

HIGH COURT OF CHHATTISGARH, BILASPUR

WPCR No. 450 of 2019

- Madhusudan Agrawal, S/o Late Shri Durga Prasad Agrawal, Aged About 57 Years R/o Jaistamb Chowk, Dongargarh, Police Station And Tehsil Dongargarh, District Rajnandgaon, Chhattisgarh.

---- Petitioner

Versus

1. State of Chhattisgarh Through Secretary, Department of Home Affairs Mahanadi Bhawan, Naya Raipur, Revenue & Civil District-Raipur, Chhattisgarh.
2. Director of General Police, Police Headquarter, Raipur, Revenue & Civil District-Raipur, Chhattisgarh.
3. Superintendent of Police Rajnandgaon, District-Rajnandgaon, Chhattisgarh.
4. Station House Officer Police-Station-Dongargarh, District-Rajnandgaon, Chhattisgarh.
5. Deputy Superintendent of Police S.C. & S.T. Welfare, Police-Station-Rajnandgaon, District-Rajnandgaon, Chhattisgarh.
6. Smt. Pushpa Ratre, W/o Shri Prakash Khare, D/o Late Gangadas Ratre, aged about 33 years, R/o (Down) Near Bamleshwari Mandir, Behind Shiv Mandir, Dongargarh, Tehsil & Police-Station-Dongargarh, District- Rajnandgaon, Chhattisgarh.

---- Respondents

For Petitioner	:	Shri Surfaraj Khan, Advocate.
For State/respondent	:	Shri Avinash K. Mishra, Panel Lawyer.

Hon'ble Shri Justice Rajendra Chandra Singh Samant

Order On Board

11/07/2019

Heard.

1. Petition under Article 226 of Constitution of India has been brought praying for quashment of FIR No.340/2019 registered by respondent No.4.

2. It is submitted by counsel for petitioner that petitioner and the prosecutrix respondent No.6 had relationship which was based on consent. Respondent No.6 is a married woman blessed with two children, therefore, allegation that applicant has sought her submissions on the basis of promise to marry her is totally unfounded. Therefore, FIR lodged is full of malafides. Hon'ble Supreme Court in State of Haryana & Ors. vs. Bhajan Lal & Ors. reported in AIR 1992 (SC) 604 has clearly held that if view of the High Court is that lodging of FIR and investigation is *malafide*, in that case writ of certiorari can be issued.

Reliance has also been placed on the judgment dated 22.11.2018 passed by Supreme Court in Criminal Appeal No.1443 of 2018(Dr. Dhruvaram Mulidhar Sonar vs The State of Maharashtra & Ors.) wherein a clear distinction has been made between rape and sexual offence by the Supreme Court and it was held that breach of promise can constitute an offence.

3. Learned counsel for respondent No.1 to 4 submits that not only offence under Section 376 of IPC but offences under Section 506 of IPC and Section 3(1)(2) of SC & SC (Prevention of Atrocities Act) have been registered against this petitioner.
4. The case is under investigation and if the complaint is *malafide*, it will be found in the investigation itself. For the present, there are allegations against this applicant, that this applicant on pretext of marriage, sexually exploited the prosecutrix for about 5 years. The prosecutrix has also mentioned in the FIR lodged by her, that her earlier marriage has been dissolved. It is submitted, that the petitioner has performed a fake marriage with the prosecutrix, thereafter when the prosecutrix demanded for proper marriage, the applicant has insulted her in the name of caste and refused to marry her.
5. I have heard both the parties and perused the documents on record.
6. Considering on the submissions made by both the parties and on perusal of the documents present in record and particularly contents of FIR, I am of this view that at the stage without further investigation it cannot be said that it is a case of *malafide* prosecution, therefore, I do not find any substance in this petition which is liable to be dismissed and is hereby dismissed at the motion stage itself.

Sd/-
(**Rajendra Chandra Singh Samant**)
JUDGE

