

*** IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ CRL.M.C. 177/2021 & CRL.M.A.901/2021(stay)

Date of decision: 11th FEBRUARY, 2021

IN THE MATTER OF:

SHRI AISHWARYA BINDAL Petitioner

Through Mr. O.P. Saxena with Mr. Ravinder
Aggarwal, Advocates.

versus

THE STATE, GOVT. OF N.C.T. OF DELHI & ANR..... Respondents

Through Ms. Kusum Dhalla, APP for the State
with S.I. Manisha, P.S. Janakpuri.

CORAM:

HON'BLE MR. JUSTICE SUBRAMONIUM PRASAD

SUBRAMONIUM PRASAD, J.

1. This is a petition under Section 482 of the Code of Criminal Procedure, 1973 (Cr.P.C.) read with Article 227 of the Constitution of India, for quashing F.I.R. No.338/2019, dated 06.09.2019, registered at Police Station Janakpuri, Delhi, for offences under Sections 509, 377, 313, 506, 376(2)(n) I.P.C.

2. The petitioner is accused of committing rape on the prosecutrix. The allegation in the FIR is that the prosecutrix met her friend, one Isha Gupta resident of Sarai Rohilla, Delhi, who introduced the petitioner/accused to the prosecutrix by stating that the accused is her friend. It is stated in the FIR that after two or three days Isha Gupta told the prosecutrix that the

petitioner/accused wanted to meet her and wants to be friends with her. It is stated in the FIR that the prosecutrix refused this proposal by stating that she will only accept friendship from such a person who will marry her. Despite that the said Isha Gupta gave the mobile number of the prosecutrix to the accused. It is stated in the FIR that the accused started talking to the prosecutrix and insisted on meeting her. It is stated that on 03.03.2019, the accused and the prosecutrix met at hotel *Oyo Town Pankha Road, Janakpuri*. It is stated in the FIR that in the hotel the accused promised marriage and pressurized her to establish physical relationship with the prosecutrix. It is stated that in April, 2019 the accused came to the house of the prosecutrix and promised that he will talk to his mother about their marriage and established physical relationship with her. It is further stated in the FIR that later the accused called the prosecutrix to Karnal on the pretext of meeting his mother and for discussion about their marriage, the prosecutrix was put up at hotel *Gopinath Grand, near Dayal Singh College, Karnal* and he established physical relationship with her stating that he will introduce the prosecutrix to his mother. It is alleged that the accused forced her to have unnatural sex. It is stated that after that incident the prosecutrix had a fight with the accused but the accused assured her that he will marry the prosecutrix within 15 days. It is further stated that on 27.07.2019, once again, under the pretext of meeting his mother, the accused took the prosecutrix to hotel *Yellow Sparrow, Namaste Chowk, Karnal* where the prosecutrix told the accused that she is pregnant with the child of the accused. It is stated in the FIR that despite being told that the prosecutrix is pregnant the accused established physical relationship with her and it is

alleged that the accused mixed some medicine in the food of the prosecutrix because of which the prosecutrix had a miscarriage. It is stated that on 25.08.2019, once again the accused called the prosecutrix to Karnal, admitted his guilt and established physical relationship with her. It is stated that after the act the accused refused to marry the prosecutrix and that he told her that he has already used her and that now she is of no use to him. It is stated in the FIR that the accused also threatened that he will put her photo on the internet which would tarnish her image. It is stated that after that incident, despite repeated attempts, the accused refused to marry the prosecutrix. It is also stated that the prosecutrix tried to contact the mother of the accused who threatened her that she will get cases filed against her and further she was threatened of dire consequences.

3. On the complaint of the prosecutrix, FIR No.338/2019 dated 06.09.2019, was registered at Police Station Janakpuri, Delhi for offences under Sections 509, 377, 313, 506, 376(2)(n) I.P.C. The petitioner was arrested on 12.09.2019 and has been released on bail on 18.11.2019. Arguments on charge were heard on 29.01.2020. The Additional Session Judge, South-West Dwarka Courts, Delhi, discharged the relatives of the accused but has held that there is substantial material on record to frame charges against the accused for offences punishable under Sections 376, 377, 376(2)(n), 509, 313, 323, 506 IPC and accordingly charges were framed against the accused.

4. This instant petition is for quashing the F.I.R. No.338/2019, dated 06.09.2019, registered at Police Station Janakpuri, Delhi, for offences under Sections 509, 377, 313, 506, 376(2)(n) I.P.C. The version of the

petitioner/accused is that the petitioner is a bright student and is enrolled in B.Tech programme with the Institute of Engineering and Technology, Nilokheri, Karnal, Haryana, affiliated with Kurukshetra University. It is stated in the petition that the petitioner has also got a diploma in Civil Engineering from Government Polytechnic, Ambala City with First Division. It is stated in the petition that the petitioner was in search of a part-time job and through one of his friend, Isha Gupta, the petitioner came in the contact with the prosecutrix. It is stated that Isha Gupta told him that the prosecutrix would help the petitioner/accused in searching online jobs, as she has numerous contacts. It is stated in the petition that the petitioner met the prosecutrix in the evening of 13.03.2019 at District Centre, Janakpuri, New Delhi, in the presence of said Ms. Isha Gupta. It is stated that his discussion with the prosecutrix regarding his job took a long time, it was late in the night and when the petitioner wanted to return back to his home in Karnal, the prosecutrix persuaded the petitioner to stay in Delhi. It is stated in the petition that the petitioner refused the proposal saying that he does not have any money or any place to stay in Delhi. It is stated that the prosecutrix herself booked two rooms in *Oyo Arora Hotel at Janakpuri*. The petitioner stayed in Room No.107, and the prosecutrix stayed in Room No.108 with her boyfriend. It is stated that pursuant to that night several communications were exchanged between the petitioner and the prosecutrix and the prosecutrix expressed her desire and liking for the petitioner. It is stated by the petitioner that the prosecutrix called the petitioner and on 18.06.2019, under constant threat given by the prosecutrix the petitioner reached the hotel and the prosecutrix established physical relationship with him and after

that put her demands that either the petitioner should marry her or give Rs.25,00,000/- (Rupees Twenty Five Lakhs Only) to her otherwise she would get the petitioner arrested in a rape case. It is stated in the petition that the Police arrested the petitioner on 12.09.2019 for rape in the present case.

5. In the petition it is stated that the prosecutrix came to visit the accused in jail twice on 25.09.2019 and 30.09.2019 i.e. before the petitioner was granted bail and it is stated that the prosecutrix threatened the petitioner/accused either to marry her or give Rs.15,00,000/- (Rupees Fifteen Lakhs only) for closing the F.I.R.

6. The petition states that the prosecutrix is in the habit of blackmailing people. It is also stated that she had married another person named Tarun Kumar @ Hari Om on 18.01.2008 and she has a female child from that marriage. It is also stated in the petition that she had filed a dowry complaint against Tarun Kumar @ Hari Om and his family. The said complaint is numbered as C.C.No.428/2008 dated 15.12.2018. It is stated in the petition that the prosecutrix entered into a compromise and the complaint was closed. The compromise deed is annexed along with the petition. In the compromise deed, the said Tarun Kumar @ Hari Om has taken the custody of the child. It is stated in the deed that the *stridhan* has been returned back to the prosecutrix.

7. The petition also states that the prosecutrix had filed FIR No.26/2010 dated 02.02.2010 against one Brijesh @ Golu for offences under Section 376. Copy of the FIR is annexed with the petition. The charge-sheet was filed on 24.04.2010. It is stated that in the trial, during her examination the prosecutrix turned hostile wherein the prosecutrix stated that she had no

sexual intercourse with Brijesh @ Golu. It is stated that the complaint against Brijesh @ Golu is more or less similar to the present complaint. The Additional Session Judge by his judgment dated 17.07.2010 has acquitted Brijesh @ Golu and stated that the prosecutrix is not a reliable witness.

8. It is also stated in the petition that the prosecutrix is a suspect in FIR No.24/2019 dated 27.01.2019, registered at Police Station Sarai Rohilla under Section 363 IPC, wherein the prosecutrix is alleged of kidnapping one Master Riyansh @ Vishnu. A copy of the said FIR is also annexed with the petition.

9. Heard Mr. O.P. Saxena, learned counsel appearing for the petitioner and Ms. Kusum Dhalla, learned APP appearing for the State and perused the material on record.

10. Mr. O.P. Saxena, learned counsel for the petitioner has reiterated the facts stated in the petition and he would contend that the prosecutrix met the petitioner/accused when he was in custody twice which would show that the allegation against the petitioner is false. He would state that the police has examined Ms. Isha Gupta and in her statement she has stated that the prosecutrix has filed the FIR only to blackmail the petitioner/accused. She has also mentioned about the false rape case registered by the prosecutrix against Brijesh @ Golu in FIR No.26/2010 where the prosecutrix turned hostile. It is submitted that in her statement Ms. Isha Gupta has confirmed that the prosecutrix has met the accused in jail. Learned counsel for the petitioner has also placed reliance on the judgment dated 17.07.2010, arising out of FIR No.26/2010. He also states that the MLC discloses that the last menstrual cycle of the prosecutrix was on 10.08.2019 and therefore the

allegation that the prosecutrix was pregnant on 27.09.2019 is false.

11. On the other hand, Ms. Kusum Dhalla, learned APP for the State would state that the petitioner is accused of a heinous offence of rape. She would state that the statement of the prosecutrix alone is sufficient to convict the accused/petitioner in case of rape. She would state that this Court should not evaluate the correctness or truthfulness of the allegations at this juncture.

12. It is well settled that the powers of the High Court under Section 482 Cr.P.C are unlimited and that in the interest of justice the High Court can make such orders as may be necessary to prevent abuse of the process of the Court or otherwise to secure the ends of justice (State of Orissa v. Debendra Nath Padhi, (2005) 1 SCC 568)). It is well settled that the High Court is free to consider every material that may be produced on behalf of the accused, to arrive at a decision whether the charge as framed could be maintained or not.

13. However, it is also equally well settled that the High Court while exercising its jurisdiction under section 482 Cr.P.C while considering an application to quash an FIR or considering the correctness of an order framing charges the High Court should not evaluate the truthfulness or correctness of the allegations levelled by the prosecution/complainant against the accused. This is not a stage to determine as to whether the defence raised by the accused is correct or not. It is settled that even if the accused is successful in raising a suspicion or doubt in allegations levelled by the prosecution or the complainant, the High Court while entertaining a petition under section 482 Cr.P.C. to quash an FIR cannot evaluate the defence and discharge the accused before the trial. The High Court must

refrain from passing an order which will result in giving finality to the accusations levelled by the prosecution by accepting the case of the defence without allowing the prosecution or the complainant to adduce evidence to substantiate the same. This is so because the defence can approach the High Court while exercising its jurisdiction under section 482 Cr.P.C at any stage of the trial with a case that the material produced is sufficient to acquit the accused.

14. The Supreme Court in a catena of judgments has held that where the prosecution/complainant has levelled allegations bringing out all ingredients of the charges levelled, and have placed material before the Court, *prima facie* evidencing the truthfulness of the allegations levelled, trial must be held. In State of Karnataka v. M. Devendrappa, (2002) 3 SCC 89, the Supreme Court has held as under:

“6. Exercise of power under Section 482 of the Code in a case of this nature is the exception and not the rule. The section does not confer any new powers on the High Court. It only saves the inherent power which the Court possessed before the enactment of the Code. It envisages three circumstances under which the inherent jurisdiction may be exercised, namely, (i) to give effect to an order under the Code, (ii) to prevent abuse of the process of court, and (iii) to otherwise secure the ends of justice. It is neither possible nor desirable to lay down any inflexible rule which would govern the exercise of inherent jurisdiction. No legislative enactment dealing with procedure can provide for all cases that may possibly arise. Courts, therefore, have inherent powers apart from express provisions of law which are necessary for proper discharge of functions and duties imposed upon them by law. That is the doctrine which finds expression in

*the section which merely recognizes and preserves inherent powers of the High Courts. All courts, whether civil or criminal possess, in the absence of any express provision, as inherent in their constitution, all such powers as are necessary to do the right and to undo a wrong in course of administration of justice on the principle quando lex aliquid alicui concedit, concedere videtur et id sine quo res ipsae esse non potest (when the law gives a person anything it gives him that without which it cannot exist). **While exercising powers under the section, the court does not function as a court of appeal or revision. Inherent jurisdiction under the section though wide has to be exercised sparingly, carefully and with caution and only when such exercise is justified by the tests specifically laid down in the section itself.** It is to be exercised ex debito justitiae to do real and substantial justice for the administration of which alone courts exist. Authority of the court exists for advancement of justice and if any attempt is made to abuse that authority so as to produce injustice, the court has power to prevent abuse. It would be an abuse of process of the court to allow any action which would result in injustice and prevent promotion of justice. In exercise of the powers court would be justified to quash any proceeding if it finds that initiation/continuance of it amounts to abuse of the process of court or quashing of these proceedings would otherwise serve the ends of justice. When no offence is disclosed by the complaint, the court may examine the question of fact. When a complaint is sought to be quashed, it is permissible to look into the materials to assess what the complainant has alleged and whether any offence is made out even if the allegations are accepted in toto.” (emphasis supplied)*

15. In Rajiv Thapar v. Madan Lal Kapoor, (2013) 3 SCC 330, the Supreme Court has held as under:

“29. The issue being examined in the instant case is the jurisdiction of the High Court under Section 482 CrPC, 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 CrPC, 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 CrPC 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 CrPC 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 quashment raised by an accused by invoking the power vested in the High Court under Section 482 CrPC:

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, the judicial conscience of the High Court should persuade it to quash such criminal proceedings in exercise of power vested in it under Section 482 CrPC. 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.” (emphasis supplied)

16. Applying the laws laid down by the Supreme Court to the facts of this case it is found that the prosecutrix has levelled allegations against the petitioner that he established physical relationship with the prosecutrix on the pretext of marriage five times. This is not a case where the accused and the prosecutrix were living together or that they had intercourse a number of times and that after a lapse of considerable time the prosecutrix has turned around and has levelled the allegation of rape.

17. In Dhruvaram Murlidhar Sonar v. State of Maharashtra, (2019) 18 SCC 191, the Supreme Court has held as under:

“23. 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 latter 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 IPC.***”
(emphasis supplied)

18. The question as to whether the consent for intercourse was given due to promise of marriage or that the allegation of promise of marriage was a mere ruse to file a case against the accused/petitioner under Section 376 Cr.P.C or whether such a promise was made at all, can be determined only after the prosecutrix is examined and after the prosecution places the entire case. The fact that the prosecutrix has levelled a similar allegation against another person and has turned hostile, though is a very important fact but it alone cannot be the basis of quashing the complaint. It is for the prosecution to establish that it was the petitioner/accused who brought the prosecutrix to Karnal on the pretext of meeting his mother. This court, at this juncture, cannot go into the antecedents of the prosecutrix to quash the complaint as it would be improper to do so. The antecedents of the prosecutrix would be an important factor which the trial Court will have to take into account during the final hearing of the case. It is well settled that the petitioner can be convicted on the statement of the prosecutrix provided the statement is

accepted by the Court and is found to be reliable. Both sides have given their own versions and the correctness of the version given by each side can be tested only during trial. The material relied on by the accused is not of such nature and is not sufficient to completely reject and over-rule the assertions contained in the complaint. This Court is therefore not inclined to quash the FIR on the basis of the available material.

19. This court however cannot be oblivious to the fact that the petitioner is a youngster and an engineering graduate and the entire life of the petitioner/accused is at stake. Keeping that in mind the trial court is directed to complete the trial expeditiously, not later than one year from today.

20. Accordingly, the revision petition is dismissed with the above observations along with the pending application.

SUBRAMONIUM PRASAD, J.

FEBRUARY 11, 2021

Rahul