

IN THE HIGH COURT FOR THE STATES OF PUNJAB AND
HARYANA AT CHANDIGARH

CRM-M No.11648 of 2019 (O&M)
Date of Decision.12.02.2020

Jatinder Singh Sarwara

...Petitioner

Vs

State of Haryana and another

...Respondents

CORAM:HON'BLE MS. JUSTICE JAISHREE THAKUR

Present: Mr. P.S. Ahluwalia, Advocate
for the petitioner.

Mr. Tanuj Sharma, AAG, Haryana.

Mr. S.S. Dinarapur, Advocate
for respondent No.2-complainant.

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JAISHREE THAKUR J. (ORAL)

1. This petition has been filed under Section 482 Cr.P.C. for quashing of FIR No.127 dated 18.03.2017 registered under Section 376 IPC at Police Station Shahabad, District Kurukshetra along with all subsequent proceeding emanating therefrom and the impugned order dated 20.03.2018 passed by the trial Court whereby the petitioner has been declared as proclaimed offender.

2. In brief facts of the case are that the aforesaid FIR was registered on statement of respondent No.2-complainant wherein it was stated that she came into contact with the accused-petitioner in the year 2012 on a social site i.e. Facebook. The father of the complainant died on 07.03.2013 and thereafter, the petitioner gave marriage proposal to family members of the complainant and asked her not to marry anyone else as he would convince

her family members for marriage. The petitioner was residing abroad and as and when he came to India, he used to take the complainant for outing and during that period, physical relations developed between them. He also started talking to mother of the complainant and promised to marry complainant, but after five years of relationship, the petitioner had shown his reluctance to marry her. During this period of five years, she received many marriage proposals but on the asking of petitioner she refused the same. He was well aware about caste of the complainant, but refused to marry her on the pretext that his parents would not allow inter-caste marriage. The complainant was in job but on asking of the petitioner, she resigned. It was further submitted that as the petitioner was going back to New Zealand on 23.03.2017, therefore, action be taken in the matter so that he could not perform engagement or marriage with anyone else.

3. Mr. P.S. Ahluwalia, learned counsel for the petitioner herein contends that a perusal of FIR would reveal that allegations leveled would not make out an offence under Section 375 IPC. As per contents of FIR, the petitioner came into contact with the complainant via Facebook and whenever the petitioner visited India, they used to go for an outing and thereafter physical relations developed between them. It is further submitted that relationship between the complainant and the petitioner was consensual and it was only when the petitioner refused to marry her on account of the fact that his parents did not agree for inter-caste marriage, the instant FIR had been registered. In support of his arguments, counsel for the petitioner would rely upon the judgment of Hon'ble Supreme Court of India in Pramod Suryabhan Pawar Vs. The State of Maharashtra and

another (2019) 9 SCC 608 wherein the Hon'ble Supreme Court quashed the FIR registered on the allegation of committing rape by giving a false promise of marriage.

5. It is further argued that despite the aforesaid factual position, the petitioner and the complainant have now entered into a compromise wherein the complainant on affidavit stated that the said FIR was registered by her on account of certain misunderstanding and differences and now she has resolved all disputes with the petitioner amicably and therefore, she does not want to pursue the FIR. It was also stated that she has no objection if FIR No.127 dated 18.03.2017 registered on her statement is quashed along with other proceedings.

6. Learned counsel appearing on behalf of respondent No.2-complainant admits to the factum of compromise and submits that the complainant has no objection if the FIR registered against the petitioner is quashed.

7. Mr. Tanuj Sharma, AAG, Haryana would submit that the petitioner had been declared proclaimed offender vide order dated 20.03.2018 passed by the Court of SDJM, Shahabad and challan has also been presented against him. The petitioner has committed a heinous crime and on investigation, a Look Out Country Notice had been issued against the petitioner. As per reply filed by the respondent-State, the factum of compromise has been denied for want of knowledge and it has been pleaded that while dismissing the instant petition, petitioner be directed to appear before the trial Court and face trial.

8. I have heard learned counsel for the parties.

9. There is a catena of judgments to the effect that developing of sexual relations on a false promise of marriage would tantamount to rape. This essentially means that if a man can prove that he intended to marry the woman but changed his mind later, then it's not rape. It's only considered rape if it's established that his intentions were *suspect* from the start. The law as settled also does not permit the offence of Rape to be compounded being a heinous crime against society.

10. In the case of **Pramod Suryabhan Pawar (supra)** it has been held *“Where a woman does not “consent” to the sexual acts described in the main body of Section 375, the offence of rape has occurred. While Section 90 does not define the term “consent”, “consent” based on a “misconception of fact” is not consent in the eye of the law.”* It has further been held :

“ 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. In Deepak Gulati [Deepak Gulati v. State of Haryana, (2013) 7 SCC 675 : (2013) 3 SCC (Cri) 660] this Court observed:

“21. ... There is a distinction between the mere breach of a promise, and not fulfilling a false promise. Thus, the court must examine whether there was made, at an early stage a false promise of marriage by the accused; and whether the consent involved was given after wholly understanding the nature and consequences of sexual indulgence. There may be a case where the prosecutrix agrees to have sexual intercourse on account of her love and passion for the accused, and not solely on account of misrepresentation made to her by the accused, or where an accused on account of circumstances which he could not have foreseen, or which were beyond his control, was unable to marry her, despite having every intention to do so. Such cases must be treated differently.

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24. Hence, it is evident that there must be adequate evidence to show that at the relevant time i.e. at the initial stage itself, the accused had no intention whatsoever, of keeping his promise to marry the victim. There may, of course, be circumstances, when a person having the best of intentions is unable to marry the victim owing to various unavoidable circumstances. The “failure to keep a promise made with respect to a future uncertain date, due to reasons that are not very clear from the evidence available, does not always amount to misconception of fact. In order to come within the meaning of the term “misconception of fact”, the fact must have an immediate relevance”. Section 90 IPC cannot be called into aid in such a situation, to pardon the act of a girl in entirety, and fasten criminal liability on the other,

unless the court is assured of the fact that from the very beginning, the accused had never really intended to marry her .”

11. In Shivashanker @Shiva v State Of Karnataka and another in Criminal appeal No 504 of 2018 decided on 6.4.2018 it has been held that it is difficult to hold that there is an offence of rape when the relationship continued for over 8 years.

12. In Dr Dhruvaram Murlidhar Sonar vs State Of Maharashtra 2019 (1) RCR (Criminal) 674 while dealing with the allegation of rape leveled in a live in relationship and there was a breach of promise to marry ,has also held that the offence of rape would not be made out.

“ 20. Thus, there is a clear distinction between rape and consensual sex. The court, in such cases, must very carefully examine whether the complainant had actually wanted to marry the victim or had mala fide motives and had made a false promise to this effect only to satisfy his lust, as the later falls within the ambit of cheating or deception. There is also a distinction between mere breach of a promise and not fulfilling a false promise. If the accused has not made the promise with the sole intention to seduce the prosecutrix to indulge in sexual acts, such an act would not amount to rape. There may be a case where the prosecutrix agrees to have sexual intercourse on account of her love and passion for the accused and not solely on account of the misconception created by accused, or where an accused, on account of circumstances which he could not have foreseen or which were beyond his control, was unable to marry her despite having every intention to do. Such cases

must be treated differently. If the complainant had any mala fide intention and if he had clandestine motives, it is a clear case of rape.

The acknowledged consensual physical relationship between the parties would not constitute an offence under section 376 of the IPC.” (emphasis supplied).

13. In this background this court has to look into the contents of the FIR registered and the affidavit filed in court by the complainant who does not want to pursue the FIR and would have no issue in case the same is quashed.

14. On a plain reading of the FIR as registered at the police station, it transpires that the parties were in a consensual relationship over the past 5 years. The prosecutrix was aged 26 years at the time of getting into the relationship where as the petitioner was 24 years and was working in New Zealand since 2011. As per the version set out by the prosecutrix in the FIR, their friendship started over face book in the year 2012. It is stated that her father expired on 7.3.2013 and after that he proposed to her while stating that he would convince her family members to allow them to get married. It is to be noted that the petitioner belonged to a Jat Sikh Community, whereas the respondent was from the backward class Sikh Community. Physical relations developed between the two and continued whenever he would be in India. The petitioner would also visit the home of the prosecutrix, and had given an assurance to the mother of the prosecutrix that a marriage would be solemnized. However, after being together for 5 years he expressed his reluctance to do so citing that they belonged to different caste, and that his parents were not agreeing. Fearing that a marriage would not take place, the

prosecutrix got the FIR registered so that he could not leave for New Zealand and that he could not perform a marriage elsewhere.

15. The relationship that developed between the parties was not based on a false promise of marriage. The parties came to know each other through facebook as far back as 2012, and thereafter a physical relationship also developed between them as late as 2014. The petitioner would visit the home of the prosecutrix when he would visit from New Zealand. The affidavit as submitted by the prosecutrix will clearly establish that the relationship was consensual with the prosecutrix being 28 years at that time, and the petitioner herein 26 years. The relationship which developed between the parties was with due consent, both being major and capable of taking a reasoned decision to enter into a physical relationship. It is also not the case of the prosecutrix that the act complained off occurred only once or that she had been subjected to any kind of force. They were in a relationship with each other for quite some time and enjoyed each other's company. When she came to know that the petitioner was not going to marry her she lodged the complaint stating *“on 23.03.2017, he is going back to New Zealand, therefore take timely action so that he cannot perform marriage anywhere else”*. It is not her case that the complainant has forcibly raped her.. Moreover, the FIR would further reflect that the marriage was not being solemnized on account of his parents not giving their consent. In this peculiar background it could not be said that he had made a false promise of marriage, only to entice her into the said physical relationship.

16. In a judgment rendered by the Hon'ble Supreme Court **in Narinder Singh and others vs. State of Punjab and another, 2014(6) SCC 466**, the

Hon'ble Apex Court has laid down certain principles and guidelines which should be kept in mind while quashing of FIRs pertaining to non compoundable offence. For ready reference paragraphs No.29.2 and 29.5 are reproduced as under :-

“29.2. When the parties have reached the settlement and on that basis petition for quashing the criminal proceedings is filed, the guiding factor in such cases would be to secure : (i) ends of justice, or (ii) to prevent abuse of the process of any court. While exercising the power the High Court is to form an opinion on either of the aforesaid two objectives.”

17. In **Vineet Kumar and Ors. v. State of Uttar Pradesh and Anr. 2017(2) R.C.R. (Criminal) 497** this Court has observed as under:

"Inherent power given to the High Court under section 482 CrPC, 1973 is with the purpose and object of advancement of justice. In case solemn process of Court is sought to be abused by a person with some oblique motive, the Court has to thwart the attempt at the very threshold. Judicial process is a solemn proceeding which cannot be allowed to be converted into an instrument of oppression or harassment. When there are materials to indicate that a criminal proceeding is manifestly attended with mala fide and proceeding is maliciously instituted with an ulterior motive, the High Court will not hesitate in exercise of its jurisdiction under section 482 CrPC, 1973 to quash the proceeding. The present is a fit case where the High Court ought to have exercised its jurisdiction under section 482 CrPC, 1973 and quashed the criminal proceedings."

18. Consequently , when the very offence of rape would not be established from a reading of the FIR and the affidavit furnished, this court has no hesitation in quashing the FIR under section 482 Cr.P.C. and all subsequent proceeding including the order dated 20.03.2018 declaring him to be a proclaimed offender arising under the same FIR, since the continuation of the same would tantamount to abuse of the process of law.

19. This petition is allowed accordingly.

(JAISHREE THAKUR)
JUDGE

February 12, 2020
Pankaj*

Whether speaking/reasoned	Yes/No
Whether reportable	Yes/No