contended that according to the FIR the complainant victim was residing with petitioner since 2013 and out their living-in relations, a child was born in the year 2014. Thereafter, when the petitioner was pressurized for marriage, he refused to do it. It has been contended that the alleged victim was living with the petitioner for a reasonable period of time, therefore, the concept of rape cannot be invoked.
2. Learned counsel went through the FIR and would submit that as per the statement of victim, she has stated that she is living with the petitioner like wife and therefore if for some reason or the other, they have got separated, it cannot be termed as rape. Learned counsel referred to a decision

rendered in SLP (Crl.) No.454 of 2017 (Shivashankar @ Shiva v. State of Karnataka & another) and would submit that in the said case the complainant was living with the petitioner for a period of 8 years, therefore, the Supreme Court held that when the victim was in the Company of the accused for a considerable period of time and for some reason or the other if they have parted their ways subsequently it cannot be stated to be rape and therefore, he submits that accordingly in this Case the FIR of rape which is existing against the petitioner is liable to be quashed.

3. On the other hand, learned counsel for the complainant/victim referred to the FIR and submits that the FIR would reveal that the victim has never stated that she lived with the petitioner accused. It is contended that if something additional has been written as against the petitioner by the Police it cannot be taken as encyclopedia and the statement recorded u/s 164 Cr.P.C., would show the manner in which the offence has been committed and there is no evidence on record that the petitioner and victim were living together.
4. Perused the documents connected to the petition and reply. Along-with reply, the written report of FIR is on record. Reading of the written report dated 29.06.2017 as a whole it do not disclose the fact that she was in the company of the petitioner or they were living together. She stated that the petitioner was in relations, he used to visit their house, thereafter on the pretext that he will marry, developed relations and out of such relations in between 2013 and 2014, a child was born. Subsequently when he was pressed for marriage, though assurance was given but eventually on

27.06.2017 he along-with his brother, uncle stormed their house, assaulted and abused them and gave threats.

5. Along-with reply, statement of Sajida Begum, mother of victim (P.W.1) is also on record. Entire reading of the report also do not show that she has deposed that the victim was living with the petitioner. Another witness Babulal (P.W.2) has also made similar statement. Statement of victim u/s 164 of Cr.P.C., which is placed on record do not disclose that she was living with the petitioner in a different house or they were in occupation of certain independent house either separate or in joint. The Statement u/s 164 further corroborates the fact of FIR. The Police has already filed the charge sheet and two of the witnesses have been examined. Subsequently, the FIR is subject of challenge by this petitioner.
6. In the FIR apart from the report which has been written by the Police, the fact that it has been written that the victim was living along-with the petitioner however does not find place in the written report, on the basis of which the said FIR was subscribed. Statement u/s 164 of Cr.P.C., placed on record also do not say so, therefore, it would be difficult to presume the fact that the victim was living along-with the petitioner.
7. On the contrary the victim has stated that on the pretext of marriage, the petitioner committed sexual intercourse. What was the mens-rea from the day one that can only be established during the course of trial when the witnesses are examined. The Court cannot add anything or presume which is not on record. The primary contradiction appears in

between written report and the FIR lodged by the Police, therefore, those facts can only be ascertained during the course of trial.

8. Under the facts and circumstances of the case, I am not inclined to accept the submission of the petitioner so as to quash the criminal case and the FIR.
9. In the result, the petition has no merit and is dismissed.

**Sd/-
GOUTAM BHADURI
JUDGE**

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