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IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CRM-M-43670-2019 (O&M)
Date of decision: 16.09.2024

Kiranjit Kaur

...Petitioner

Versus

Manpreet Singh @ Pintu and others

...Respondents

CORAM: HON’BLE MR. JUSTICE HARPREET SINGH BRAR

Present: Mr. Achin Gupta, Advocate
for the petitioner.

HARPREET SINGH BRAR, J. (ORAL)

1. The present petition has been preferred under Section 482 of Code of Criminal Procedure, 1973 (for short ‘Cr.P.C.’) seeking quashing of impugned order dated 03.09.2019 (Annexure P-3) passed by learned Additional Sessions Judge, Faridkot, whereby the summoning order dated

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11.09.2017 passed by learned Judicial Magistrate 1st Class, Faridkot, in the case stemming from Criminal Complaint bearing No.222 dated 15.12.2015 under Sections 420, 376, 120-B, 109, 201 & 506 of the Indian Penal Code, 1860 (for short 'IPC'), was upheld.

2. Succinctly put, the facts are that the petitioner was married to one Baltej Singh. However, matrimonial discord ensued between them. Respondent No.1 persuaded the petitioner to obtain divorce from Baltej Singh, as he assured her that respondent No.2 will take good care of her and marry her. Subsequently, in April, 2014, before obtaining the decree of divorce, the petitioner started residing with respondent No.2. Respondents No.3 & 4, who are wife and daughter of respondent No.2, respectively and were residing in Canada, expressed their approval to the relationship between the petitioner and respondent No.2. From April, 2014 to May, 2015, respondent No.2 developed physical relations with the petitioner on the pretext of marrying her. Thereafter, on 18.04.2015, respondent No.4 returned to India and she refused to let the petitioner enter the house of respondent No.2. The petitioner's belongings were taken to another house and she was told that she was no longer allowed to stay with respondent No.2. The respondents had also promised to pay maintenance to the petitioner and assured her that she would



have a share in the ancestral property of respondent No.2, however, they later reneged on this promise. Moreover, some unknown persons armed with weapons threatened to kill the petitioner twice. On 04.06.2015, the petitioner moved an application before the concerned Senior Superintendent of Police, but no action was taken. The petitioner again moved an application before the Senior Superintendent of Police on 31.08.2015, but to no avail. Hence, the complaint before the Magistrate.

3. After scrutinizing the preliminary evidence led by the petitioner, learned trial Court, vide order dated 11.09.2017, while summoning respondent No.2 under Section 420 of IPC, ordered to dismiss the complaint against the remaining respondents. Aggrieved by this order, the petitioner preferred a revision petition before the Court of learned Additional Sessions Judge, Faridkot, which was also dismissed. Still not satisfied, the petitioner has filed the instant petition.

4. Learned counsel for the petitioner contends that the petitioner herself appeared as CW-4 and narrated the entire occurrence exactly in accordance with the version stated in the original complaint. As many as six witnesses were examined by the petitioner, however, learned Courts below failed to correctly appreciate the evidence brought forth by the prosecution,

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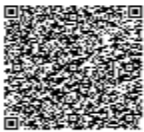
which clearly establishes that *prima-facie*, all the respondents, in connivance with each other, issued threats to the petitioner and committed offences punishable under Sections 420, 376, 120-B, 109, 201 & 506 of IPC. It is settled proposition of law that only *prima-facie* case is to be seen at the time of summoning the accused and not whether the material available on record can lead to conviction of the accused. As such, the impugned order has resulted into serious miscarriage of justice, illegality and irregularity. Therefore, the summoning order as well as the impugned order dismissing the revision petition filed by the petitioner are liable to be quashed.

5. Having heard learned counsel of the petitioner and after perusing the record of the case with his able assistance, it appears that there is nothing in the orders passed by learned Courts below to indicate illegality or misreading of evidence. From the statements of the witnesses as well as the material available on record, there is nothing to suggest that the evidence was tampered with by the respondents or that attempts were made to make it disappear. Furthermore, no cogent evidence is available to show that respondents No.1, 3 & 4 have abetted or conspired in any way with respondent No.2 for the alleged crime committed against the petitioner.



6. The absence of consent on the part of the woman is *sine qua non* to attract the offence of rape as defined under Section 375 of IPC. While Section 90 of IPC does not lay down all the necessary ingredients to constitute consent, it elucidates circumstances that would render consent irrelevant, for instance, when consent is given under misconception of fact, the incident cannot be deemed to be consensual. Therefore, engaging in sexual relations with the victim on a false promise of marriage, would invoke the offence under Section 375 of IPC, as the same is premised on a misconception of fact. However, in the present case, both the petitioner and respondent No.2 were already married, but resided with each other instead of their spouses. The petitioner was fully aware of the marital status of respondent No.2, since she has clearly stated in her complaint that she and her parents talked to respondent No.3 i.e. wife of respondent No.2 to seek her approval of her relationship with the petitioner. One of the two pre-conditions required to constitute the offence of rape on the pretext of marriage, is that 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. In the instant case, there are other relevant factors i.e. matrimonial dispute of the petitioner with her husband, a promise to maintain her and give her a share in the land of

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respondent No.2, to provide the petitioner with a house and a peaceful environment etc. Therefore, it cannot be said that the petitioner established sexual relations with respondent No.2 solely on the promise of marriage.

7. Accordingly, the present petition is dismissed and the impugned order dated 03.09.2019 (Annexure P-3) passed by learned Additional Sessions Judge, Faridkot as well as the summoning order dated 11.09.2017 (Annexure P-2) passed by learned Judicial Magistrate 1st Class, Faridkot, are upheld.

8. All the pending miscellaneous application(s), if any, shall stand disposed of.

[HARPREET SINGH BRAR]
JUDGE

16.09.2024
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Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No