

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.48999 of 2022

Arising Out of PS. Case No.-765 Year-2019 Thana- JAKKANPUR District- Patna

BIR KUNAL SINGH @ BEER KUNAL SINGH @ VEER KUNAL SINGH
S/o Ramji Singh R/o village- Barewa, P.O. and P.S.- Haidar Nagar, District-
Palamu (Jharkhand)

... .. Petitioner/s

Versus

1. The State of Bihar
2. RINKI KUMAR D/o Late Birendra Kumar Singh Resident of Suraj Singh,
Road No. 04, Chandmari Road, Postal Park, Mithapur Bus Stand, P.S.-
Jakanpur, District- Patna

... .. Opposite Party/s

Appearance :

For the Petitioner/s : Mr. Rakesh Mohan Singh, Adv.
For the Opposite Party/s : Mr. Narsingh Tanti, APP

CORAM: HONOURABLE MR. JUSTICE SATYAVRAT VERMA
ORAL ORDER

3 16-10-2023 1. Heard the learned counsel for the petitioner and

learned APP for the State along with learned counsel appearing

on behalf of the O.P. No.2.

2. The learned counsel for the petitioner submits that

the present quashing application has been filed seeking quashing

of the order dated 12.07.2022, passed in Sessions Trial

No.809/2021, arising out of Jakanpur P.S. Case No. 765/2019,

whereby the learned Additional District and Sessions Judge-1st,

Patna has been pleased to reject the discharge application filed

on behalf of the petitioner under section 227 of the Cr.P.C.

3. The learned counsel for the petitioner submits that

till date, charges have not been framed.



4. It is next submitted that the issue, which arises for consideration in the present case is whether sexual intercourse with the woman amounts to rape, if consent was obtained by a false promise of marriage within the meaning of section 375 of the Indian Penal Code. It is next submitted that obtaining consent for sexual intercourse on false promise of marriage is considered as misconception of fact within the meaning of section 90 of the Indian Penal Code, thus it is not considered as a valid consent in the eyes of law and thus the accused would be charged under section 375 of the Indian Penal Code, as second explanation of section 375 of the Indian Penal Code provides punishment of rape if sexual intercourse is done without victim's consent. The learned counsel next submits that the law is clear that physical relations established on a false promise to marry amounts to rape. It is next submitted that the law is not static rather is dynamic and changes in accordance with the needs of the society. It is further submitted that now the Courts have started taking a different view towards section 375 of the Indian Penal Code and have interpreted the terms 'consent' in a broader way. It is further submitted that where two consenting adults establish physical relation, the same is not an offence, if there is an affirmative conscious and voluntary consent to



engage in physical relation.

5. The learned counsel relies on the judgment in the case of **Maheshwar Tigga vs. State of Jharkhand**, as reported in **(2020) 10 SCC 108**, submits that the Hon'ble Supreme Court based on the facts of the case recorded:-

“10. They were both smitten by each other and passions of youth ruled over their minds and emotions. The physical relations that followed was not isolated or sporadic in nature, but regular over the years. The prosecutrix had even gone and resided in the house of the appellant. In our opinion, the delay of four years in lodgement of the FIR, at an opportune time of seven days prior to the appellant solemnising his marriage with another girl, on the pretext of a promise to the prosecutrix raises serious doubts about the truth and veracity of the allegations levelled by the prosecutrix. The entire genesis of the case is in serious doubt in view of the admission of the prosecutrix in cross-examination that no incident had occurred on 9-4-1999.

14. Under Section 90 IPC, a consent given under a misconception of fact is no consent in the eye of the law. But the misconception of fact has to be in proximity of time to the occurrence and cannot be spread over a period of four years. It hardly needs any elaboration that the consent by the appellant was a conscious and informed choice made by her after due deliberation, it being spread over a long period of time coupled with a conscious positive action not to protest. The prosecutrix in her letters to the appellant also mentions that there would often be quarrels at her home with her family members with regard to the relationship, and beatings given to her.”



6. The learned counsel for the petitioner further submits that can rape continue in eternity without the prosecutrix realizing that the accused does not have any intention to marry, it is submitted that it is difficult to fathom that the prosecutrix over a prolonged period of time was not able to realize that promise of marriage was false from the beginning or there is a possibility of breach of promise.

7. The learned counsel next submits that in view of the submissions recorded hereinabove, the facts of the present case be appreciated i.e. whether in the nature of allegation as alleged, can it be even remotely suggested that the O.P. No.2 was raped by the petitioner on the pretext of marriage or it was the petitioner who was taken for a ride by the O.P. No.2 and subsequently implicated with false allegation of rape.

8. The learned counsel for the petitioner next submits that the O.P. No.2 instituted the instant F.I.R. alleging that she got in touch with the petitioner, who worked with Jharkhand Police through social media and they started meeting and fell in love and entered into physical relationship and the informant got pregnant in August, 2017 but was aborted, it is next alleged that against her wish, the petitioner again entered into physical relation and she again became pregnant in



December, 2017 and was again aborted for second time, it is next alleged that whenever the petitioner got an opportunity, he entered into physical relation but never talked to his family regarding marriage, further in the year 2018, she forced the petitioner to marry but then also nothing happened, thereafter in March, 2018 he informed that he is going to Nagaland and on 22.03.2018 gave a call asking the informant to come to Ranchi as he had to go to Nagaland, accordingly, she came to Ranchi, where the petitioner did not take her to his house rather took her to a hotel and established physical relation and next day made her meet his cousin brother, who also assured that he will get her married to the petitioner, thereafter the petitioner went to Nagaland on 28.03.2023. It is next alleged that the petitioner used to call her weekly from Nagaland and on 13.07.2018 he came back from Nagaland to Patna, where they again established physical relation but this time the petitioner video-graphed the act. Further on 07.11.2018, she again pressurized him to marry, when he disclosed that his family members are not getting ready, and thereafter, he blocked her number but she talked to him on his whats app number, thereafter in February, 2019, the petitioner again came to Patna for attending a marriage where they again established physical relation and



when she objected he abused. Thereafter, it is alleged that on 23.03.2019 when she again pressurized for marriage, he assaulted her, causing injury and forcefully established sexual relation. Further on 29.04.2019 she again informed the petitioner that she is pregnant but the petitioner got the child aborted by forcefully administering medicine on the pretext that since he has to marry her and if the child would be born before marriage, the same would be a shameful conduct, further again on 26.08.2019, he came to Patna and established physical relation and also threatened that if she will institute any case against his family members, he will commit suicide and she will get implicate and on the same day, he also made one more video, thereafter, he hacked her mobile number on 08.09.2019 and said that he will not marry her, as she talks with two other people. Thereafter, she realized that the petitioner on false pretext of marriage was establishing physical relation.

9. The learned counsel for the petitioner submits that from bare perusal of the allegation, as alleged in the F.I.R., it would manifest that the O.P. No.2 came in contact with the petitioner through Facebook and thereafter developed intimate relationship and they also indulged in physical relationship though the O.P. No.2 alleges that she gave consent on pretext of



marriage, the learned counsel next submits that only to falsely implicate the petitioner, the present false case has been instituted, it is next submitted no doubt, the petitioner and the O.P. No.2 through social media came in contact of each other and thereafter developed intimacy but the petitioner never promised her to marry, for the reason that the O.P. No.2 herself disclosed that she is married from before and has instituted a case against her husband, being Nalanda Mahila P.S. Case No. 12/2017, thus, it is submitted that since the O.P. No.2 was married from before, as such how can it be even presumed that the petitioner would have given assurance that he will marry her. It is further submitted that from perusal of the allegation, as alleged in the F.I.R., it would manifest that the same does not even remotely suggests that the O.P. No.2 was a married woman, who was having differences with her erstwhile husband. It is submitted that the opposite party no.2 deliberately did not disclose the said fact in the F.I.R. about her first marriage, in order to give a serious color to the case and at the same time portrayed that she came in touch with the petitioner through social media, fell in love and the petitioner promised her to marry, based on which, she entered into a physical relation, it is next submitted that when petitioner and the O.P.



No.2 were in relationship, at that time, the marriage of the O.P. No.2 was subsisting with her husband, it is further submitted that though the informant alleges that thrice she became pregnant and was aborted but then it absolutely does not stand to reason that if she was aborted then why the name of the doctor is not disclosed in the F.I.R., which amply demonstrates that the allegation of abortion is alleged to give a serious colour to the case. It is further submitted that the O.P. No.2 prior to instituting the present F.I.R., had instituted Complaint Case No. 4911/2019 against the petitioner and while the complaint case was pending adjudication, present F.I.R. came to be instituted, concealing the said fact that a complaint has also been filed, which also casts an aspersion on the conduct of the O.P. No.2, as to why she instituted the instant F.I.R. when she had already filed a complaint case. The learned counsel next submits that it absolutely does not stand to reason that the informant alleges that she came to know the petitioner through social media in the year 2017 and till 2019 i.e. after spending nearly two years, she could not gather that petitioner was misusing her. It is further submitted that since the informant from before was married and was having strained relationship with her husband, as such, she became intimate with the petitioner and tried to seek his help



against her husband and when the petitioner was not in a position to help her, the present false case came to be instituted. The learned counsel submits no doubt the petitioner and the informant had intimate relationship but then there was no promise of marriage attached to it as the informant was married from before and her marriage was subsisting, as such, the informant could not have married the petitioner without divorcing her husband.

10. It is further submitted relying on para-14 of the judgment, in the case of Maheshwar Tigga vs. The State of Jharkhand (supra) that misconception of fact has to be in proximity of time to the occurrence and cannot be spread over a period of two years, further the consent of the O.P. No.2 was a conscious decision taken which also manifest from the fact that she never protested and established physical relation as and when they met. The learned counsel next submits that it is easy to allege rape but difficult to prove but then the stigma attached to it remains.

11. The learned APP for the State along with learned counsel for the O.P. No.2 vehemently opposes the submission made on behalf of the learned counsel for the petitioner but then the learned counsel for the O.P. No.2 very



fairly submits that the O.P. No.2 was married from before and when she had entered into relationship with the petitioner, at that time, her marriage was subsisting.

12. Considering the submissions made by the learned counsel for the petitioner, taking into account the facts recorded hereinabove, the order dated 12.07.2022, passed in Sessions Trial No.809/2021, arising out of Jakanpur P.S. Case No. 765/2019, whereby the application seeking discharge of the petitioner has been rejected, is hereby quashed.

(Satyavrat Verma, J)

amit/-

U		T	
---	--	---	--

