
(2009) 04 DEL CK 0101

In the Delhi High Court

Case No : Criminal M.C. No. 451 of 2009

Akhil Sachdeva

APPELLANT

Vs

State and Another

RESPONDENT

Date of Decision : 22-04-2009

Acts Referred:

Citation : (2009) 2 ILR Delhi 530 Supp

Hon'ble Judges : Dr. S. Muralidhar, J

Bench : Single Bench

Advocate : Nitin Sehgal, for the Appellant; Pawan K. Behl and Vimal Puggal, for R-2, for the Respondent

Judgement

S. Muralidhar, J.—This petition u/s 482 of the Code of Criminal Procedure 1973 ("CrPC") seeks the quashing for FIR No. 318 of 2006 registered at Police Station Paschim Vihar under Sections 120B/328/376/420 IPC and all proceedings consequent thereto.

2. The aforementioned FIR was registered at Police Station (PS) Paschim Vihar on 14th April 2006 at the instance of the Respondent No. 2 complainant who stated that on 23rd February 2005 while browsing through a matrimonial website i.e. shaadi.com she came into touch with the Petitioner. During the e-mail and telephone conversations with each other, the Petitioner had presented himself to be a citizen of Canada and working as investment banker and earning income \$1,40,000/- year. He informed the complainant that he was a divorcee and expressed his desire to marry the complainant. Since the parents of the complainant had also agreed to the proposal of the Petitioner to marry her, the complainant too developed a strong instinct to marry the Petitioner. The engagement ceremony was fixed for 6th November 2005 and the marriage was to be performed soon thereafter.

3. The Petitioner came to India on 25th October 2005 and the complainant along with her family members received him at the airport. During his stay at Paschim

Vihar, Delhi on 26th October 2005 the Petitioner invited the complainant to watch a movie at Chankya Cinema Hall. Meetings were held at a common venue with the parents of both sides and engagement ceremony was performed on 6th November 2005 whereby valuable articles and ornaments were provided to the Petitioner and his family members. It was represented to the complainant and her family members that soon after the marriage, the Petitioner would return to Canada.

4. The date of marriage was fixed for 14th April 2006. The complainant stated that after the engagement ceremony she and the Petitioner met on several occasions at their respective residences. On 9th November 2005 she was called telephonically at about 2.30 pm by Vinod Kumar Sachdeva the father of the Petitioner and asked to come along with the photocopies of the passport, ration card, bank passbook etc. for the purpose of submitting the form for immigration to Canada so that the immigration process could be expedited. According to the complainant, in good faith and being unaware about their nefarious and evil designs of the Petitioner and his relatives she went to their residence at Paschim Vihar. It is stated that the father, mother and grand-mother of the Petitioner took her to a separate room where the Petitioner was already present and left her alone in that room. The Petitioner offered the complainant a cold drink which she consumed. However, after ten minutes of consuming the drink she started feeling drowsy and became unconscious. When she regained her senses the complainant was shocked to discover that she was naked and all her clothes were lying scattered. When she enquired from the Petitioner as to what had happened to her and the Petitioner told her that he had mixed some intoxicating substance in her cold drink and had established physical relations. The complainant states that she suffered a great mental shock and questioned the Petitioner as to how he had dared to outrage her modesty and informed him that she would report the matter to the police. The Petitioner assured her to get the marriage arranged at an early date and told her that establishing physical relations prior to the marriage was a part of the western culture and requested her not to disclose the matter to anybody, while again assuring her that they would get married shortly. The Petitioner further informed her that if she disclosed the fact that they had already physical relationship, he would not marry her at any cost. The complainant received an e-mail on 10th April 2006 which dashed the hopes of the marriage taking place. Accordingly she lodged a complaint with the police on the basis of which the above FIR was registered.

5. It appears that while the Petitioner's father, mother and grandmother were arrested, the Petitioner was evading his arrest and he was declared Proclaimed Offender ("PO"). The charge sheet was filed in the trial court against all the accused in July 2007. The case proceeded to the stage of arguments on the order of charge before the Additional Sessions Judge ("ASJ"). It appears from the order dated 3rd September 2008 passed by the learned ASJ that during the course of the proceedings, the prosecutrix informed the Court that she had accepted a demand draft of Rs. 3.75 lakhs as the final settlement for the

expenses incurred by the family of the prosecutrix during the engagement ceremony. Thereafter in para 4 of the said the learned ASJ has noted as under:

4. The prosecutrix, during the course of arguments, herself further directly stated in the Open Court that though she is reserving her rights qua the main accused namely Akhil Sachdeva who was her proposed husband but she is not pressing for her allegations qua the present accused persons before this Court. She further claimed that acceptance of Rs. 3.75 lacs as settlement amount for the expenses incurred in engagement ceremony should not benefit the co-accused Akhil Sachdeva in any way.

6. The learned ASJ by the said order proceeded to discharge the other three accused but clarified that the said order would not "tantamount to any expression of opinion qua the case of co-accused Akhil Sachdeva."

7. According to the Petitioner, thereafter in the month of October/November 2008 the Petitioner and the complainant again got in touch with each other through internet and telephonically and started talking to each other. It is stated that both of them agreed to settle their disputes and the complainant agreed to the quashing of the FIR. It is claimed that since the Petitioner and the prosecutrix have settled their disputes out of the Court with the help of friends and relatives, no useful purpose will be served if the trial goes on. The Petitioner has enclosed as Annexure B to the petition an affidavit dated 31st January 2009 sworn to by the prosecutrix in which she states that her disputes with the Petitioner have been dissolved and that she has no objection if the FIR is quashed.

8. The petition is supported by an affidavit of the father of Petitioner in his capacity as power attorney of the Petitioner. The special power of attorney ("SPA") executed by the Petitioner in favour of his father on 3rd December 2008 while in London has been annexed with the petition. This petition was filed on 10th February 2009.

9. A status report has been filed in which it is stated that the Petitioner who is the main accused in the case could not be arrested as "he continuously evaded his arrest despite being declared PO in the case by the Court of Law."

10. This Court is unwilling to entertain the present petition at the instance of the person who has been declared as a PO by the criminal court and who continues to remain a fugitive from justice. The Petitioner is not willing to be physically present in the country and appear before the trial court and yet seeks the indulgence of quashing of the criminal proceedings. The offence that he is accused of is a grave one punishable u/s 376 IPC.

11. The Division Bench of this Court in *Rajiv Tayal Vs. Union of India (UOI) and Others*, declined to entertain a petition by a person who was declared as PO challenging an order impounding his passport. It was observed in the said case as under:

We have an interesting situation where the petitioner seeks to quash the order dated 21st August, 2004 and yet refuses to join the proceedings pending before the Metropolitan Magistrate largely on the ground that he is now residing in USA and subject him to the criminal process in India would be an unfair burden as is evident from the challenge raised earlier to the constitutional validity of the Passport Act and rejected by this Court. The petitioner also submits that he has not yet been served with the summons. The petitioner's Counsel has further submitted that the investigation in his case ought to be conducted by sending him a questionnaire and he should not be asked to join the investigation in India. The acceptance of such a plea would give a premium to the petitioner/accused who happens to travel abroad and it will thus be open to such an accused/petitioner to misuse the process of law to make a mockery of the Indian judicial system by asking for such a special procedure totally opposed to the principles of the criminal jurisprudence. The petitioner was repeatedly asked by this Court to join the proceedings before the Metropolitan Magistrate when the Court was prepared to provide him suitable protection against his arrest or any other penal consequences in respect of his passport, but the petitioner declined to do so and even today inter alia insists that the summons must be served on him before he is required to answer it. We cannot countenance the conduct of a party who while seeking to quash the order of the learned M.M., nevertheless declines to join proceedings on the hypertechnical plea of the summons not having been served on him notwithstanding the protection offered by this Court.

12. This Court is also conscious of the distinction in the legal position concerning matrimonial offences punishable under Sections 498A/406/34 IPC, in the context of which the Supreme Court has in *B.S. Joshi and Others Vs. State of Haryana and Another*, held that the criminal proceedings should be quashed by the High Court if any agreement is reached between the parties. However, it would not be permissible for High Court to quash the criminal proceedings involving the heinous crime of rape punishable u/s 376 IPC merely because the prosecutrix, for various compulsions, has agreed to settle the disputes with the principal accused. The judicial conscience does not permit this course of action.

13. An earnest appeal is made by learned Counsel for the Petitioner that he would like to withdraw this petition. This Court is not inclined to accede to this prayer. Having invoked the jurisdiction of this Court, while continuing to remain PO, the Petitioner should not be permitted to withdraw this petition at his own sweet will when he finds that this Court is not inclined to grant the relief as prayed for by him.

14. For all the aforementioned reasons, the petition is dismissed.

15. The Respondent No. 1 State is directed to take appropriate steps to have the Petitioner brought to justice as expeditiously as possible.