

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.35518 of 2021

Arising Out of PS. Case No.-52 Year-2019 Thana- MADHEPUR District- Madhubani

Dilip Kumar Thakur @ Dilip Kumar Son of Shiv Narayan Thakur Resident of
Village - Pachahi, P.S.- Madhepur, District - Madhubani

... .. Petitioner/s

Versus

1. The State of Bihar
2. Punam Kumari Daughter of Sri Bhola Prasad Resident of Village - Pachahi,
P.S.- Madhepur, District - Madhubani

... .. Opposite Party/s

Appearance :

For the Petitioner	:	Mr. A. K. Jha, Adv.
For the State	:	Mr. Ajay Kumar No. 2, APP
For the O.P.2	:	None

CORAM: HONOURABLE MR. JUSTICE PRABHAT KUMAR SINGH
ORAL ORDER

5 20-04-2024 Heard learned counsel for the petitioner and learned
A.P.P. for the State. Despite valid service of notice, nobody
appears on behalf of informant/opposite party no. 2.

2. This application has been filed for quashing the
impugned order dated 24.02.2021 passed by learned Additional
District & Sessions Judge, Ist, Madhubani in Sessions Trial No.
256 of 2019, arising out of Madhepur P.S. Case No. 52 of 2019,
for the offences punishable under Sections 420 and 376 of the
Indian Penal Code whereby and whereunder the learned
Additional District & Sessions Judge, Ist, Madhubani has been
pleased to reject the discharge petition dated 18.09.2019 filed by
this petitioner under Section 228 of the Cr.P.C.



3. The prosecution case, as per the First Information Report in short, is that on the false promise of marriage, this petitioner established physical relation with informant /opposite party no. 2 for many years and thereafter, refused to marry her.

4. Learned counsel for the petitioner submits that from bare perusal of the F.I.R., it would manifest that the informant herself alleges that she was in relationship with this petitioner for many years and as such, it cannot be said that physical relation was established under false promise of marriage. He further submits that informant and petitioner were engaged in sexual activity for quite some time which cannot be said to be induced and involuntary. As such, allegation of inducement and commission of rape is not made out against the petitioner and in such circumstance, continuance of criminal proceeding would be an abuse of the process of the court, but the learned Court below, without appreciating these facts, has rejected the petition filed for discharge of the petitioner under Section 228 of the Cr.P.C.

5. On the other hand, learned A.P.P. for the State vehemently opposes the arguments advanced on behalf of the petitioner and submits that there is specific allegation against this petitioner that on the false promise of marriage, he



established physical relation with the informant and thereafter, refused to marry her. Perusal of the impugned order, it reflects that there is sufficient material on record against this petitioner and it cannot be said that *prima facie*, no case is made out against this petitioner. Therefore, the learned Court below has rightly rejected the discharge petition of petitioner.

6. Heard learned counsel for the parties and perused the materials available on record. From bare perusal of the F.I.R., it is apparent that opposite party no. 2 was in relationship with this petitioner for many years. It is also admitted that when the relationship started, both of them were major. Opposite party no.2 had willingly been staying with the petitioner and had relationship. Now, if the relationship is not working out, it cannot be a ground for lodging an F.I.R. against the petitioner for the offence punishable under section 376 of the Indian Penal Code. There is no allegation to the effect that the promise for marriage was given by the petitioner was false at the very inception of relationship.

7. While dealing with a similar situation, Hon'ble Supreme Court in case of **Pramod Suryabhan Pawar Vs. State of Maharashtra**, reported in **(2019) 9 SCC 608** has observed as follows:-



“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.”

8. In view of the aforesaid discussions and law laid down by the Hon’ble Supreme Court in the case of **Pramod Suryabhan Pawar (*supra*)**, this Court is of the opinion that it is a fit case to interfere with the impugned order passed by the learned Court below. Accordingly, the order dated 24.02.2021 passed by learned Additional District & Sessions Judge -I, Madhubani in Sessions Trial No. 256 of 2019, arising out of Madhepur P.S. Case No. 52 of 2019 corresponding to G.R. No. 550 of 2019, is hereby quashed.

9. Thus, the present quashing application is allowed.

(Prabhat Kumar Singh, J)

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