

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.44509 of 2023

Arising Out of PS. Case No.-96 Year-2021 Thana- MAHILA P.S. District- Patna

PANKAJ KUMAR SHRIVASTAVA SON OF UPENDRA KUMAR
SHRIVASTAVA RESIDENT OF MOHALLA- FLAT NO. 304, VINOD
KUNJ, PRIYADARSHI NAGAR, BHAGWAT NAGAR, PS- AGAMKUAN,
DISTT- PATNA

... .. Petitioner/s

Versus

1. The State of Bihar
2. PINKY KUMARI DAUGHTER OF RAMSHRAY PRASAD AGRAHARI,
RESIDENT OF MOHALLA- UP KIRANA STORE, OPPOSITE PILLAR
NO. 57, BAILEY ROAD, PS- SASHTRI NAGAR, DISTT- PATNA,
BIHAR

... .. Opposite Party/s

Appearance :

For the Petitioner/s	:	Mr. P.N. Shahi, Sr. Advocate Mr. Vikash Kumar Pankaj Mr. Rishav Dev
For the Opposite Party/s	:	Mr. Anil Prasad Singh Mr. Jharkhandi Upadhyay
For the O.P. No. 2	:	Mr. Rajkumar Mr. Saurabh Nath

CORAM: HONOURABLE MR. JUSTICE SANDEEP KUMAR
ORAL JUDGMENT

Date : 02-07-2024

Heard learned Senior Counsel for the petitioner, learned
counsel for the State and learned counsel appearing on behalf of
the Informant.

2. Initially, the present case has been filed for quashing
the F.I.R. and cognizance. During the pendency of the present
application, the discharge application has been rejected vide
order dated 15.07.2023 which is also under challenge by filing
an interlocutory application (I.A. No. 1 of 2023).

3. The prosecution story as alleged by the Informant



prosecutrix in her written complaint to the concerned police Station is that she was posted as ANM in Koilwar and she met with the petitioner posted as pharmacist at Bihiya, who later proposed the Prosecutrix in 2016 and further introduced her to his family too and assured to solemnize the marriage soon. It is further alleged that in 2017 Petitioner called the Prosecutrix stating that her mother was ill and when she reached his house, the Petitioner forcefully established physical relation with the Prosecutrix and again assured the Petitioner for marriage. It is also alleged that the Petitioner made multiple physical relations on the pretext of marriage. It is further alleged that the Petitioner is now reluctant to marry her as she has medical issues of white spots and caste difference.

4. Learned counsel for the petitioner submits that the Petitioner is innocent and has committed no offence and has been falsely implicated in the present case for oblique reasons.

5. It is submitted that the allegations made in the FIR are general in nature and are not specific. Further, no material has come against the petitioner during the course of investigation. Moreover, the prosecution story itself is cryptic without any specific dates & details and nothing but bundle of lies. Nothing has come in the Medical report of the prosecutrix and



consequently, no case of alleged rape is made out under the alleged section.

6. It has been submitted that moreover, no witnesses even the mother & sister of the prosecutrix have uttered a single word with respect to the alleged incident of rape. Moreover, the reasons best known the Prosecutrix's father, brothers and *bhabis* haven't been examined by the Investigating Officer. It would not be out of place to mention that the prosecutrix is a habitual litigant having attained proficiency in lodging false complaints and cases has also filed frivolous complaint against her brother and his wife in the month of February - March, 2019 at Shastri Nagar Police Station to pressurize them to succumb to her illegitimate monetary demands. Further, in July, 2018, the Informant also lodged complaint with the Incharge Medical Officer, Koilwar against a reputed government doctor alleging that he misbehaved and abused her. Further, nothing untoward has come in the medical report of the Informant in the present case and the said medical report does not support the case of the Informant & allegations of rape.

7. Learned counsel for the petitioner further submits that it is pertinent to mention here that the Petitioner is a government employee presently posted as pharmacist at the Community



Health Center, Bihiya, Ara where the Petitioner & the Informant came to know each other as they were from the same sector and department and posted in the same district also. Both of them got acquainted with each other in the meetings of the department and later developed friendship with each other through social media, and consequently, developed love affair / relationship. He submits that it is pertinent to mention here that before starting of the relationship, the Informant once visited the Petitioner's house with her mother to give the invitation card and invite the Petitioner and his family members to her brother's marriage in Patna in the winter of 2016-17 wherein she clicked several photographs at the Petitioner's house with his family.

8. It is also submitted that the allegation of living together in rented premises are false and in the investigation also the landlord too has specifically not supported allegations of living together in said rented premises as alleged by the Informant in the FIR.

9. He submits that the Informant herself had informed the Petitioner on 21.01.2020 that her marriage had been fixed with the State Government Officer of Jharkhand namely, Deepak Kumar of Dhanbad and she is going to meet him alone at Dhanbad. She further requested the Petitioner to find out the



present status of her train tickets by PNR Numbers. Further, she also sent the photograph of said Deepak Kumar over facebook.

10. Learned counsel for the petitioner submits that the Petitioner always stood in the thick and thin of the Prosecutrix and helped her whenever she required his help due to her past relationship. In May, 2021 due to post COVID effects the Prosecutrix was having difficulty in breathing and consequently, she was treated at the Primary Health Center, Ara wherein, she called the Petitioner and asked for his help to commute her to her residence at Patna as none in the family were willing to come to Ara. The Petitioner helped her and went to Ara to arrange her commutation from Ara to her said residence.

11. It is further submitted that on several occasions, the Informant asked for monetary help from the Petitioner at one pretext or the other and consequently, the Petitioner also helped her whenever the need arose as per his capability. Informant on earlier occasions used to return his money no sooner she was out of her financial difficulty but since November, 2020, the Informant was reluctant in returning any money given by the Petitioner. It is also pertinent to mention here that as on date, the Informant owes Rs 37,000/- which she hasn't returned yet.

12. Learned counsel for the petitioner submits that in



June, 2021, the prosecutrix informed the Petitioner over WhatsApp message that her marriage is almost fixed with one Praveen Kumar staying in Mumbai and working with Maharashtra State Government and he also has white spots. She also sent the photograph of said Parveen Kumar in the said WhatsApp chat.

13. Learned counsel appearing on behalf of the petitioner further submits that despite being in relationship with the Petitioner, the informant was looking for a better suitable match in her caste only therefore, the love affair / relationship between the Petitioner and Informant started diminishing and later the said affair completely came to an end. Moreover, the Petitioner felt hurt, devastated and insulted by the approach of the Informant towards him as a mere reserved option and he realized himself of being used as a tissue paper by the Informant's incorrigible behavior of considering the Petitioner as a mere alternative in reserve.

14. Learned counsel for the petitioner further submits that the situation further worsened when the Informant developed some kind of fondness for one Dr. Arvind Sinha working in a private Hospital by being in continuous contact with him over phone calls and WhatsApp chat post midnight, too.



15. It has been submitted by the learned Senior Counsel for the petitioner that the informant has got married and she is staying happily with her husband.

16. Learned counsel for the opposite party No. 2 and the State has opposed the application.

17. I have considered the arguments of learned Senior Counsel appearing for the petitioners and learned counsel for the parties.

18. From the reading of the F.I.R., it appears that it is a case of consensual sex for five years. The marriage did not materialize thereafter the informant got married somewhere.

19. Supreme Court passed in the case of ***Sonu alias Subhash Kumar Vs. State of Uttar Pradesh and Another reported in (2021) 18 SCC 517*** has held as follows:-

“6. On the basis of the rival submissions and with the assistance of the counsel, we have perused the FIR. The FIR specifically records that the second respondent had developed a friendship with the appellant and that he had assured that he would marry her. The FIR then records that the appellant and the second respondent developed a physical relationship which spread over a period of one-and-a-half years, during the course of which the second respondent conversed with the parents and sister of the appellant. It has been alleged in the FIR that the parents of the appellant were agreeable to the couple getting married. As a matter of fact, the appellant returned to his hometown at Jhansi on 5-1-2018 when he had made a phone call to



her stating that she should come and visit him so that they can get married. On travelling to Jhansi at the behest of the appellant, the second respondent was informed by the father of the appellant that the appellant did not wish to marry her. The contents of the statement under Section 164CrPC also indicate that the second respondent had “voluntarily developed relationship of husband-wife with him”. The second respondent has then stated that “now, he and his family members are refusing to marry with me”. The second respondent has further stated that “my sole grievance is that Sonu is refusing to marry with me.

7. The contents of the FIR as well as the statement under Section 164CrPC leave no manner of doubt that, on the basis of the allegations as they stand, three important features emerge..

7.1. The relationship between the appellant and the second respondent was of a consensual nature.

7.2. The parties were in the relationship for about a period of one-and-a-half years.

7.3. Subsequently, the appellant had expressed a disinclination to marry the second respondent which led to the registration of the FIR.

8. In Pramod Suryabhan Pawar [Pramod Suryabhan Pawar v. State of Maharashtra, (2019) 9 SCC 608 : (2019) 3 SCC (Cri) 903] , while dealing with a similar situation, the principles of law which must govern a situation like the present were enunciated in the following observations : (SCC p. 618, para 16)

“16. 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.”

9. Further, the Court has observed : (Pramod Suryabhan Pawar case [Pramod Suryabhan Pawar v. State of Maharashtra, (2019) 9 SCC 608 : (2019) 3 SCC (Cri) 903] , SCC p. 620, para 18)

“18. To summarise the legal position that emerges from the above cases, the “consent” of a woman with respect to Section 375 must involve an active and reasoned deliberation towards the proposed act. To establish whether the “consent” was vitiated by a “misconception of fact” arising out of a promise to marry, two propositions must be established. The promise of marriage must have been a false promise, given in bad faith and with no intention of being adhered to at the time it was given. The false promise itself must be of immediate relevance, or bear a direct nexus to the woman's decision to engage in the sexual act.

10. Bearing in mind the tests which have been enunciated in the above decision [Pramod Suryabhan Pawar v. State of Maharashtra, (2019) 9 SCC 608 : (2019) 3 SCC (Cri) 903] , we are of the view that even assuming that all the allegations in the FIR are correct for the purposes of considering the application for quashing under Section 482CrPC, no offence has been established. There is no allegation to the effect that the promise to marry given to the second respondent was false at the inception. On the contrary, it would appear from the contents of the FIR that there was a subsequent refusal on the part of the appellant to marry the second respondent which gave rise to the registration of the FIR. On these facts, we are of the view that the High Court was in error in declining to entertain the petition under Section 482CrPC on the basis that it was only the evidence at trial which would lead to a determination as to whether an offence was established.””

20. Considering the law laid down by the Hon’ble



Supreme Court in the case of *Sonu alias Subhash Kumar Vs. State of Uttar Pradesh* (supra) and considering the statement in the F.I.R. and other materials on record, I am of the view that this is a case of consensual sex and no offence is made out against the petitioner.

21. In view of the above, this application is allowed.

22. Accordingly, the order dated 29.09.2022 for the offences punishable under Sections 376 & 420 of the Indian Penal Code passed by the Judicial Magistrate, 1st Class, Patna in Patna Mahila Thana P.S. Case No. 96/2021, the order dated 15.07.2023 rejecting the discharge application and also the F.I.R. i.e. Patna Mahila P.S. Case No. 96 of 2021 are hereby quashed.

(Sandeep Kumar, J)

Saif/-

AFR/NAFR	NAFR
CAV DATE	N.A.
Uploading Date	26.07.2024
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