

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

Date of Decision: 27.01.2020

+ **CRL.M.C. 80/2020 and CRL.M.A. 367/2020 (stay)**

IN THE MATTER OF:

VIRENDER SINGH

..... Petitioner

Through: Mr. P.N. Dhar, Advocate

Versus

STATE

..... Respondent

Through: Ms. Manjeet Arya, APP for State with
W/SI, Anu Pundir, P.S. Shahdara & W/SI, Renu,
P.S. Bhajanpura

CORAM:

HON'BLE MR. JUSTICE MANOJ KUMAR OHRI

MANOJ KUMAR OHRI, J. (ORAL)

1. The present petition is directed against the order dated 11.11.2019 passed by the Additional Sessions Judge in S.C. No.1964/16 whereby the charge was framed against the present petitioner under Sections 376/377/506 IPC.

2. The facts as noted by the trial court in the impugned order are reproduced below:-

“2. On 22.04.2014, the prosecutrix lodged a typed complaint with PS Shahdara, Delhi narrating that:-

(i). She was married to one ‘R’ in the year 1992 and has two children from the said wedlock. Due to certain difference, she and her husband got divorce in the year 2012.

(ii). In January, 2013, she received a phone on her mobile and the caller introduced him as Virender Singh. She disconnected the phone being wrong number but the caller called again and again and stated that he wanted to talk to her.

(iii). The prosecutrix was stressed as her daughter was having jaundice and requested the caller not to pester her citing the illness of her daughter. However, the caller called her several times and inquired about the wellness of her daughter and one day after taking the address of the prosecutrix came to her home to visit her ailing daughter. The parties conversed at length.

(iv). The accused disclosed that he was married but her wife was mentally differently-abled and he has been divorced and that he sought to marry the prosecutrix. The prosecutrix sought some time to think over. The accused called her many times everyday and visited her house often.

(v). On 11.02.2013, he took her to his house and told her that he was having a factory of nickel polish and that he would keep the prosecutrix happy and would look after her children in a good manner. The prosecutrix agreed to the marriage with him. He came to her house on 11.02.2013 and stayed there over night. While the children of the prosecutrix were asleep in the night, he stated to her that now they were going to be married, there was nothing wrong in making the relations and he made physical relations with the prosecutrix forcibly against her will and consent.

(vi). Next day he brought a gold mangal sutra and promise to marry her soon. Thereafter, he used to visit her house 4 to 5 days in a week and made forcible physical relations with her against her will and

consent. He also took her to various places outside Delhi and stated herself to be his wife in the register of Hotels and after consuming liquor established physical relations and forcibly committed anal sex upon her.

(vii). He kept on deferring the subject of marriage and on 22.10.2013 on the day of karvachoth promise to marry her soon but after that stopped receiving her calls. Prosecutrix went to his house on 08.04.2012 and there met a lady, who stated her to be the wife of accused and stated having two children from the wedlock. After lot of efforts, she was able to talk to the accused and confronted him as to the fraud committed by him, whereas he threatened her to kill her and her children boasting that he was a powerful person.”

3. Learned counsel for the petitioner contended that the complainant was aged about 36 years and was a divorcee having two children from her earlier marriage. He further contended that there is a delay in making the complaint as the said complaint was given only on 22.04.2014. He also contended that the complainant had made false allegations against the petitioner as the complainant was known to the petitioner since the year 2011 and had not met him for the first time in January, 2013. It was contended that the present FIR is a case of breach of promise rather than of false promise to marry and further, that Section 506 IPC is not made out and the petitioner should have been discharged under the aforesaid section.

Learned counsel for the petitioner has placed reliance on the decisions in Satish Mehra v. Delhi Administration & Anr. reported as **(1996) 9 SCC 766** Birkha v. State of M.P. reported as **1980 J LJ 56**, Kanchi Ram v. State reported as **2000 SCC OnLine Del 385** & State v. Sandeep reported as **2019 SCC OnLine Del 10332**.

4. Learned APP for the State, on the other hand, has supported the impugned order.

5. I have heard learned counsels for the parties and have also gone through the case records.

6. The complainant in her complaint had stated that she was divorced on 04.10.2012 and in the month of January, 2013, she received a call from the petitioner which she disconnected. Subsequently, the petitioner impressed upon her to talk which was refused as the complainant's daughter was suffering from jaundice. On the pretext of seeing the complainant's daughter, the petitioner came to the house of the complainant and promised to marry her as well as to look after her two children. On such promise, the complainant agreed to marry him. He further stated that he had taken divorce from his wife and will marry her.

7. On 11.02.2013, the petitioner stayed at the complainant's house and despite her refusal, established physical relations with her. The petitioner committed the aforesaid offence on number of occasions against her wishes. On 12.10.2013, the petitioner again came to the complainant's house and despite her refusal, made forcible relations with her. Again on 22.10.2013, the petitioner came to the complainant's house and reiterated his promise to marry her. Thereafter he did not contact her. It was stated that when the complainant went to the petitioner's house, she met a woman named *Billo* who stated herself to be the petitioner's wife. It was also stated that the petitioner had two children from his marriage.

8. As far as the contention of the learned counsel for the petitioner with respect to delay is concerned, it has not merit. In State of Madhya Pradesh v

Chhakki Lal and Anr., reported as **(2019) 4 SCC (Cri) 348**, it was held that delay in making a complaint is not fatal to the prosecution case if the delay is well explained.

9. Learned counsel for the petitioner has referred to a copy of the entry register of Hotel Varuna, Shimla to submit that the complainant was known to the petitioner since the year 2011 and had even gone voluntarily with him from 07.10.2011 to 08.10.2011 to Shimla. A perusal of the hotel register shows that the aforesaid entry is with respect to stay of two adults but only the name of Virender Singh is written and the name of second adult is not mentioned. There are no supporting documents of identification as well. From above, it cannot be said at this stage that the second adult who checked along with the petitioner was the complainant. The same is a matter of trial.

10. The parameters relevant at the stage of framing of charge have been laid down in Prafulla Kumar Samal v Union of India reported as **(1979) 3 SCC 4**, as follows:-

“7.The words “not sufficient ground for proceeding against the accused” clearly show that the Judge is not a mere post office to frame the charge at the behest of the prosecution, but has to exercise his judicial mind to the facts of the case in order to determine whether a case for trial has been made out by the prosecution. In assessing this fact, it is not necessary for the court to enter into the pros and cons of the matter or into a weighing and balancing of evidence and probabilities which is really his function after the trial starts. At the stage of Section 227, the Judge has merely to sift the evidence in order to find out whether or not there is sufficient ground for proceeding against the accused. The sufficiency of ground would take within its fold the nature of the

evidence recorded by the police or the documents produced before the court which ex facie disclose that there are suspicious circumstances against the accused so as to frame a charge against him.”

11. The decision relied on by the learned counsel for the petitioner in Satish Mehra (Supra) reiterates what has been stated in Prafulla Kumar Samal(supra). Reliance placed by the learned counsel for the petitioner in Birkha(supra) is misplaced as the said judgment was against an order on conviction whereas in the present case, only charges have been framed against the petitioner.

12. Learned counsel for the petitioner has relied on the decision in Sandeep (supra) to submit that the alleged physical relations between the complainant and the petitioner were consensual. A perusal of the captioned case would show that it pertained to a challenge against an order of acquittal where after going through the testimony of the prosecutrix, her father & mother, it was held that there was inherent inconsistency in the testimony of the prosecutrix. The ratio in the aforesaid case is not applicable to the present facts as the captioned case related to a challenge against an order of acquittal whereas in the present case, the truthfulness and reliability of the prosecutrix is still to be tested in the trial. The prosecutrix has specifically stated that on 12.10.2013 despite her refusal, the petitioner had made forcible relations with her. In Dhruvaram Murlidhar Sonar v State of Maharashtra and Others reported as **2018 SCC OnLine SC 3100**, Supreme Court held that there is a clear distinction between rape and consensual sex.

13. Lastly, learned counsel for the petitioner contended that in order to attract Section 506 IPC, it needs to be stated that the alleged threat caused an alarm in the mind of the victim. In support, he has placed reliance on the

decisions in Kanshi Ram v. State reported as **(2000) 54 DRJ 112** and Tanu Sharma v State reported as **2013 SCC OnLine Del 3867**.

14. In Kanshi Ram (supra), the accused had given an exhortation '*maro salon ko*'. A Coordinate Bench of this Court held that mere threat is no offence under Section 506 IPC. To fall in mischief of Section 506 IPC, there has to be an alarm in the mind of the victim on account of the alleged threat. The aforesaid view was also reiterated by another Coordinate Bench in Tanu Sharma(supra) and Pramod Goyal v. State & Ors reported as **2016 SCC OnLine Del 4804**.

15. Recently, in Vikram Johar v. State of Uttar Pradesh and Anr. reported as 2019 SCC OnLine 609, the Supreme Court while reaffirming its earlier decision in Fiona Shrikhande v. State of Maharashtra, **(2013) 14 SCC 44** and Manik Taneja v. State of Karnataka, **(2015) 7 SCC 423** held as follows:-

27. Now, reverting back to Section 506, which is offence of criminal intimidation, the principles laid down by Fiona Shrikhande (supra) has also to be applied when question of finding out as to whether the ingredients of offence are made or not. Here, the only allegation is that the appellant abused the complainant. For proving an offence under Section 506 IPC, what are ingredients which have to be proved by the prosecution? Ratanlal & Dhirajlal on Law of Crimes, 27th Edition with regard to proof of offence states following:—

“...The prosecution must prove:

(i) That the accused threatened some person.

(ii) That such threat consisted of some injury to his person, reputation or property; or to the person, reputation or property of someone in whom he was interested;

(iii) That he did so with intent to cause alarm to that person; or to cause that person to do any act which he was not legally bound to do, or omit to do any act which he was legally entitled to do as a means of avoiding the execution of such threat.”

28. A plain reading of the allegations in the complaint does not satisfy all the ingredients as noticed above.

29. On the principles as enumerated by this Court in Fiona Shrikhande (supra) and Manik Taneja (supra), we are satisfied that ingredients of Sections 504 and 506 are not made out from the complaint filed by the complainant. When the complaint filed under Section 156(3) Cr.P.C., which has been treated as a complaint case, does not contain ingredients of Sections 504 and 506, we are of the view that Courts below committed error in rejecting the application of discharge filed by the appellant. In the facts of the present case, we are of the view that appellant was entitled to be discharged for the offence under Sections 504 and 506.

16. A perusal of the complaint and the statements of the prosecutrix under Section 161 CrPC and 164 CrPC do not show that the prosecutrix was alarmed when a threat was extended to her by the petitioner and therefore all

the ingredients under Section 506 are not satisfied. Accordingly, the petition is allowed to the extent that the charge under Section 506 IPC is held to be not made out against the petitioner. The trial shall however proceed with respect to the remaining charges.

17. The present petition is disposed of along with the pending application.

18. A copy of this order be communicated to the trial court.

MANOJ KUMAR OHRI
(JUDGE)

JANUARY 27, 2020

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