

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

CRL.M.C. 1474/2018 & CRL. REV. 785/2016

Reserved on : 08.11.2019

Date of Decision : 20.11.2019

IN THE MATTER OF:

CRL.M.C. 1474/2018 & CRL. M.A. 5356/2018

AJEET SINGH

... Petitioner

Through: Mr. Hrishikesh Baruah, Mr. Hemant
Phalpher and Mr. Siddhant Kaushik, Advocates

Versus

STATE & ANR

... Respondents

Through: Dr. M.P. Singh, APP for State.

AND

CRL. REV. 785/2016

AJEET SINGH

... Petitioner

Through: Mr. Hrishikesh Baruah, Mr. Hemant,
Phalpher and Mr. Siddhant Kaushik, Advocates

Versus

STATE (NCT) OF DELHI & ANR

... Respondents

Through: Dr. M.P. Singh, APP for State.

CORAM:

HON'BLE MR. JUSTICE MANOJ KUMAR OHRI

1. The present criminal miscellaneous petition has been filed under Section 482 Cr.P.C. seeking quashing of the charge-sheet and consequent proceedings arising out of FIR No.865/2015 registered under Section 376 IPC at P.S. Hari Nagar. The petitioner has also filed the aforementioned

Crl. Rev. Petition under Section 397/401 Cr.P.C. against the impugned order dated 08.09.2016 whereby the charge under Section 376 IPC was framed against the petitioner.

2. In the present case, the complainant was impleaded as respondent No.2 in both the petitions. The notice of the present petitions was served on her and her counsel duly appeared and even filed the *Vakalatnama* on her behalf. The counsel appeared on subsequent dates as well however, thereafter neither the complainant nor her counsel appeared. The matter was taken up on 07.11.2019 on which date, the counsel for the complainant was telephonically informed about the pendency of the present case however, neither the complainant nor her counsel appeared on that date. Learned APP, on instructions from the I.O., submitted that the complainant was informed by the Investigating Officer about the order dated 07.11.2019 passed by this Court. The arguments were heard on behalf of the petitioner as well as learned APP for the State. The trial court record, which had been requisitioned, was also perused.

3. Learned counsel for the petitioner contended that the present FIR is a gross abuse and misuse of the process of law *inasmuch* as the complaint has been filed with malafide intentions. It was submitted that ingredients of the offence punishable under Section 376 IPC are not made out as the complainant at the time of the registration of the FIR was already married to one Arvind Sharma which marriage according to the learned counsel for the petitioner is still subsisting.

4. Learned counsel for the petitioner has referred to various documents filed along with the petitions, in support of his aforesaid submission, that the complainant was already married and that she has

filed a criminal case for rape and other offences against her husband namely, Arvind Sharma. He has also referred to the court orders to show that the complainant was also previously married to one Nishant Mishra.

5. Based on the aforementioned materials and statement of the complainant recorded during investigation, it is submitted that the complainant was already married twice and had two daughters out of the said marriage. It was urged that since complainant was already married and the said marriage was still subsisting, no case is made out against the petitioner. In support of his submission, he has placed reliance on the decision rendered by Supreme Court in Prashant Bharti Vs. State (NCT of Delhi) reported as **(2013) 9 SCC 293** and decisions of the Coordinate Bench of this Court in Mohit Nagar Vs. State and Anr. reported as **2017 SCC OnLine Del 7616**, Rahul Mishra Vs. State (Govt. of NCT of Delhi) reported as **2018 SCC OnLine Del 7231**.

6. Learned counsel for the petitioner also contended that even otherwise it is a fit case of quashing of the FIR as it has been admitted by the complainant that she was in a live-in relationship with the petitioner for quite some time. It was stated that the complainant had taken a conscious decision to continue to live with the petitioner. In support of his submission, learned counsel for the petitioner has placed reliance on the decision rendered in Dr. Dhruvaram Murlidhar Sonar Vs. State of Maharashtra and Ors. reported as **2018 SCC Online SC 3100**, in support of his submissions that if physical relations continued then it does not amount to rape under false promise to marry.

7. The scope of Section 482 Cr.P.C. and the parameters to exercise the power under Section 482 Cr.P.C. by the High Court to quash the

prosecution at the stage of issuing process or at the stage of framing of charge have been enunciated time and again. In Rajiv Thapar and Ors. Vs. Manda Lal Kapoor reported as (2013) 3 SCC 330, the following guidelines were laid down for quashing of the FIR and the consequent proceedings :-

“29. The issue being examined in the instant case is the jurisdiction of the High Court under Section 482 of the Code of Criminal Procedure, if it chooses to quash the initiation of the prosecution against an accused, at the stage of issuing process, or at the stage of committal, or even at the stage of framing of charges. These are all stages before the commencement of the actual trial. The same parameters would naturally be available for later stages as well. The power vested in the High Court under Section 482 of the Code of Criminal Procedure, at the stages referred to hereinabove, would have far reaching consequences, inasmuch as, it would negate the prosecution’s/complainant’s case without allowing the prosecution/complainant to lead evidence. Such a determination must always be rendered with caution, care and circumspection. To invoke its inherent jurisdiction under Section 482 of the Code of Criminal Code the High Court has to be fully satisfied, that the material produced by the accused is such, that would lead to the conclusion, that his/their defence is based on sound, reasonable, and indubitable facts; the material produced is such, as would rule out and displace the assertions contained in the charges levelled against the accused; and the material produced is such, as would clearly reject and overrule the veracity of the allegations contained in the accusations levelled by the prosecution/complainant. It should be sufficient to rule out, reject and discard the accusations levelled by the prosecution/complainant, without the necessity of recording any evidence. For this the material relied upon by the defence should not have been refuted, or alternatively, cannot be justifiably refuted, being material of sterling and impeccable quality. The material relied upon by the accused should be such, as would persuade a reasonable person to dismiss and condemn the actual basis of the

accusations as false. In such a situation, the judicial conscience of the High Court would persuade it to exercise its power under Section 482 of the Code of Criminal Code to quash such criminal proceedings, for that would prevent abuse of process of the court, and secure the ends of justice.

30. Based on the factors canvassed in the foregoing paragraphs, we would delineate the following steps to determine the veracity of a prayer for quashing, raised by an accused by invoking the power vested in the High Court under Section 482 of the Code of Criminal Code:-

30.1 Step one, whether the material relied upon by the accused is sound, reasonable, and indubitable, i.e., the material is of sterling and impeccable quality?

30.2 Step two, whether the material relied upon by the accused, would rule out the assertions contained in the charges levelled against the accused, i.e., the material is sufficient to reject and overrule the factual assertions contained in the complaint, i.e., the material is such, as would persuade a reasonable person to dismiss and condemn the factual basis of the accusations as false.

30.3 Step three, whether the material relied upon by the accused, has not been refuted by the prosecution/complainant; and/or the material is such, that it cannot be justifiably refuted by the prosecution/complainant?

30.4 Step four, whether proceeding with the trial would result in an abuse of process of the court, and would not serve the ends of justice?

30.5 If the answer to all the steps is in the affirmative, judicial conscience of the High Court should persuade it to quash such criminal proceedings, in exercise of power vested in it under Section 482 of the Code of Criminal Code. Such exercise of power, besides doing justice to the

accused, would save precious court time, which would otherwise be wasted in holding such a trial (as well as, proceedings arising therefrom) specially when, it is clear that the same would not conclude in the conviction of the accused.”

8. In the present case, as per allegations in the FIR, the complainant stated that she was a resident of Lucknow and used to work and live there along with her daughter due to divorce from her first husband. She met the present petitioner through a matrimonial site. The petitioner telephoned and proposed to marry her. He also stated that he was a divorcee and was residing with his mother in Delhi. With their consent, the marriage was fixed in November, 2014. During this time, whenever the complainant used to visit Delhi, she used to stay at petitioner's house. Due to some personal difficulty of the petitioner, the petitioner proposed to postpone the marriage, to which the complainant agreed. On one day, the petitioner asked the complainant to seek her transfer from U.P. and come with her belongings to his house in Delhi. The complainant accepted the proposal and came to Delhi along with her daughter and her belongings. She started residing with the petitioner from 01.03.2015. After few days, the petitioner started manhandling the complainant and broke the household articles brought by her. One day after returning, she found the petitioner at home with one girl, whom she came to know later, was the second wife of the petitioner. The said girl also told the complainant that she was the wife of the petitioner. It was also told that the marriage of the petitioner with the said girl was subsisting and he also had a son from her. The girl also told the complainant that the petitioner was facing trial under Section 498A/406 IPC in Rampur district. When the said girl told the petitioner that she had disclosed the factum of their

marriage to the complainant, the petitioner had beaten up the complainant. The petitioner continued to make forcible relations with the complainant. She made a complaint to P.S. Hari Nagar however, on account of threat from the petitioner and his brother to harm her daughter, she withdrew the said complaint. She returned to the home of the petitioner where again physical relations were made forcibly without her consent and the petitioner also extorted money from her. On 04.06.2015, she was again thrown out of the petitioner's home after which, she made the present complaint on 18.06.2015.

9. In her statement recorded under Section 164 Cr.P.C., the complainant made similar allegations against the petitioner although learned counsel for the petitioner submitted that there are variations.

10. From a combined reading of the statement of the complainant and the Status Report, the following facts emerge:-

10.1. The complainant came in touch with the petitioner through a matrimonial site and accepted the petitioner's proposal to marry her. Although their marriage was fixed in November, 2014 but the same got postponed on account of the ill health of the petitioner's mother.

10.2. During this time, whenever the complainant used to come to Delhi, she used to live at the house of the petitioner. The physical relation between them was established despite complainant's refusal but on the assurance of marriage by the petitioner.

10.3. Even as per the Status Report, the unverified death of Arvind Sharma had taken place in the year 2016 whereas the allegations in the present case relates to the year 2014 and 2015, which are prior in time.

10.4. Though the initial physical relations were made on promise to marry, however, subsequently after the complainant met the other girl who stated herself to be wife of the petitioner, it has been specifically alleged that the complainant was beaten and the physical relations were made forcibly. It was further stated that after she withdrew the police complaint from Hari Nagar Police Station on account of threat of her daughter being harmed by the petitioner and his brother. After returning to the home of the petitioner, he again made forcible physical relations without her consent and extorted money from her.

11. Both the contentions of the learned counsel for the petitioner are premised on the fact that the relationship between the parties are consensual albeit, based on the promise to marry. In this regard, as already noted above, the initial physical relations between the parties were consensual, on the petitioner's promise of marriage. However, later the physical relations were not consensual and were rather made forcibly. In Dr. Dhruvaram Murlidhar Sonar (*supra*), Supreme Court held that there is a clear distinction between rape and consensual sex. It was held that acknowledged consensual physical relationship between the parties would not constitute an offence under Section 376 of the IPC. The same, however, is not the case in the present matter. The complainant has specifically alleged that the petitioner had beaten her and made forcible physical relations without her consent. The said subsequent forcible physical relations were not based on any promise of marriage. The reliance placed by the learned counsel for the petitioner on the aforesaid decisions is completely misplaced as the same pertains to cases of consensual sex based on the promise of marriage. In the present case, the

complainant had unequivocally stated that the petitioner had forcibly raped her.

12. In view of the above discussions, both the petitions are dismissed along with the pending application. The view expressed hereinabove are only for the purpose of disposal of present petitions and the same shall not have any effect on the trial of the case.

(MANOJ KUMAR OHRI)
JUDGE

NOVEMBER 20, 2019
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