

(2015) 02 DEL CK 0397

In the Delhi High Court

Case No : Writ Petition (C) No. 1045 of 2015

Anil Dutt Sharma

APPELLANT

Vs

Union of India and Others

RESPONDENT

Date of Decision : 18-02-2015

Acts Referred:

Constitution of India, 1950 — Article 226
Penal Code, 1860 (IPC) — Section 376

Citation : (2015) 2 RCR(Criminal) 202

Hon'ble Judges : G. Rohini, C.J.;Rajiv Sahai Endlaw, J

Bench : Division Bench

Advocate : C.S.S. Tomar, for the Appellant; Jasmeet Singh, C.G.S.C., Advocates for the Respondent

Final Decision : Dismissed

Judgement

CM Nos. 1837/2015 and 1838/2015 (both for exemptions)

Allowed, subjected to all just exceptions.

The applications stand disposed of.

W.P. (C) No. 1045/2015

1. This petition under Article 226 of the Constitution of India, filed as a Public Interest Litigation (PIL), seeks directions for, (i) securing compensation for persons acquitted of criminal charge of rape under Section 376 of the Indian Penal Code, 1860 (IPC); (ii) registration of cases against persons on whose complaint such acquitted person were prosecuted; (iii) arrest in com-plaints/FIRs of the offence of rape only after conducting a preliminary enquiry and after medical report has been obtained and only for sufficient cause to be recorded by a Police Official not below the rank of Deputy Commissioner of Police/ Superintendent of Police; (iv) restraining the respondent No. 5 Press Council of India from circulating/publishing news of such offences having been committed, unless the permission is taken either from the Court or Senior Police Officer

monitoring the case; (v) banning sex offers and availability of pornographic/objectionable material on the internet, without obtaining registration thereof; (vi) taking action against Police Officials involved in investigation into the offence of rape which ultimately result in acquittal; (vii) keeping the cases of live-in-relationship out of the purview of Section 376 of the IPC; and, (viii) for the Central Government, the Govt. of NCT of Delhi, the Commissioner of Police, Delhi and the National Commission for Woman to ensure that citizens wear dignified dresses in public places. We have heard the counsel for the petitioner.

2. In our opinion, the petition is misconceived and in ignorance of the laws/procedures already available and in force. No general directions as sought can be issued. Moreover, all cases of acquittal cannot be permitted to lead to the conclusion of falsity of the claim of the complainant/prosecutrix or of faulty investigation. The test of proof, in prosecutions, is a tall one and merely because the said test has not been satisfied, resulting in acquittal, cannot be allowed to automatically lead to setting in motion a process of harassment to the complainant/prosecutrix or the Police Officials who had investigated the matter. The high rate of acquittal in such cases, on which the entire premise of the petition is based, can thus not be an indice of the prosecution being malicious or vindictive. The fact that the prosecution ended in the discharge or acquittal of the accused does not necessarily warrant that the accusation made was baseless to the knowledge of the prosecution.

3. One of us (Rajiv Sahai Endlaw, J.), sitting singly in *Gangadhar Padhy Vs. Prem Singh*, (2014) 211 DLT 104 and in *Akbar Ali Vs. State* (Govt. of NCT, Delhi) and *Others* : has held that an action for malicious prosecution is not favoured in law and should be properly guarded and its true principles strictly adhered to, since public policy favours the exposure of a crime and it is highly desirable that those reasonably suspected of crime be subjected to the process of criminal law for the protection of society and the citizen be accorded immunity for bona fide efforts to bring anti-social members to the society to the bar of justice. It was further held that to show that there was no reasonable and probable cause for prosecution, it has to be established that the prosecution did not believe in the guilt of the accused. It was yet further observed that police is an impartial agency constituted by the State for investigation into offences, booking of offenders and bringing them to justice, on their being satisfied by their enquiries that the case is truthful and merits prosecution and if such an agency prosecuted the offender, it would certainly be a factor in favour of the complainant having reasonable and probable cause.

4. As far as the relief sought, of keeping the live-in-relationships outside the purview of Section 376 of the IPC is concerned, the same would amount to giving the live-in-relationships, the status of matrimony and which the Legislature has chosen not to do. In another petition, also filed in public interest, before this Court today, the challenge is to the exclusion of sexual intercourse or sexual interaction with wife being not under 15 years of age, from the definition of rape.

We are of the view that such aspects are better left to the domain of the Legislature and the decision thereon is not for the Courts. All that we can observe is, that a live-in-relationship constitutes a distinct class from marriage. It is also not as if the defence of consent would not be available in such cases to the accused. We do not find any merit in the petition and dismiss the same.