

IN THE HIGH COURT OF DELHI AT NEW DELHI

% Judgment delivered on: 18.11.2019

+ **W.P.(CRL) 1577/2019 CRL. M.A. 11505/2019 & CRL. M.A. 31102/2019**

VIVEK CHAUKAR Petitioner
versus

THE STATE & ANR Respondents

Advocates who appeared in this case:

For the Petitioner : Mr. Inderbir Singh Alag, Senior Advocate
: with Mr. Nikhil Bhalla, Mr. Sumit Bhadana
: and Mr. J. Singh, Advocates.

For the Respondents : Ms. Kusum Dhalla, APP for Ms. Kamna
: Vohra, ASC for State.
: SI Manish Kumar, P.S. Jagat Puri.
: Mr. L.K. Giri and Mr. Atul Trivedi,
: Advocates for R-2 along with R-2 in person.

CORAM
HON'BLE MR JUSTICE VIBHU BAKHRU

JUDGMENT

VIBHU BAKHRU, J

1. The petitioner has filed the present petition, *inter alia*, praying that FIR No. 0095/2019 under Section 376 of the Indian Penal Code, 1860 (IPC), registered with PS Jagat Puri and all proceedings emanating therefrom, be quashed.

2. The said FIR was filed at the instance of respondent no.2 (the complainant). The petitioner contends that the FIR in question was filed

with a view to harass the petitioner. He alleges that the complainant and her husband have been blackmailing him for money for a long time. Further, it is contended that the FIR in question is a counterblast to a complaint filed by the petitioner with the Crime Branch, Meerut.

3. Briefly, the facts contained in the FIR in question are as follows:

3.1 The complainant filed the FIR in question stating that her first marriage was solemnized with Devender, however, they are separated. She stated that she met the petitioner herein in the year 2015, when she was working as a school teacher and despite informing the petitioner that she is married, he continued to get close to her. According to the complainant, he told her he would stay with her for her whole life and would marry her.

3.2 According to the complainant, the petitioner started visiting her house and established a physical relationship with her without her consent would make her consume tablets. She stated that he would return the next day leaving her feeling half dead. Further, she stated that the petitioner would force her to get abortions by giving her medicines. He would also take money from the complainant on the pretext of being in debt.

3.3 On 07.05.2019, she came to know that the petitioner had solemnized marriage with another girl on 06.05.2019.

4. The petitioner, however, submits to the contrary. He submits that he is engaged in the business of supplying school uniforms. The

complainant used to work as a receptionist at a school in Vishwas Nagar, Shahdara, Delhi and he met the petitioner during the course of his business. Thereafter, the interaction between the two increased and the petitioner submits that she informed him that her parents had expired and that her husband treats her with cruelty. The petitioner helped the complainant financially on many occasions in view of the foregoing facts.

5. However, on coming to know that the parents of the petitioner were alive and that she was happily married with two children, he cut-off all ties with the complainant and stopped giving her any financial help. The petitioner submits that soon thereafter, the complainant and her husband started to blackmail the petitioner for money, failing which, they threatened him that they would initiate false criminal cases against him. According to the petitioner, these demands increased when the complainant came to know about the marriage of the petitioner scheduled to be held on 06.05.2019.

6. The petitioner, thereafter, lodged a complaint with the Crime Branch, Meerut on 08.05.2019 and the FIR in question (FIR No. 0095/2019 under Section 376 of the Indian Penal Code, 1860, registered with PS Jagat Puri) was lodged at the instance of the complainant on the next day, that is, on 09.05.2019.

Reasons and Conclusion

7. The present petition was listed on 29.05.2019 and on that date, this Court had issued notice, which was accepted by the learned counsel

who appeared for respondent no. 2 (the complainant) and six weeks' time was granted to the respondents to file a counter affidavit. This Court had also passed an interim order staying the proceedings in connection with FIR in question (FIR bearing no. 95/2019) under Section 376 of the Indian Penal Code, 1860 (IPC) registered with P.S. Jagat Puri. Despite sufficient opportunity, respondent no. 2 did not file any counter affidavit and therefore, the averments made in this petition remained uncontroverted.

8. However, respondent no.2 filed an application (CRL. M.A. 31102/2019), *inter alia*, praying that the interim order staying proceedings in relation to the FIR in question be vacated. It is alleged in the said application that the Investigating Officer (Ms. Anupam) had not made any serious efforts to arrest the petitioner and had advised the complainant (respondent no.2) to compromise the matter after accepting some money, which would also be beneficial to her. She has also made allegations against the SHO, P.S. Jagat Puri. She alleges that the SHO had evinced interest in her and had asked her to make him happy.

9. The learned counsel appearing for respondent no.2 contends that the SHO had demanded certain sexual favours from her. He submitted that respondent no.2 had also filed a complaint with the Delhi Commission for Women in this regard.

10. In addition to the above, respondent no.2 also alleged that on 08.06.2019, she had been beaten by three unknown girls and one unknown boy and a complaint in this regard had been made to the SHO, P.S. Jagat Puri. There does appear to be some error in this regard, since

respondent no.2 states in her application that the said incident had taken place on 08.06.2019. However, the complaint annexed to the said application is dated 04.06.2019. A perusal of the said complaint indicates that she had also alleged that her purse had been snatched and that one of the girls had placed a knife on her abdomen. She stated that after the incident, she had called her friend and narrated the incident to her.

11. Respondent no.2 filed yet another complaint on 07.06.2019 alleging that she was attacked for the second time on 05.06.2019 by a group of three persons, which included one girl and two boys. She alleged that the said assailants had demanded that she withdraw the FIR in question. She stated that she saved herself and went to her friend's house and narrated the incident to her friend and also called the police at 100. She stated that she reached the police station at 02:30 a.m. after getting medically examined but the police refused to file any complaint. On the basis of the aforesaid allegations, respondent no.2 had prayed that interim order dated 29.05.2019 staying further proceedings regarding the FIR in question, be recalled.

12. It is seen that the allegations made in the application pertain to incidents that are alleged to have occurred after the stay order was granted by this court. There are hardly any averments, which effectively traverse the averments made in the petition.

13. Having stated the above, it is also necessary to observe that it is not necessary to examine the allegations made by the petitioner in this petition. The scope of the present petition is limited to examining whether the FIR in question requires to be quashed. It is contended on

behalf of the petitioner that the said FIR, registered under Section 376 of the IPC requires to be quashed as, *ex facie*, it does not disclose commission of the offence punishable under Section 376 of the IPC.

14. A plain reading of the FIR indicates that respondent no.2 had disclosed that her first marriage which was solemnized with Devender. However, she was separated from her husband. She stated that she became acquainted with the petitioner in the year 2015 and he had wanted to get close to her. She stated that she informed him that she was married but despite the same, he was not discouraged and stated that he had no objections on the count that she was married. She claimed that the petitioner also stated that he would accompany her throughout the life and would marry her. She stated that he started visiting her at her house and had established physical relationships with her. She stated that he had also taken money from her by pleading that he was in debt. She complained that the petitioner had got married on 06.05.2019 with another girl and he had spoiled her life and had left her alone without any support. She had stated that he had established physical relationships with her by falsely holding out that he would get marry to her.

15. The plain reading of the FIR in question indicates that according to respondent no.2, a close relationship had developed between the petitioner and her since the year 2015. Although she had stated that the petitioner had established physical relationships with her despite her objections, she had also indicated that he had established physical relationships with her on a false promise of marriage by leading her to believe that he would get married to her. She had also stated that the

petitioner had represented that he would accompany her throughout her life and would also marry to her. It is at once apparent from the plain reading of the said FIR that respondent no.2 is aggrieved on account of the petitioner breaking up the relationship between them and getting married to another person. She had also stated that he had left her alone and without support clearly indicating that her grievance is with the petitioner is not regarding his establishing physical relationships with her but on parting with her company.

16. Thus, there is little doubt that even according to respondent no.2, the relationship between her and the petitioner was consensual. Although she claims that her consent was no consent as it was induced by a false promise of marriage.

17. In view of the above, the principal issue to be addressed is whether in the given facts, respondent no.2's version that she was induced to establish a relationship with the petitioner on the promise of marriage is unsustainable. Admittedly, respondent no.2 has already married. Although she claimed that she was separated from her husband, it is not her case that they are divorced. In the circumstances, there would be no question of marriage between the petitioner and respondent no.2 and her version that her consent for engaging in a sexual act was vitiated on account of such inducement, cannot be accepted.

18. It is also important to note that according to respondent no.2 and the petitioner, their relationship had spanned over almost about four years. This is fairly a lengthy period of time and it cannot be accepted that respondent no.2 continued to be allured into establishing a physical

relationship with the petitioner on the promise of marriage which, in any case, could not be solemnized as respondent no.2 was already married.

19. Section 376 IPC prescribes a punishment for an offence of rape. The said offence is described under Section 375 IPC. Section 375 IPC is set out below:-

“375. Rape. — A man is said to commit “rape” if he —

xxxx

under the circumstances falling under any of the following seven descriptions —

First. — Against her will.

Secondly. — Without her consent

xxxx

Explanation 2. — Consent means an unequivocal voluntary agreement when the woman by words, gestures or any form of verbal or non-verbal communication, communicates willingness to participate in the specific sexual act:

Provided that a woman who does not physically resist to the act of penetration shall not by the reason only of that fact, be regarded as consenting to the sexual activity.

xxxx”

20. A plain reading of the FIR in question indicates that there is no allegation that the petitioner had forcefully established a physical relationship with the complainant. It is clear that their physical relationship, if any, was established with respondent no.2’s consent.

Respondent no.2 claims that her consent was not unequivocal or voluntary but had been induced under the promise of marriage.

21. In terms of Section 90 of the IPC, a consent which is given under fear or mis-conception is not a consent, as is intended by this Court. Section 90 IPC is set out below:-

“90. Consent known to be given under fear or misconception. — A consent is not such a consent as is intended by any section of this Code, if the consent is given by a person under fear of injury, or under a misconception of fact, and if the person doing the act knows, or has reason to believe, that the consent was given in consequence of such fear or misconception; or
Consent of insane person. — if the consent is given by a person who, from unsoundness of mind, or intoxication, is unable to understand the nature and consequence of that to which he gives his consent; or
Consent of child. — unless the contrary appears from the context, if the consent is given by a person who is under twelve years of age.”

22. In this context, the Supreme Court had in ***Pramod Suryabhan Pawar v. State of Maharashtra and Another: (2019) SCC online SC 1073***, observed as under:-

“14. This Court has repeatedly held that consent with respect to Section 375 of the IPC involves an active understanding of the circumstances, actions and consequences of the proposed act. An individual who makes a reasoned choice to act after evaluating various alternative actions (or inaction) as well as the various possible consequences flowing from such action or inaction, consents to such action...”

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20. Where the promise to marry is false and the intention of the maker at the time of making the promise itself was not to abide by it but to deceive the woman to convince her to engage in sexual relations, there is a “misconception of fact” that vitiates the woman's “consent”. On the other hand, a breach of a promise cannot be said to be a false promise. To establish a false promise, the maker of the promise should have had no intention of upholding his word at the time of giving it. The “consent” of a woman under Section 375 is vitiated on the ground of a “misconception of fact” where such misconception was the basis for her choosing to engage in the said act...”

23. The Supreme Court in ***Pramod Suryabhan Pawar*** (*supra*) had also referred to various other decisions and summarized the legal position in the following words:-

““22. To summarise the legal position that emerges from the above cases, the “consent” of a woman with respect to Section 375 must involve an active and reasoned deliberation towards the proposed act. To establish whether the “consent” was vitiated by a “misconception of fact” arising out of a promise to marry, two propositions must be established. The promise of marriage must have been a false promise, given in bad faith and with no intention of being adhered to at the time it was given. The false promise itself must be of immediate relevance, or bear a direct nexus to the woman's decision to engage in the sexual act.”

24. It is clear that in this case, there was no possibility of the petitioner and respondent no.2 getting married at the time when

respondent no.2 alleges that they had established physical relationships. Thus, respondent no.2's contention that her consent was involuntary and not a consent as contemplated under Section 375 of IPC cannot be accepted.

25. In ***Prashant Bharti v. State (NCT of Delhi): (2013) 9 SCC 293***, the Supreme Court had considered a case where a woman who was married had alleged that she was induced into a physical relationship with the accused on the promise of marriage. The Supreme Court had repelled the said allegation as false in view of the fact that the complainant was married at the material time. The relevant extract of the said decision is set out below:-

“17. It is relevant to notice, that she had alleged, that she was induced into a physical relationship by Prashant Bharti, on the assurance that he would marry her. Obviously, an inducement for marriage is understandable if the same is made to an unmarried person. The judgment and decree dated 23-9-2008 reveals that the complainant/prosecutrix was married to Lalji Porwal on 14-6-2003. It also reveals that the aforesaid marriage subsisted till 23-9-2008, when the two divorced one another by mutual consent under Section 13-B of the Hindu Marriage Act. In her supplementary statement dated 21-2-2007, the complainant/prosecutrix accused Prashant Bharti of having had physical relations with her on 23-12-2006, 25-12-2006 and 1-1-2007 at his residence, on the basis of a false promise to marry her. It is apparent from irrefutable evidence, that during the dates under reference and for a period of more than one year and eight months thereafter, she had remained married to Lalji Porwal. In such a fact situation, the assertion made by the complainant/prosecutrix, that the appellant-accused had

physical relations with her, on the assurance that he would marry her, is per se false and as such, unacceptable. She, more than anybody else, was clearly aware of the fact that she had a subsisting valid marriage with Lalji Porwal. Accordingly, there was no question of anyone being in a position to induce her into a physical relationship under an assurance of marriage. If the judgment and decree dated 23-9-2008 produced before us by the complainant/prosecutrix herself is taken into consideration along with the factual position depicted in the supplementary statement dated 21-2-2007, it would clearly emerge that the complainant/prosecutrix was in a relationship of adultery on 23-12-2006, 25-12-2006 and 1-1-2007 with the appellant-accused, while she was validly married to her previous husband Lalji Porwal. In the aforesaid view of the matter, we are satisfied that the assertion made by the complainant/prosecutrix, that she was induced to a physical relationship by Prashant Bharti, the appellant-accused, on the basis of a promise to marry her, stands irrefutably falsified.”

26. The said reasoning is equally applicable on the facts of this case and the allegations made by the respondent that she was induced into a physical relationship on a false promise to marry is, *ex-facie*, unsustainable.

27. The complainant had alleged that she had disclosed to the petitioner that she was married, yet he was not discouraged and had stated that he had no objection. This also indicates that that the parties had established their relationship fully aware that the same could not fructify in their marriage at the material time.

28. Insofar as the allegations made by respondent no.2 in her application (CRL. M.A. 31102/2019) is concerned, this Court had

directed respondent no.1 to file a status report. The status report has since been filed indicating the actions taken on various complaints filed by her on or after 29.05.2019. The relevant extract of the said status report is set out below:-

“After the stay proceeding, complainant made several complaints on various date at P.S jagatpuri. The action on that complaints are under as:-

1. On 29/05/19, complainant made a complaint before the Delhi Commission for women related to not conducting fair investigation by the IO or misbehaviour by SHO which is pending in DCW.
2. On 04/06/19, complainant made a complaint in P.S Jagatpuri related to snatching and threatening by three girls and one boy and in her complaint she mentioned that she informed her one friend about the incident. In this regard it is submitted that the CDR detail of complainant's mobile number was obtained, as per the details, she did not talk with her friend on 04/06/19. On local enquiry, no eye witnesses were found and the complainant did not make any PCR call regarding the incident. Hence the complaint has been filed.
3. On 05/6/19, complainant made PCR call related to quarrel and the same has been filed by the IO because the caller said that her case is pending in Karkardooma court.
4. On 07/06/16, complainant made PCR call related to misbehaviour by unknown person and the same has been filed by I.O. because there was no cognizable offence made out.
5. On 27/06/19, complainant again made a complaint in P.S Jagatpuri related to threats received by her from four mobile numbers. On enquiry it is found that the alleged numbers never called on her mobile number during the period from 29.5.19 to 01/7/19 since CDR's of the mobile numbers were examined. Hence the complaint has been filed.

All the complaints have been enquired into and thereafter filed.”

29. In view of the fact that the complaints made by respondent no.2 of being assaulted on two occasions after the present petition was filed have been inquired into, this Court does not consider it necessary to pass any orders in this regard. Needless to state that respondent no.2 is not precluded from taking all remedies in relation thereto as available in law.

30. In view of the above, the FIR in question does not disclose any offence punishable under Section 376 of the IPC. The petition is merited and is thus, allowed. Accordingly, FIR bearing no. 0095/2019 under Section 376 of the Indian Penal Code, 1860, registered with PS Jagat Puri and all proceedings emanating therefrom, are quashed.

31. The pending applications are also disposed of.

VIBHU BAKHRU, J

NOVEMBER 18, 2019

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