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

Date of decision: 26th November, 2019

+ CRL.M.C. 1727/2019

DANISH ALI

..... Petitioner

Through Mr. Nitesh Kumar Singh, Adv.

versus

STATE & ANR

..... Respondents

Through Mr. K.K. Ghei, APP for State
Ms. Sunieta Ojha with Ms. Fozia
Rahman, Mr. Sikander Siddiqui, Ms.
Priyadarshini, Ms. Rashmi dixit and
Mr. Faisal Mohd., Advs. for R-2
W/SI Komal Shakya, PS Parliament
Street, W/SI Rajesh.

CORAM:

HON'BLE MR. JUSTICE SURESH KUMAR KAIT

J U D G M E N T (O R A L)

1. Vide the present petition, the petitioner seeks direction thereby to quash the FIR No. 91/2016 registered under section 323/376/384/506 IPC on 04.05.2016 and Chargesheet filed against the petitioner and any proceedings initiated therefrom.

2. As stated in the present petition, the petitioner and respondent no.2 know each other since July, 2010 and had a love affair spanning more than

six years and wanted to culminate their relationship into marriage but the same could not be materialized on account of the protest raised by their respective families and also on account of some misunderstanding which arose between the Petitioner and the respondent No. 2, that prompted the respondent no.2 to make a written complaint which was culminated into the present FIR.

3. Counsel for the petitioner submits that the respondent no. 2 made a written complaint on 04.05.2016 with Police Station Parliament Street stating therein that sometime in July, 2010 she came across the Petitioner herein, as he was her brother's friend.

4. Furthermore, the respondent no. 2 claimed that on 31.12.2010, at a New Year's party, the petitioner offered her cold drink and took her to a small room in Kamlanagar and raped her and took pictures. On account of those pictures, he blackmailed her and also threatened her by saying that if she dares to disclose the said fact, the petitioner would disclose the pictures on internet and in front of neighbours.

5. Learned counsel for the petitioner further submits that in the same breath, the Respondent no. 2 claims that the petitioner expressed his love for her and at the same point of time, he also undertook that he would never

disclose the said facts and would keep the obscene pictures with him only and in the future, if the respondent no. 2 wishes so, she could collect them from him.

6. It was also claimed by the respondent no. 2 that the petitioner agreed to hand over her obscene pictures and MMS (purportedly taken by the petitioner) and accordingly she went to meet the petitioner on 30.04.2016 at Paschim Vihar Metro Station and while on their way back, the respondent no. 2 asked the petitioner to hand over the above stated data and expressed her desire to end their relationship after which the petitioner allegedly slapped her and took out a knife saying that he would finish things finally and pushed the respondent no. 2 out of the car. Thereafter, she called up the police. Lastly, it was claimed by the Respondent no. 2 that on 02.05.2016 when the Respondent no. 2 came back to her home, petitioner's uncle and lawyer Wasim Ansari tortured her and insulted her family.

7. It is submitted, despite claiming of being harassed by the petitioner on 30.04.2016, the respondent no. 2 failed to lodge any complaint and only after an unexplained delay of four days, the Respondent no. 2 filed a complaint with the Parliament Street Police Station on 04.05.2016 and accordingly the FIR herein was registered.

8. It is further submitted that the petitioner and respondent no. 2 know each other since July, 2010 and had a love affair spanning for more than five years and wanted to culminate their relationship into marriage. They have been exchanging messages/phone calls etc. since the year 2011 and there was no pressure or coercion exerted by the petitioner upon the respondent no. 2 to continue the relationship as the same was mutual and consensual. The copy of some of the messages exchanged between the petitioner as well as the respondent no. 2 and the photographs of the petitioner as well as the respondent no. 2 together are annexed herewith and marked as Annexure-P-3 & Annexure P-4 respectively.

9. It is also further submitted that the families of both the petitioner and respondent No. 2 are known to each other since many years and therefore, the petitioner has been on visiting terms with the family of the respondent no. 2 and he used to attend each and every family function organized by the family of the respondent no. 2. Sometime in the month of April, 2014, the respondent no. 2 told the petitioner that marriage of her brother, namely Mr. Aadil Khan was to be solemnized on 23.12.2014 with a London based girl, whom he had met on Facebook. She also stated that her home is not in a fit condition to bring a highly educated and working Westerner bride. The

respondent no.2 requested petitioner to conduct renovation of the Ground Floor of her home and build an entire new Second Floor for the newly married couple. Thereupon, the petitioner calculated the expenditure to be incurred as per the market rate towards the construction work to be undertaken as per the requirement of the respondent no. 2 and told her about the same. The petitioner also requested her that if she wants to commence the construction, she would have to advance some money towards materials and labour charges as per the market practice. The moment respondent no. 2 came to know about the hefty sum required for the construction and renovation of her home, she expressed her inability to pay the money as was required.

10. Learned counsel submits that after some time, the respondent no. 2 once again approached the petitioner and requested him to initiate the construction and bear the expenses himself and promised him in unequivocal terms to make the payment in this regard later on as she did not have enough money to make the payment at one go at that point in time. Considering his relation with the respondent no. 2 and her unwavering promise to pay later on, the petitioner agreed to commence the construction and renovation of the respondent no.2's home, at his own expense. The

petitioner completed renovation of the Ground Floor as well construction of the entire Second Floor before two months of the marriage of the respondent no. 2's brother i.e. in October, 2014 after spending ₹6,94,800/- (Rupees six lakh and ninety four thousand and eight hundred only) from his own pocket and resources. On the occasion of the marriage of the respondent no. 2's brother, solemnised on 23.12.2014, the petitioner has actively attended and in fact, drove his own car taking the respondent no. 2's brother Mr. Aadil Khan to the venue of marriage ceremony. The copy of the photographs of the marriage function of the respondent no. 2's brother are annexed as Annexure-P-5 (Colly).

11. Further case of the petitioner is that respondent no. 2 and her brother, who is unemployed, have taken multiple loans from the petitioner on one or another point in time. In fact, respondent no. 2's brother was married in the year 2014 and a major chunk of expenditures were borne by the petitioner as the respondent no. 2 and her brother made a promise to return the friendly loans in future. The details of the loans advanced by the petitioner are furnished along with the relevant proofs as Annexure P-6. The bills of the various miscellaneous expenses incurred during the course of the marriage ceremony, paid by the petitioner are annexed as Annexure P-7.

12. Learned counsel for the petitioner further submits that out of the above mentioned loans, the respondent no. 2, who is a sole earning member of his family, has returned part of the loans through cheque. In fact, the respondent no. 2 had handed over a cheque to the petitioner bearing cheque no. 672631 drawn on State Bank of India for Rs. 50,000/- (Rupees fifty thousand only) on 27.04.2016 in lieu of the loans advanced by the petitioner to her, however, the same bounced when presented for encashment on 30.04.2016. The said cheque was once again presented before the banker on 16.07.2016 for encashment, however the same was also bounced on account of "*funds insufficient*". Thereafter, the petitioner had file a case against the respondent No. 2 under section 138 of NI Act. The petitioner had also preferred a Civil Suit seeking recovery of ₹12,37,135/- (Rupees Twelve Lakh Thirty Seven Thousand One Hundred Thirty Five Rupees Only) before the concerned Civil Court in the year 2016 and thereafter the said suit was withdrawn by the petitioner.

13. On the other hand, learned APP appearing on behalf of the State has opposed the present petition and submits that the present FIR is registered for the offences punishable under Section 323, 376, 384, 506 IPC and in case of ***Parbatbhai Aahir and Ors. vs. State of Gujrat and Ors. AIR 2017***

SC 4843, the Hon'ble Supreme Court has held as under:

“15.(vi) In the exercise of the power Under Section 482 and while dealing with a plea that the dispute has been settled, the High Court must have due regard to the nature and gravity of the offence. Heinous and serious offences involving mental depravity or offences such as murder, rape and dacoity cannot appropriately be quashed though the victim or the family of the victim have settled the dispute. Such offences are, truly speaking, not private in nature but have a serious impact upon society. The decision to continue with the trial in such cases is founded on the overriding element of public interest in punishing persons for serious offences.”

14. However, respondent no.2 is personally present in Court with her counsel named above and she has been identified by SI Komal, IO of the case. Learned counsel for the respondent no.2 submits that due to some misunderstanding between the petitioner and respondent no.2, she made the complaint which culminated into the FIR. Thereafter, the chargesheet was also filed after investigation. The respondent no.2/complainant later introspected and realized that she had made a false complaint against the petitioner, who in fact, is not guilty of rape.

15. As suggested by learned APP, which cannot be disputed that if anyone makes false statement or complaint, then prosecution has to be initiated against such person. In the present case, respondent no.2/complainant has stated on affidavit that due to some misunderstanding

with the petitioner, she made the false and frivolous complaint and does not wish to continue with the case further against the petitioner.

16. It is not in dispute that heinous and serious offences such as murder, rape and dacoity etc. cannot be quashed despite the fact that the victim or the family of the victim have settled the dispute.

17. It is also not in dispute that such offences are, truly speaking, not private in nature but have a serious impact upon society. But at the same time, quashing of the FIR, in such cases the Court has to see whether actually crime has taken place or due to some other malafide purpose or intention, the complaint has been made which subsequently, has culminated into an FIR. If court comes to the conclusion, as in the present petition, that in fact the rape has not been committed by the accused in the case, in my considered opinion, there is no bar to quash the FIR even in case of rape or other heinous offences.

18. At this stage, learned APP submits that whether in fact rape has been committed or not, is a matter of trial.

19. On this issue, I dispute with the submission made by the APP because if the victim herself has filed an affidavit making the statement that the offence of rape has not taken place, then there is no bar even at this stage to

quash the FIR.

20. The petitioner and respondent no.2 have not disputed the fact that they knew each other since July 2010 and had a love affair spanning more than six years and wanted to culminate their relationship into marriage. They had been exchanging text messages/phone calls etc. since the year 2011. Copy of some of the messages exchanged between the petitioner as well as respondent no.2 are annexed with the present petition. The fact that they know each other and had a love affair is established by the fact that they kept meeting together in different hotels and took close photographs with each other which are on record. However, due to the fact that the family members of the petitioner as well as respondent no.2 did not agree to their marriage and there were some other issues between the petitioner and respondent no.2, due to which the petitioner refused to marry, therefore, she made the frivolous complaint which culminated into the FIR against the petitioner.

21. It is also not in dispute that the cell phone of the petitioner has been seized by the IO and sent for FSL, however, there were no obscene photographs of the respondent no.2 therein. This fact has not been disputed by IO of the case WSI Rajesh, the then IO.

22. In addition to above, respondent no.2 has filed the affidavit which is at Annexure P-23, at Page 197 of the petition, whereby stating that the petitioner and respondent no.2 were known to each other, having lived in the same locality and following common faith being Islam.

23. The petitioner and the respondent no.2 also contemplated marriage however the same could not be materialized on account of vehement protests raised against their matrimonial alliance by their respective families. Hence, both parties have decided to pursue their independent life without any interference from each other in any manner.

24. It is further stated in the affidavit of respondent No. 2 that the dispute arose between the petitioner and the respondent no.2 due to misunderstandings about possession of certain personal belongings, leading to the filing of the criminal complaint by the respondent no.2 against the petitioner upon which an FIR has been registered against the petitioner in the Parliament Street, Police Station, New Delhi.

25. The aforesaid fact of the affidavit has not been disputed by respondent no.2, who is personally present in court.

26. Respondent no.2 is a well qualified woman, who has acquired degree of MBA and she worked with Jet Airways till 2010. Thereafter, she changed

her job and worked in Ashoka Hotel, New Delhi. She is not an illiterate lady. She has a good and wide exposure of life. She knew what is wrong and right at that point of time and does so even today. It is not disputed by the respondent no.2 that her relations with the petitioner were consensual. They both became possessive for each other and wanted to marry but due to the reasons mentioned above, their marriage could not be solemnized.

27. Though as per the directions of the Hon'ble Supreme Court in ***ParbatBhai Aahir*** (Supra), the FIR should not be quashed in case of rape as it is an heinous offence, but when the respondent no.2/ complainant/prosecutrix herself takes the initiative and makes affidavits before this Court, stating that she made the complaint due to some misunderstanding and now wants to give quietus to the misunderstanding which arose between the petitioner and respondent no.2, in my considered opinion, in such cases, there will be no purpose in continuing with the trial. Ultimately, if such direction is issued, the result will be of acquittal in favour of the accused, but substantial public time shall be wasted.

28. Though keeping in view the allegations made in the complaint by the respondent no. 2 and for her statement recorded under Section 162 Cr.P.C., the prosecutrix/ respondent no.2 is liable to be prosecuted for filing false

complaint and making false statement before the Court. However, keeping in view the fact that the respondent no.2 wishes to give quietus to the case and seeks apology, I refrain myself for taking such action against the respondent no.2.

29. I hereby make it clear that if in such cases, FIR is quashed, it does not give a wrong signal to the society as in fact, it is not a case where heinous crime had happened. This case does not fall in that category. Therefore, keeping in view the above said facts, the present case is fit for quashing of FIR. Accordingly, FIR and consequent proceedings emanating therefrom are hereby quashed.

30. The petition is accordingly allowed and disposed of.

(SURESH KUMAR KAIT)
JUDGE

NOVEMBER 26, 2019
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