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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
BEFORE
HON'BLE MR. JUSTICE PURUSHAINDRA KUMAR KAURAV
+ **CRIMINAL MISCELLANEOUS CASE NO. 3307/2022**

Between:-

**GAURAV KUMAR CHAUDHARY,
S/O SH. SITARAM CHOUDHARY,
R/O RZ - 12, GALI NO. 1, DABRI,
PALAM ROAD, VISHALI, DABRI
DWARKA, NEW DELHI – 110045PETITIONER**

(Through: Mr. Shivam Kumar & Mr. Sumit Ranjan, Advocates)

AND

STATE OF NCT OF DELHI RESPONDENT NO. 1

**TXXXXI, THE PROSECUTRIX,
W/O KITOI CHISO,
R/O H. NO. – 223, ROOM NO. – 100
MUNIRKA VILLAGE, KISHAN GARH,
SOUTH WEST, NEW DELHI-110067...RESPONDENT NO. 2**

(Mr. Amit Ahlawat, APP for State)

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Pronounced on : 20.09.2022

J U D G M E N T

PURUSHAINDRA KUMAR KAURAV, J.

1. This petition under Section 482 of the Code of Criminal Procedure, 1973 (Cr.P.C.) seeks for quashment of FIR No. 295/2021,



under Section 376 of the Indian Penal Code (IPC) registered at Police Station Vasant Kunj North, Delhi, and all the proceedings emanating therefrom

2. The facts of the case are that in May, 2020 the petitioner and prosecutrix started knowing each other being face-book friends. They first time met on 31.05.2020 and thereafter started frequently meeting each other. As per the allegations levelled in the FIR, the petitioner proposed the prosecutrix for marriage. On 14.06.2020 the petitioner made sexual relations with the prosecutrix on the pretext of marriage. The petitioner, thereafter, also made physical relations with the prosecutrix and as and when the prosecutrix used to raise her voice, she was told that he would marry her and there was nothing wrong in having pre-marital sexual intercourse. It is alleged that believing the petitioner, the prosecutrix continued to have sexual relations for about one year and during the said period the petitioner and the prosecutrix visited the native place of the prosecutrix at *Dimapur*, Nagaland expressing their interest to marry. It is alleged that during the aforesaid period the petitioner got the prosecutrix aborted two times against her will. However, on 28.05.2021, the petitioner suddenly without telling anyone has left the prosecutrix and when the prosecutrix tried to call her, she found that her number was blocked. It is alleged that since the petitioner promised to marry, therefore, the prosecutrix made sexual relations with the petitioner. After registration of the FIR the statement of the prosecutrix under Section 164 of Cr.P.C. was recorded. After completion of the investigation, the police has submitted the charge sheet before the competent court and the matter is pending at the stage of framing of charge.



3. Learned counsel appearing on behalf of the petitioner submits that no offence under Section 376 IPC is made out as the prosecutrix was well aware about the subsistence of her earlier marriage. According to him, sexual intercourse between the petitioner and the prosecutrix was consensual and based on their free will. He submits that there is no reason for any false promise, as the prosecutrix was already married. He placed reliance on the decisions of this court in the cases of *Mohit Nagar v. State and Anr.*¹, *Mohit Narula v. State of NCT of Delhi & Anr.*², *Rahul Mishra v. State Govt. of NCT of Delhi & Ors.*³ and *Sabhajeet Maurya v. State NCT of Delhi*⁴. He submits that in all these cases prosecution for offence under Sections 376 and 313 of IPC has been quashed by this court in exercise of power under Section 482 of Cr.P.C. under the similar circumstances.

4. Learned counsel appearing on behalf of the State vehemently opposed the instant petition. He submits that the same is not maintainable at this stage. According to him, the stage of framing of charge has not yet reached and the petitioner can raise all his points before the court at the time of framing of charge. He further submits that on account of allegation of abortion without the will of the prosecutrix, the police has filed the charge sheet not only for the offence punishable under Section 376 of IPC, but for the offence punishable under Section 313 of IPC also. He therefore, submitted that the decision relied upon by learned counsel for the petitioner would not be any assistance, as in those cases offence under Section 313 of IPC was not involved.

¹ (2017) SCC OnLine Del 7616

² (2018) SCC OnLine Del 8764

³ (2018) SCC OnLine Del 7231

⁴ (2020) SCC OnLine Del 1525



5. I have heard learned counsel appearing on behalf of the parties and have perused the material available on record.

6. The Hon'ble Supreme Court in the matter of ***Neeharika Infrastructure Pvt. Ltd. v. State of Maharashtra and Others***⁵ conducted a detailed study of the situations where the court may not exercise its extraordinary jurisdiction. While considering various earlier pronouncements on the subject in paragraph No. 80 following conclusions have been recorded:-

“In view of the above and for the reasons stated above, our final conclusions on the principal/core issue, whether the High Court would be justified in passing an interim order of stay of investigation and/or “no coercive steps to be adopted”, during the pendency of the quashing petition under Section 482 Cr.P.C and/or under Article 226 of the Constitution of India and in what circumstances and whether the High Court would be justified in passing the order of not to arrest the accused or “no coercive steps to be adopted” during the investigation or till the final report/chargesheet is filed under Section 173 Cr.P.C., while dismissing/disposing of/not entertaining/not quashing the criminal proceedings/complaint/FIR in exercise of powers under Section 482 Cr.P.C. and/or under Article 226 of the Constitution of India, our final conclusions are as under:

i) Police has the statutory right and duty under the relevant provisions of the Code of Criminal Procedure contained in Chapter XIV of the Code to investigate into a cognizable offence;

ii) Courts would not thwart any investigation into the cognizable offences;

iii) It is only in cases where no cognizable offence or offence of any kind is disclosed in the first information report that the Court will not permit an investigation to go on;

⁵ (2021) SCC OnLine SC 315



iv) *The power of quashing should be exercised sparingly with circumspection, as it has been observed, in the 'rarest of rare cases (not to be confused with the formation in the context of death penalty).*

v) *While examining an FIR/complaint, quashing of which is sought, the court cannot embark upon an enquiry as to the reliability or genuineness or otherwise of the allegations made in the FIR/complaint;*

vi) *Criminal proceedings ought not to be scuttled at the initial stage;*

vii) *Quashing of a complaint/FIR should be an exception rather than an ordinary rule;*

viii) *Ordinarily, the courts are barred from usurping the jurisdiction of the police, since the two organs of the State operate in two specific spheres of activities and one ought not to tread over the other sphere;*

ix) *The functions of the judiciary and the police are complementary, not overlapping;*

x) *Save in exceptional cases where non-interference would result in miscarriage of justice, the Court and the judicial process should not interfere at the stage of investigation of offences;*

xi) *Extraordinary and inherent powers of the Court do not confer an arbitrary jurisdiction on the Court to act according to its whims or caprice;*

xii) *The first information report is not an encyclopaedia which must disclose all facts and details relating to the offence reported. Therefore, when the investigation by the police is in progress, the court should not go into the merits of the allegations in the FIR. Police must be permitted to complete the investigation. It would be premature to pronounce the conclusion based on hazy facts that the complaint/FIR does not deserve to be investigated or that it amounts to abuse of process of law. After investigation, if the investigating officer finds that there is no substance in the application made by the complainant, the investigating officer may file an appropriate*



report/summary before the learned Magistrate which may be considered by the learned Magistrate in accordance with the known procedure;

xiii) The power under Section 482 Cr.P.C. is very wide, but conferment of wide power requires the court to be more cautious. It casts an onerous and more diligent duty on the court;

xiv) However, at the same time, the court, if it thinks fit, regard being had to the parameters of quashing and the self-restraint imposed by law, more particularly the parameters laid down by this Court in the cases of R.P. Kapur (supra) and Bhajan Lal (supra), has the jurisdiction to quash the FIR/complaint;

xv) When a prayer for quashing the FIR is made by the alleged accused and the court when it exercises the power under Section 482 Cr.P.C., only has to consider whether the allegations in the FIR disclose commission of a cognizable offence or not. The court is not required to consider on merits whether or not the merits of the allegations make out a cognizable offence and the court has to permit the investigating agency/police to investigate the allegations in the FIR;

xvi) The aforesaid parameters would be applicable and/or the aforesaid aspects are required to be considered by the High Court while passing an interim order in a quashing petition in exercise of powers under Section 482 Cr.P.C. and/or under Article 226 of the Constitution of India. However, an interim order of stay of investigation during the pendency of the quashing petition can be passed with circumspection. Such an interim order should not require to be passed routinely, casually and/or mechanically. Normally, when the investigation is in progress and the facts are hazy and the entire evidence/material is not before the High Court, the High Court should restrain itself from passing the interim order of not to arrest or “no coercive steps to be adopted” and the accused should be relegated to apply for anticipatory bail under Section 438 Cr.P.C. before the competent court. The High Court shall not and as such is not justified in passing the order of not to arrest and/or “no coercive steps” either during the investigation or till the investigation is completed and/or till the final



report/chargesheet is filed under Section 173 Cr.P.C., while dismissing/disposing of the quashing petition under Section 482 Cr.P.C. and/or under Article 226 of the Constitution of India. xvii) Even in a case where the High Court is prima facie of the opinion that an exceptional case is made out for grant of interim stay of further investigation, after considering the broad parameters while exercising the powers under Section 482 Cr.P.C. and/or under Article 226 of the Constitution of India referred to hereinabove, the High Court has to give brief reasons why such an interim order is warranted and/or is required to be passed so that it can demonstrate the application of mind by the Court and the higher forum can consider what was weighed with the High Court while passing such an interim order.

xviii) Whenever an interim order is passed by the High Court of “no coercive steps to be adopted” within the aforesaid parameters, the High Court must clarify what does it mean by “no coercive steps to be adopted” as the term “no coercive steps to be adopted” can be said to be too vague and/or broad which can be misunderstood and/or misapplied”.

7. In view of the aforesaid legal position it is seen that the prosecutrix in her statement recorded under Section 164 of Cr.P.C. has categorically stated that she made sexual relations with the petitioner on multiple occasions on the pretext of marriage. In August, 2020 she got pregnant and was forcefully given medicine which resulted in her abortion. She started crying after that, but the petitioner allegedly told her that the child before marriage would be a problem.

8. The facts in the case of ***Mohit Nagar (supra)*** would show that in that case the prosecutrix herself made statement under Section 164 of Cr.P.C. stating therein that the prosecutrix does not want to pursue the case with respondent No. 2 as she sorted out the dispute and the prosecutrix and the accused in that case were going to get married. In



another decision of ***Mohit Narula (supra)*** in paragraph No. 7, it has been recorded that there was no material to substantiate that the prosecutrix got pregnant twice or that any abortion was got conducted. This was the statement recorded therein. In the decision of ***Rahul Mishra (supra,)*** the FIR in question was quashed, with the consent of the parties.

9. In the present case the prosecutrix belongs to State of *Nagaland*. According to her she had already got divorced from her earlier husband by rituals/customs. The allegations of false pretext of marriage are specifically made.

10. The Hon'ble Supreme Court in the decision of ***Pramod Suryabhan Pawar v. State of Maharashtra and Another***⁶ in paragraph No. 16 has held that where the promise to marry is false and the intention of the maker at the time of making the promise itself was not to abide by it but to deceive the woman to convince her to engage in sexual relations, there is a "misconception of fact" that vitiates the woman's "consent". On the other hand, a breach of a promise cannot be said to be a false promise. To establish a false promise, the maker of the promise should have had no intention of upholding his word at the time of giving it. The "consent" of a woman under Section 375 is vitiated on the ground of a "misconception of fact" where such misconception was the basis for her choosing to engage in the said act. The Hon'ble Supreme Court under the facts of that case found that the allegations in the FIR belie the case that she was deceived by the accused promise of marriage. The Hon'ble Supreme Court found that even if the facts set out in the complainant's statements are accepted in totality, no offence under Section 376 of the

⁶ (2019) 9 SCC 608



IPC was occurred. In paragraph No. 19 various facts have been recorded to indicate that the complainant and the appellant knew each other since 1998 and were intimated since 2004. More importantly in that case there was no allegation under Section 313 of IPC.

11. So far as the decision relied upon by learned counsel for the petitioner in the case of *Sabhajeet Maurya (supra)* is concerned, the said decision is rendered in an appeal against conviction under Sections 376, 313 & 307 of IPC. At this stage, the entire material cannot be examined, when even the charges have not been framed.

12. Taking into consideration the overall facts and material available on record, this court does not find appropriate to exercise its power under Section 482 of Cr.P.C. at this stage. However, liberty is granted to the petitioners to take all grounds at the stage of framing of charge before the trial court, which shall be considered on its own merits without being influenced by the observations made in this order.

13. The trial court is directed to consider all aspect of the matter before framing of charges and nothing stated in this order should be considered to be an expression of any opinion on the merits of the case.

14. Accordingly, with above directions, the instant petition is disposed of.

(PURUSHAINDRA KUMAR KAURAV)
JUDGE

SEPTEMBER 20, 2022

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