
(2021) 08 UK CK 0295

In the Uttarakhand High Court

Case No : Criminal Writ Petition No. 1453 Of 2021

Divyansh Bisht & Anr

APPELLANT

Vs

State Of Uttarakhand & Others

RESPONDENT

Date of Decision : 18-08-2021

Acts Referred:

Indian Penal Code, 1860 — Section 376, 504

Code Of Criminal Procedure, 1973 — Section 155(2), 156(1), 482

Constitution Of India, 1950 — Article 226

Citation : (2021) 08 UK CK 0295

Hon'ble Judges : R.C. Khulbe, J

Bench : Single Bench

Advocate : Parikshit Saini, Siddhartha Bisht, Reema Rana

Final Decision : Disposed Of

Judgement

1. Heard learned counsel for the parties.
2. By means of present writ petition, moved under Article 226 of the Constitution of India, the petitioner has sought quashing of the FIR registered as FIR/Case Crime No. 442 of 2021 for the offences punishable under Sections 376, 504 IPC at Police Station Raipur, District Dehradun.
3. As per the FIR dated 03.08.2021, the respondent submitted an information on 03.08.2021 with the allegation that the petitioner no.1 committed rape with her on the false pretext of marriage.0
4. It is submitted by the learned counsel for the petitioners that petitioners have falsely been implicated; there is no medical on record regarding sexual offence; respondent no.3 was major at the time of occurrence; now, after marriage, applicant-Divyansh Bisht and respondent-Monika Negi are living as husband and wife; their marriage was solemnized on 14.08.2021 according to

Hindu rites; proceedings of marriage registration is pending before the Sub-Registrar, Dehradun.

5. Moreover, both the parties i.e. Petitioner no. 1- Divyansh Bisht and respondent no.3- Monika Negi are also present before the Court being duly identified by their respective counsel; they clearly state before the Court that they both are major; they have solemnized the marriage and now they are living as husband and wife. Respondent no. 3 Monika Negi submitted her mark-sheet of High School; as per the mark sheet her date of birth is 01.08.1997.

6. From the perusal of the FIR, it is clear that no time, date, day or even month is mentioned in the FIR when the petitioner had committed sexual offence with her; even FIR is silent about the place of occurrence. There is no allegation to the effect that the promise to marry given by the applicant to the third respondent was false at the inception; now both are living as husband and wife after the marriage.

7. The Honâ??ble Apex Court in a recent case of â??Sonu @ Subhash Kumar vs. State of U.P. and anotherâ??, reported in AIR 2021

Supreme Court 14059 has held as under

10. Further, the Court has observed:

â??To summarise the legal position that emerges from the above cases, the â??consentâ? of a woman with respect to Section 375 must

involve an active and reasoned deliberation towards the proposed act. To establish whether the â??consentâ? was vitiated by a

â??misconception of factâ? 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 womanâ??s decision to engage in the sexual act.â??

8. Although, the accused made physical relations with the prosecutrix on the pretext of the marriage but the petitioner no. 1 has already fulfilled the

condition by solemnizing marriage with the prosecutrix. Both are now living happily as husband and wife after marriage. The FIR was lodged due to

misconception of facts, accordingly, no case is made out under Section 376 and 504 IPC against petitioners.

9. Moreover, the Honâ??ble Supreme Court in the case of State of Haryana and others v. Bhajan Lal & others, reported in 1992 Supp (1)

SCC 335, has considered, in detail, the provisions of Section 482 Cr.P.C., and the power of the High Court to quash criminal proceedings or FIR. The

Honâ??ble Supreme Court summarized the legal position by laying the following guidelines to be followed by High Courts in exercise of their inherent

powers to quash a criminal complaint: -

1. â??Where the allegations made in the first information report or the complaint, even if they are taken at their face value and accepted in

their entirety do not prima facie constitute any offence or make out a case against the accused.

2. Where the allegations in the first information report and other materials, if any, accompanying the FIR do not disclose a cognizable

offence, justifying an investigation by police officers under Section 156(1) of the Code except under an order of a Magistrate within the

purview of Section 155(2) of the Code.

3. Where the uncontroverted allegations made in the FIR or complaint and the evidence collected in support of the same do not disclose the

commission of any offence and make out a case against the accused.

4. Where the allegations in the FIR do not constitute a cognizable offence but constitute only a non-cognizable offence, no investigation is

permitted by a police officer without an order of a Magistrate as contemplated under Section 155(2) of the Code.

5. Where the allegations made in the FIR or complaint are so absurd and inherently improbable on the basis of which, no prudent person

can ever reach a just conclusion that there is sufficient ground for proceeding against the accused.

6. Where there is an express legal bar engrafted in any of the provisions of the Code or the concerned Act (under which a criminal

proceeding is instituted) to the institution and continuance of the proceedings and/or, where there is a specific provision in the Code or the

concerned Act, providing efficacious redress for the grievance of the aggrieved party.

7. Where a criminal proceeding is manifestly attended with mala fide and/or where the proceeding is maliciously instituted with an ulterior

motive for wreaking vengeance on the accused and with a view to spite him due to private and personal grudge.

10. Considering the fact and circumstances of the case, in the light of aforesaid judgments, prima facie, there is no evidence against the petitioners to

proceed with the investigation under Sections 376 and 504 IPC.

11. Accordingly, the instant petition deserves to be allowed, and accordingly allowed. In consequence, FIR/Case Crime No.442 of 2021 for the

offences punishable under Sections 376, 504 IPC registered at Police Station Raipur, District Dehradun is hereby quashed qua the petitioners.

12. Present criminal writ petition is disposed of in the aforesaid terms.

13. Pending application, if any, also stands disposed of.