

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

CRL.REV.P. 1094/2018

Reserved on : 05.12.2019

Decision on : 17.12.2019

IN THE MATTER OF:

CRL.REV.P. 1094/2018

SMT. CHETNA

..... Petitioner

Through: Ms. Francis Paul and Mr. Biswambar
Nayak, Advocates.

versus

STATE & ANR.

..... Respondents

Through: Ms. Radhika Kolluru, APP for
State with SI Sanjugita from PS-
Dwarka Sector-23.
Mr. Jagat Singh Baasla , Advocate for
respondent no.2.

CORAM:

HON'BLE MR. JUSTICE MANOJ KUMAR OHRI

1. The Present revision petition has been filed assailing the impugned order dated 18.10.2018 passed in FIR No. 180/2018 registered under Sections 376/417/406/493 IPC at P.S. Dwarka Sector 23, whereby the respondent no.2 was discharged.

2. The brief facts noted by the trial court are as under:-

“1. FIR in question was registered on complaint given by prosecutrix on 25.04.2018 to SHO, PS Sector-23, alleging that on 24.04.2013 she married accused as per Hindu rites in presence of family members of accused. Both prosecutrix and accused were divorcee. After marriage, prosecutrix did

not find behavior of accused cordial. Prosecutrix alleged at the time of marriage, accused told her that he would give all rights to prosecutrix and her son but he did not enter name of prosecutrix in his service record. Accused told prosecutrix that he-is not divorced. Accused executed an affidavit on 15.11.2016 that he would marry prosecutrix as soon he will get divorced. Prosecutrix alleged that accused married her on basis of forged documents and established physical relations with her. Prosecutrix alleged that accused is not returning her gold and he also took Rs2 lakh from her parents to settle his divorce case.

2. During investigation prosecutrix was medically examined. Her statement was recorded u/Sec. 164 Cr.P.C. Accused was formally arrested and charge-sheeted to face trial for offence punishable under Sections 376/417/406/493 IPC.”

3. Learned counsel for the petitioner has challenged the impugned order being arbitrary and decided on incorrect appreciation of facts. It is submitted that the statement of the complainant recorded during investigation before the Police as well as before the learned Metropolitan Magistrate, are consistent and disclose the commission of offence by the respondent No. 2.

4. Per contra, learned counsel for the respondent No. 2/accused has supported the impugned order and has submitted that even if the prosecution case is assumed to be correct, no case is made out against the respondent. He submitted that the prosecutrix is a mature and a divorced lady and was always aware of the marital status of the respondent No. 2. He further submitted that the prosecutrix willingly lived with the respondent No. 2 and was not under any misconception of promise of marriage by the respondent No. 2. In support of his submission, learned counsel for the respondent has relied upon the decision rendered by the Supreme Court in Dr. Dhruvaram Murlidhar

Sonar vs. The State of Maharashtra & Ors. reported as **2018 SCC Online SC 3100.**

5. I have heard learned counsel for the parties and gone through the trial court record. The FIR in the present case came to be registered on a direction to the SHO passed in an application filed by the petitioner under Section 156(3) Cr.P.C. The prosecutrix initially made a complaint addressed to SHO, P.S. R.K. Puram, which was received vide DD No. 56B on 23.04.2016. No action forthcoming, the prosecutrix gave another complaint to the SHO, P.S. Dwarka on 25.04.2018 on which later, aforesaid directions under Section 156(3) was given by the Metropolitan Magistrate. After registration of the FIR, a statement of the prosecutrix was also recorded under Section 164 Cr.P.C. before the Metropolitan Magistrate. The investigating agency also seized the divorce papers of both the parties as well as the marriage photographs handed over by the prosecutrix.

6. In the first complaint made to the SHO, P.S. R.K. Puram, it was stated by the prosecutrix that she got married to the respondent on 24.04.2013. At that time, she was already divorced and had an 8 year old son from her first marriage. However, the respondent No. 2 never entered her name in his service record. Later on, she came to know that the respondent No. 2 had not obtained divorce from his first wife which resulted in frequent dispute. It was her complaint that the respondent No. 2, after showing some fake court papers, induced her to marry him despite subsistence of his first marriage. It was further alleged that in pursuance to such falsity, the respondent No. 2 established physical relation with her. The respondent No. 2 also asked for financial help from the prosecutrix to enable him to obtain divorce from his

first wife. To the similar effect, is her complaint made to the SHO, P.S. Dwarka where it was additionally mentioned that the respondent No. 2 executed an affidavit dated 23.12.2016 which was prepared on a stamp paper purchased on 15.11.2016. It was further stated that the respondent No. 2 had taken Rs.2,00,000/- from her parents in July, 2017 to settle his divorce case. Even her articles including jewellery and documents which were lying in the house of the respondent No. 2, were not returned. In her statement recorded under Section 164 Cr.P.C., she reiterated her complaint and also stated that during her stay in the house of the respondent No. 2, she came across a notice of mediation and when she confronted him with the same, he told the prosecutrix that his divorce was still pending.

7. A perusal of the impugned order by the trial court would show that the same was passed on the following reasons, reproduced hereunder:-

“14. After examining documentary as well as oral evidence which prosecution proposes to adduce to prove guilt of accused, even if fully accepted is not showing that accused committed alleged offences for which they are being prosecuted because of following reasons:

a) Prosecutrix is a mature divorced woman. She was aware that accused during subsistence of his earlier marriage cannot marry her and as such she cannot be under misconception of any false promise of marriage by accused.

b) Even after knowing marital status of accused, prosecutrix continued to be in relationship with accused which indicates that she was not offended by any act of accused.

c) There is no evidence of legal marriage between accused and prosecutrix rather mutual agreement dated 23.12,2016 executed between them makes it evident that prosecutrix did not consider herself married to accused and agrees that after divorce of accused, she would marry him. (thus, Section 493 IPC is not attracted)

- d) Prosecutrix, was staying with accused and her statements indicates her willingness to be in relationship with accused.*
- e) There is no material on record to indicate that accused cheated prosecutrix rather agreement dated 23.12.2016 makes it clear that prosecutrix was aware about marital status of accused.*
- f) There is no material on record that accused at initial stage itself, the had no intention whatsoever, of keeping his promise to marry prosecutrix.*
- g) There is no material on record to substantiate allegation of prosecutrix that Rs.2 Lakhs were given to accused nor there is any evidence against that he committed criminal breach of trust by retaining articles of prosecutrix. (thus, section 406 IPC is not attracted)”.*

8. The finding recorded at Para 14(a) is incorrect for the reason that at no point of time, the prosecutrix had claimed knowledge of the subsistence of the respondent No. 2's first marriage, at the time of her own marriage with the respondent. Although, an argument was advanced by the learned counsel for the respondent No. 2 to the extent that the marriage between the prosecutrix and the respondent No. 2 is not proved however, from the records it is apparent that an affidavit, noted above, was executed by the respondent No. 2 wherein the factum of marriage was admitted. It was further stated in the said affidavit that after the marriage solemnized on 24.04.2013, the prosecutrix and the respondent No. 2 were living together as husband and wife. It was also stated that after his divorce from the first wife, the respondent No. 2 had solemnized his marriage with the prosecutrix. It is informed that the respondent No. 2 has himself placed reliance on the aforesaid affidavit during the bail proceedings.

9. The reliance by the learned counsel for the respondent No. 2 on the decision in Dr. Dhruvaram Murlidhar Sonar (Supra), is misplaced as in the captioned case the complainant entered into a relationship with the accused knowing fully well about the status of his subsisting marriage. In the captioned case, Supreme Court observed :-

“24....It is not a case of a passive submission in the face of any psychological pressure exerted and there was a tacit consent and the tacit consent given by her was not the result of a misconception created in her mind....”.

10. So far as the findings recorded in other paras of the impugned order are concerned, the same need to be tested at the time of trial.

11. In Om Wati (Smt.) and Anr. Vs. State through Delhi Admn. and Ors. reported as **(2001) 4 SCC 333**, Supreme Court while considering the scope of Section 227 Cr.P.C. held that at that stage, the Court has to peruse the evidence to find out if there are sufficient grounds for proceeding against the accused. It was further held:

“8...If upon consideration, the court is satisfied that a prima facie case is made out against the accused, the Judge must proceed to frame charge in terms of Section 228 of the Code. Only in a case where it is shown that the evidence which the prosecution proposes to adduce to prove the guilt of the accused, even if fully accepted before it is challenged in cross-examination or rebutted by defence evidence cannot show that the accused committed the crime, then and then alone the court can discharge the accused. The court is not required to enter into meticulous consideration of evidence and material placed before it at this stage. This Court in Stree Atyachar Virodhi Parishad vs. Dilip Nathumal Chordia & Anr. [1989]ISC560 cautioned the High Courts to be loathe in interfering at the stage of framing the charges against the accused. Self-restraint on the part of the High Court should be the rule unless

there is a glaring injustice staring the court in the face. The opinion on many matters can differ depending upon the person who views it. There may be as many opinions on a particular point, as there are courts but that would not justify the High Court to interdict the trial. Generally, it would be appropriate for the High Court to allow the trial to proceed”.

12. In Dipakbhai Jagdishchandra Patel vs. State of Gujarat and Anr., reported as **2019 SCC OnLine SC 588**, the Supreme Court held as under:-

“15. We may profitably, in this regard, refer to the judgment of this Court in State of Bihar v. Ramesh Singh AIR 1977 SC 2018 wherein this Court has laid down the principles relating to framing of charge and discharge as follows:

“Reading SS 227 and 228 together in juxtaposition, as they have got to be, it would be clear that at the beginning and initial stage of the trial the truth, veracity and effect of the evidence which the prosecutor proposes to adduce are not to be meticulously judged. Nor is any weight to be attached to the probable defence of the Accused. It is not obligatory for the Judge at that stage of the trial to consider in any detail and weigh in a sensitive balance whether the facts, if proved, would be incompatible with the innocence of the Accused or not. The standard of test and judgment which is to be finally applied before recording a finding regarding the guilt or otherwise of the Accused is not exactly to be applied at the stage of deciding the matter Under S 227 or S 228 of the Code. At that stage the Court is not to see whether there is sufficient ground for conviction of the Accused or whether the trial is sure to end in his conviction.

Strong suspicion against the Accused, if the matter remains in the region of suspicion, cannot take the place of proof of his guilt at the conclusion of the trial. But at the initial stage if there is a strong suspicion which leads the Court to think that there is ground for presuming that the Accused has committed an offence then it is not open to the Court to say that there is no sufficient ground for proceeding against the Accused. The presumption of the guilt of the Accused which is to be drawn at the initial stage is not in the sense of the law governing the trial of criminal cases in France where the Accused is presumed to be guilty unless the contrary is proved. But it is only for the purpose of deciding

prima facie whether the court should proceed with the trial or not.

If the evidence which the prosecutor proposes to adduce to prove the guilt of the Accused even if fully accepted before it is challenged in cross-examination or rebutted by the defence evidence, if any, cannot show that the Accused committed the offence, then there will be no sufficient ground for proceeding with the trial.

If the scales of pan as to the guilt or innocence of the Accused are something like even at the conclusion of the trial, then, on the theory of benefit of doubt the case is to end in his acquittal. But if, on the other hand, it is so at the initial stage of making an order Under Section 227 or Section 228, then in such a situation ordinarily and generally the order which will have to be made will be one Under S. 228 and not Under S. 227”.

13. In view of the above, the impugned order dated 18.10.2018 is set aside. The revision petition is allowed. The parties are directed to appear before the Trial Court on 08.01.2020 for directions, wherein the trial court shall fix the matter for further proceedings.

14. Copy of this order be sent to the trial Court for information and compliance.

MANOJ KUMAR OHRI, J

DECEMBER 17, 2019

ga