

(2023) 11 SHI CK 0074

In the High Court Of Himachal Pradesh

Case No : Criminal Miscellaneous Petition (Main) No. 1038 Of 2023

Abhilash Walia

APPELLANT

Vs

State Of H.P. & Ors.

RESPONDENT

Date of Decision : 23-11-2023

Acts Referred:

Indian Penal Code, 1860 — Section 323, 376, 506
Hindu Marriage Act, 1955 — Section 13B
Code Of Criminal Procedure, 1973 — Section 161, 173

Citation : (2023) 11 SHI CK 0074

Hon'ble Judges : Rakesh Kainthla, J

Bench : Single Bench

Advocate : Ankush Dass Sood, Ankit Dhiman, Gaurav Chaudhary, Avni Kochhar, Mohit Dogra

Final Decision : Dismissed

Judgement

Rakesh Kainthla, J

1. The complainant made a statement that she had entered into a compromise with the petitioner, which was effected without any influence from any person. The compromised deed (Annexure P-2) bears her signature. She has no objection, in case, the FIR is ordered to be quashed in view of the compromise.

2. As per the allegations in the FIR, the victim is married and she was raped by the petitioner after promising to marry her. He did not fulfil the promise made by him. Hence, the offence punishable under Section 376 of IPC was committed.

3. Keeping in view the fact that the victim was married, she could not have believed the promise made to her that the petitioner would marry her because it is not permissible to marry another person during the subsistence of the marriage. It was laid down by the Hon'ble Supreme Court in Prashant Bharati vs. State 2013 (9) SCC 293 that where the separated wife alleged that she was made to undergo sexual intercourse on the promise of marriage, no offence is

made out, as she could not have married without divorcing her husband. It was observed:

"17. It is relevant to notice, that she had alleged, that she was induced into a physical relationship by Prashant Bharti, on the assurance that he would marry her. Obviously, an inducement for marriage is understandable if the same is made to an unmarried person. The judgment and decree dated 23.9.2008 reveals, that the complainant/ prosecutrix was married to Lalji Porwal on 14.6.2003. It also reveals that the aforesaid marriage subsisted till 23.9.2008 when the two divorced one another by mutual consent under Section 13B of the Hindu Marriage Act. In her supplementary statement dated 21.2.2007, the complainant/prosecutrix accused Prashant Bhati of having had physical relations with her on 23.12.2006, 25.12.2006 and 1.1.2007 at his residence, on the basis of a false promise to marry her. It is apparent from irrefutable evidence, that during the dates under reference and for a period of more than one year and eight months thereafter, she had remained married to Lalji Porwal. In such a fact situation, the assertion made by the complainant/prosecutrix, that the appellant-accused had physical relations with her, on the assurance that he would marry her, is per se false and as such, unacceptable. She, more than anybody else, was clearly aware of the fact that she had a subsisting valid marriage with Lalji Porwal. Accordingly, there was no question of anyone being in a position to induce her into a physical relationship under the assurance of marriage. If the judgment and decree dated 23.9.2008 produced before us by the complainant/prosecutrix herself is taken into consideration along with the factual position depicted in the supplementary statement dated 21.2.2007, - it would clearly emerge, that the complainant/prosecutrix was in a relationship of adultery on 23.12.2006, 25.12.2006 and 1.1.2007 with the appellant-accused, while she was validly married to her previous husband Lalji Porwal. In the aforesaid view of the matter, we are satisfied that the assertion made by the complainant/ prosecutrix, that she was induced into a physical relationship by Prashant Bharti, the appellant-accused, on the basis of a promise to marry her, stands irrefutably falsified.

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20. For the sake of argument, even if it is assumed, that Prashant Bharti, the appellant-accused and Priya, the complainant/prosecutrix, actually had a physical relationship, as alleged, the same would necessarily have to be consensual, since it is the case of the complainant/prosecutrix herself, that the said physical relationship was with her consent consequent upon the assurance of marriage. But then, the discussion above clearly negates such an assurance. A consensual relationship without any assurance, obviously will not substantiate the offence under Section 376 of the Indian Penal Code, alleged against Prashant Bharti."

4. Similar is the judgment of this Court in Dushyant Kumar vs. State of H.P. 2017 (Supp) Shim. LC 202 wherein it was held:

8. Now advertent to the facts of this case. The complainant admittedly is the legally wedded wife of Shri Nitu. In the report under Section 173 Cr.P.C. though there is a reference to the dissolution of her marriage with said Shri Nitu in the year 2014, however, in view of the statement of her mother recorded on 3.8.2015 under Section 161 Cr.P.C. and placed on record along with the copy of police report the marriage of the prosecutrix with said Shri Nitu was not dissolved by a decree of divorce even by that date also. Being so, how she could have fallen prey to the allurements of solemnization of marriage allegedly given to her by the accused-petitioner knowing fully well that she was legally wedded wife of Shri Nitu aforesaid. Even if it is believed to be true that her marriage with said Shri Nitu was dissolved in the year 2014 how she could have allowed the accused to subject her to sexual intercourse in the year 2011 and start living with him under the same roof as her first marriage was subsisting at that time.

9. Admittedly, there were physical relations between the accused-petitioner and the complainant. Such relations on the face of the record available at this stage cannot be said to be forcible or against her will and without her consent and rather consensual as she was a consenting party to such relation with the accused-petitioner. A married woman having her husband alive and three children maintaining physical relations with a third person that too during the currency of her marriage, cannot be said to be heard of any complaint that she has been subjected to sexual intercourse without her consent and against her will.

5. This Court had granted the permission to compound the offences punishable under Section 376 of IPC in Naveen Kumar Versus State of H.P, 2023 (1) Shimla Law Cases 281, Jagdeep Singh versus State of H.P, 2023 (1) Shimla Law Cases, 266, and Mohal Lal versus State of H.P, 2022 (supple.) Shimla Law Cases 448.

6. Keeping in view these precedents, FIR No. 159/2018 dated 21.06.2018 registered at Police Station Balh, District Mandi, H.P. for the commission of offences punishable under Sections 376, 323 and 506 of IPC and consequent proceedings arising out of the FIR is ordered to be quashed.