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IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CRM-M-36870-2022

Date of Decision: December 14, 2022

Harmanjot Singh

.....Petitioner

Versus

State of Punjab

.....Respondent

CORAM: HON'BLE MR.JUSTICE RAJESH BHARDWAJ

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

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RAJESH BHARDWAJ, J.

Instant petition has been filed under Section 482 Cr.P.C. praying for quashing of FIR No.91, dated 12.05.2022, under Section 376 IPC, registered at Police Station City Moga, District Moga, as well as all consequential proceedings arising therefrom.

As per the facts of the case, FIR has been lodged by mother of prosecutrix (name concealed) against the accused/petitioner for committing rape with her daughter by giving false assurance of marriage. It was alleged that her daughter is presently behind bars in Modern Jail, Faridkot, in FIR No.194, dated 10.11.2021, under Sections 166, 189, 190, 204, 328, 381, 506, 509 IPC, registered at Police Station City Moga. It was alleged that the complainant of that FIR Harmonjot Singh(petitioner) in spite of being married has entered into physical relationship with her daughter by giving false promise of marriage to her. It is further alleged that in pursuance to the order of the Hon'ble Court, her daughter appeared before the SHO, City Moga on 27.12.2021 and recorded her statement. It is further stated that

Investigating Agency being biased against her did not take any action on her complaint. She alleged that instead of taking legal action against the accused, the complainant and her daughter, i.e. prosecutrix are being harassed by the police. She also alleged that Harmanjot Singh has been giving threats to her and her daughter to compromise the case. Request was made to take legal action against the accused and provide justice to her daughter and family. On the basis of the complaint, formal FIR was registered and investigation commenced.

Counsel for the petitioner has vehemently contended that the petitioner has been falsely roped in the present FIR. He has submitted that the present FIR is nothing but a counter-blast to above-mentioned FIR No.194, dated 10.11.2021. He has submitted that petitioner is working as a Clerk on contract basis in judicial Court at Moga and the prosecutrix was working there as Peon in the Court of Civil Judge (Junior Division) Moga. As both of them were working at the same place, hence they had friendly relations. However, the prosecutrix in a very well hatched conspiracy tried to exploit the petitioner. In the guise of birthday gift, she gave a gift pack to the petitioner and threatened the petitioner not to open the same failing which she would commit suicide. On opening the same, the petitioner found that the gift pack given by the prosecutrix contained the documents pertaining to a Court case titled as Nirmal Singh vs Bant Singh. The petitioner reported the same to the concerned Civil Judge regarding stolen documents of the Court case by the prosecutrix. Resultantly, above-mentioned FIR No.194, dated 10.11.2021 was registered against the prosecutrix and she was arrested. He submits that on account of the same, the prosecutrix nurtured a grudge against the petitioner and thus, she got

lodged the present FIR against the petitioner through her mother. He has submitted that on the face of it, FIR is a counter-blast to the FIR No.194, dated 10.11.2021. He further submits that even from reading of the allegations made in the FIR, no offence under Section 376 IPC is made out. He submits that Hon'ble Supreme Court in **Pramod Suryabhan Pawar vs The State of Maharashtra and others** (2019) 9 SCC 608 has held that once the prosecutrix and the accused are of the age of majority and they have entered into a physical relationship consensually, the consent is not vitiated by misconception of facts and thus, offence under Section 376 IPC is not made out. He relies upon **K.Ramkrishan and another vs State of Bihar and another**, JT 2000 (Suppl.I), SC 53, **State of Haryana and others vs Ch.Bhajan Lal and others**, AIR 1992 SC 604, and **State of Karnatka vs L.Munniswamy and others** (1997) 2 SCC 699 and submits that prosecution of the petitioner is nothing but an abuse of the process of the Court and thus , the present FIR deserves to be quashed.

Heard.

Evidently, both the petitioner/accused and the prosecutrix are of the age of majority. Both of them are employed in the judicial Court at Moga. No doubt the prosecutrix is an accused in FIR No. 194 dated 10.11.2021, which allegedly has been lodged at the behest of the petitioner and is pending trial. However, the prosecutrix in the present case has made specific allegations that the petitioner has entered into relationship with her on the basis of promise of marriage, however, it was found that the petitioner was already married. It has been alleged that once the petitioner was already married, the promise made to her for marriage has been totally vitiated by misconception of fact. The complainant in this case is the mother of the

prosecutrix. It was further alleged that she and her daughter were running from pillar to post to take the legal action against the petitioner but as his father is employed in the police department, the police is biased against them and no action is taken on their complaint. Hon'ble the Supreme Court in Neeharika Infrastructure Pvt.Ltd. Vs State of Maharashtra, 2021 SCC Online SC 315 has held that power of the High Court under Section 482 Cr.P.C. is an extraordinary power and should not be invoked in a cavalier manner. It has been settled that powers should not be invoked to quash the FIR at threshold. The allegations and counter-allegations of both the sides are purely disputed questions of fact, which would be established only by leading evidence before the trial Court.

Weighing the facts and circumstances on the anvil of law settled, this Court finds that case in hand fails to qualify the test for invoking the inherent jurisdiction by this Court. Resultantly, the present petition being devoid of any merit is hereby dismissed.

However, nothing expressed hereinabove shall have any bearing on the merits of the case.

December 14, 2022
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(RAJESH BHARDWAJ)
JUDGE

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| 1. | Whether speaking/reasoned ? | Yes/No |
| 2. | Whether reportable ? | Yes/No |