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

+ **W.P.(CRL) 3602/2019**

FAIZAN

..... Petitioner

Through: Mr Feroz Khanchazi, Mr Abdus
Sattar and Mohd. Sadiq, Advocates.

versus

STATE & ANR.

..... Respondents

Through: Mr Amanpreet Singh, Advocate for
Mr Rahul Mehra, Standing Counsel
for State with SI Seema, PS Jamia
Nagar.

CORAM:

HON'BLE MR. JUSTICE VIBHU BAKHRU

ORDER

% **26.02.2020**

1. The petitioner has filed the present petition, *inter alia*, praying that FIR No.0226/2019, under Section 376 of the IPC, registered with PS Jamia Nagar and all consequential proceedings emanating therefrom, be quashed.
2. The said FIR was registered at the instance of a woman (hereafter referred to as 'the complainant' – name withheld to avoid any ignominy). She had stated that she was married to one Rakesh @ Himanshu (husband) about five years ago. After their marriage, she discovered that her husband was suffering from Tuberculosis (TB) and due to that reason, she started living separately with her parents. She stated that during the said period, she was in contact with the petitioner through Facebook and they started conversing telephonically. She stated that, thereafter, she met the petitioner

and told him about her marriage. She alleges that the petitioner promised to keep her with him and also promised that he would marry her if she would divorce her husband. She alleges that in the aforesaid manner, the petitioner trapped her and whenever he visited her parental home, the petitioner used to take her to an address in Okhla Vihar, Jamia Nagar to establish physical relationship on the promise of marriage.

3. She stated that sometime thereafter, she became pregnant and delivered a male child (from the petitioner) on 14.01.2018. However, because she was still married to her husband, she disclosed her husband's name to be child's father in all the documents and the petitioner did not object to the same.

4. She stated that when she forced the petitioner to marry her, he began avoiding her.

5. The complainant's statement under Section 164 of the CrPC was recorded and a copy of the same has been annexed with the status report filed before this Court. The statement recorded under Section 164 of the CrPC is similar to the contents of the aforesaid FIR. She stated that she had met the petitioner prior to her divorce and he had sympathised with her situation. She stated that, thereafter, one day, he had taken her to his house where he established physical relations with her (*'physical relationship ho gaye'*). She stated that she became pregnant and informed the same to the petitioner, who asked her to get the pregnancy terminated. She stated that she had been pressing the petitioner for getting married but he had been avoiding the issue. She stated that she has, subsequently, divorced her husband and even thereafter, the petitioner did not marry her.

6. The learned counsel appearing for the State submits that in addition to the above statement, the complainant's statement under Section 161 of the CrPC was recorded which is, essentially, to the same effect. However, in her statement, she alleged that the petitioner had given her a cold drink and on consuming the same, she became unconscious. When she gained consciousness, she found that the petitioner had established physical relations with her.

7. A chargesheet has been filed and the matter is admitted for framing of charges. The learned counsel appearing for the State submits that since the matter is pending for framing of charges, it is not necessary for this Court to intervene at this stage. Although the said contention is merited; however, it is seen that there is no material on record, which would be sufficient to cast any grave suspicion on the petitioner.

8. As noticed above, the aforesaid FIR does not indicate that the petitioner had established any physical relationship with the complainant without her consent. The allegation that a consensual relationship would amount to an offence under Section 376 of the IPC only on the ground that the petitioner had promised to marry the complainant, is unsustainable. It is evident from the facts, as narrated by the complainant, that she was already married and therefore, there was no question of the petitioner getting married to her at the time when they established a physical relationship. It is also seen that her allegation is not regarding any one-time incident but a long-standing relationship. An allegation of commission of an offence under Section 376 of the IPC, in a long-standing intimate relationship involving consensual sex, cannot be sustained only on a bald allegation that the

accused had promised or proposed marriage.

9. The consent to engage in sex secured on the inducement of a false promise to marry, is vitiated; but such consent is a matter of that moment and cannot sustain over a protracted period of time. Thus, there is little scope to allege commission of such an offence, where a long and steady relationship has sustained over a period of time. Accepting otherwise would mean accepting that such a relationship is devoid of any affection. A promise to marry cannot be accepted as the currency, or the only consideration, for establishing physical relations over a period of time.

10. More importantly, in this case, the complainant was already married according to Hindu rites and therefore, could not legally be married without securing divorce from her husband, which concededly, she has not secured.

11. In ***Prashant Bharti v. State (NCT of Delhi): (2013) 9 SCC 293***, the Supreme Court held that the assertion that the complainant; who was a married woman, was induced to establish physical relations on inducement of promise of marriage, was unacceptable. The relevant paragraph of the judgment is produced 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.

12. Before concluding, this Court also considers it apposite to note that the petitioner is present in Court and states that he still wants to sustain his relationship with the complainant and he had not made any false inducement or promise to the petitioner. He states that he is still willing to get married to the complainant.

13. The complainant is also present in the Court and she also states that she does not wish to pursue the FIR in question.

14. Given the circumstances of this case, this Court is of the view that it would not serve the ends of justice if the petitioner is called upon to defend proceedings, initiated pursuant to the FIR in question. In view of the above, this Court considers it apposite to allow the present petition.

15. Accordingly, FIR No. 0226/2019, under Section 376 of the IPC, registered with PS Jamia Nagar and all proceedings emanating therefrom, are quashed.

16. The petition is, accordingly, allowed.

VIBHU BAKHRU, J

FEBRUARY 26, 2020
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