

**IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

208-2

**CRM-M-18938-2021 (O&M)
Decided on : 21.01.2022**

Kulwant Singh

... Petitioner(s)

Versus

State of Punjab

... Respondent(s)

CORAM: HON'BLE MRS. JUSTICE MANJARI NEHRU KAUL

(Through Video Conferencing)

PRESENT: Mr. Gopal Singh Nahel, Advocate,
for the petitioner(s).

Mr. Luvinder Sofat, AAG, Punjab.

MANJARI NEHRU KAUL, J. (Oral)

The petitioner is seeking quashing of FIR No. 93, dated 23.03.2021, lodged under Section 376 IPC, registered at Police Station Sadar Mansa (annexed as Annexure P-1).

Learned counsel for the petitioner *inter alia* contends that admittedly the petitioner had promised to marry the prosecutrix and thereafter, they both had been in a consensual relationship. However, he was unable to solemnize marriage with the prosecutrix later on, as his parents did not give him permission for the same. He, thus, submits that it was because of genuine reasons, he could not keep his promise to the prosecutrix. Learned counsel submits that the case of the petitioner is squarely covered by **Sonu @ Subhash v. State of U.P. & another, 2021(2) R.C.R.(CrI.) 269**, where, the Hon'ble Supreme Court in similar facts and circumstances, quashed the FIR by observing that the offence of rape could not be made out against a person if the promise to marry was not false at the inception. It has further been urged that the delay of almost one year and

four months in the lodging of the FIR from the date, when the alleged rape was committed for the first time on 05.11.2019, left no manner of doubt that the petitioner had established physical relations with the prosecutrix with her consent and she had chosen to frame him in the instant case only to spite him. Learned counsel has also placed reliance upon **K.P. Thimmappa Gowda v. State of Karnataka, (2011) 14 SCC 475** and **Pramod Suryabhan Pawar v State of Maharashtra, (2019) 9 SCC 608**.

The learned State counsel has vehemently opposed the prayer and submissions made by the counsel opposite. Learned State counsel has submitted that the case is still under investigation and hence, on this ground alone, the instant petition deserves to be dismissed. Still further, while drawing the attention of this Court to the allegations levelled in the FIR (annexed as Annexure P-1), the learned State counsel submits that the petitioner had lured the prosecutrix, a widow having a seven year old son into a relationship with him by giving her a false promise of marriage and also further assuring her as well as her father to take care of her, as “there was no shadow over her head”. Learned State counsel submits that it was, thus, very apparent that in fact, the petitioner never intended to marry the prosecutrix and had been sexually exploiting her all along by practicing deception, because as soon as the prosecutrix disclosed about her pregnancy to the petitioner, he changed his mind and abandoned her by giving her the excuse that his parents would not permit him to solemnize marriage with her. It has been further submitted that there was medical evidence also on record to corroborate that the prosecutrix was carrying a pregnancy of over 13 weeks at the time of the registration of FIR in question. Still further, learned State counsel while contesting the submissions made by the learned

counsel for the petitioner *qua* the delay of one year and four months in the lodging of the FIR in question from the date when the petitioner allegedly established physical relations with the prosecutrix for the first time, submitted that the question of any delay in the registration of the FIR would be of no consequence in the instant case, as it was only after the petitioner refused to solemnize marriage with the prosecutrix, did she realize that she had been taken for a ride and soon thereafter, the prosecutrix got the FIR in question registered against the petitioner.

Heard learned counsel for the parties and perused the material on record.

The petitioner is seeking quashing of the FIR which stands registered against him for an heinous offence under Section 376 IPC. The investigation in the aforementioned FIR is still underway. No doubt, the powers of this Court to invoke its inherent jurisdiction under Section 482 Cr.P.C., are extremely wide and in certain exceptional cases, this Court can order quashing of the FIR, however, advertng to the case in hand, this Court would loathe to accept the prayer of the petitioner to quash the FIR for the reasons to follow.

On a perusal of the contents and allegations levelled in the FIR, the commission of a cognizable offence under Section 376 IPC is *prima facie* made out. The investigation by the police as such, should not be meddled with, at this crucial stage by embarking upon an inquiry *qua* the genuineness or otherwise of the allegations levelled by the prosecutrix. *Prima facie*, it does appear that the prosecutrix seemingly trusted the petitioner and it was on account of the assurance of marriage given to her, she established physical relations with him. The submissions made by the

counsel for the petitioner that his assurance of marriage given to the prosecutrix was genuine to begin with, cannot be appreciated at this stage, because the investigation is still underway and in case the challan is presented, then all these submissions would be appreciated at the time of trial. This Court, however, finds it extremely strange and amusing that after having a relationship with the prosecutrix for more than a year and after coming to know about her pregnancy, which was sired by none other than him, the petitioner very conveniently pulled the plug on their relationship by leaving her high and dry. In case, his family set up was such that he could not have married a girl of his choice, the petitioner should have refrained from taking the prosecutrix along the garden path without taking his parents into confidence and their permission. *Prima facie*, it does appear that the petitioner did not have any honorable intentions to solemnize marriage with the prosecutrix. The facts of the case in hand are clearly distinguishable from **Sonu @ Subhash's** case (supra), inasmuch as, even the investigation had been completed in the said case and it was thereafter, the accused had sought quashing of the charge-sheet. Adverting to the case in hand, it is not the case of either of the parties that prior to the pregnancy of the prosecutrix or, as and when, the prosecutrix broached the topic of marriage with the petitioner, he either evaded or postponed the solemnization of their marriage, and still the prosecutrix continued to have physical relations with him. Rather, it has not been disputed by the counsel for the petitioner that it was after the prosecutrix disclosed about her pregnancy to the petitioner and asked him to marry her as per the promise given, he expressed his inability to marry citing his family pressure. It would not be out of context to observe that every breach of promise to marry may not always be termed as

a false promise making the man culpable of the offence of rape, however, in the facts and circumstances of the instant case, as already observed earlier, it would be a matter to be appreciated at the time of trial whether the alleged false promise of marriage given to the prosecutrix, was false at the inception or whether it was indeed a subsequent refusal on account of genuine reasons, as pleaded by the learned counsel for the petitioner.

As a sequel to the above, this Court is not inclined to invoke its inherent jurisdiction under Section 482 Cr.P.C. and quash the FIR in question and that too at a nascent stage.

Petition stands dismissed accordingly. However, anything observed hereinabove shall not be construed to be an expression of opinion on the merits of the case.

(MANJARI NEHRU KAUL)
JUDGE

January 21, 2022

J.Ram

Whether speaking/reasoned: *Yes/No*
Whether Reportable: *Yes/No*