

(2024) 11 MP CK 0010

In the Madhya Pradesh High Court

Case No : Criminal Revision No. 3259 of 2022

Indrajeet Singh

APPELLANT

Vs

The State Of Madhya Pradesh And Others

RESPONDENT

Date of Decision : 13-11-2024

Acts Referred:

Code of Criminal Procedure 1973 — Section 164, 227
Indian Penal Code 1860 — Section 227, 366-A, 375, 376, 376(2)(n)
Indian Evidence Act 1872 — Section 90

Citation : (2024) 11 MP CK 0010

Hon'ble Judges : Prem Narayan Singh, J

Bench : Single Bench

Advocate : Aditi Mehta, Tarun Pagare

Final Decision : Dismissed

Judgement

Prem Narayan Singh, J

1. Present revision petition has been filed on behalf of the petitioners being aggrieved by the order dated 25.07.2022 passed in ST No.400/2021 by 8th Additional Session Judge and Special Judge (EOW), Indore whereby the learned Judge has dismissed the application of the petitioner filed under Section 227 of Cr.P.C. and framed the charges against the petitioners under Section 376(2)(n) of IPC.

2. According to the prosecution story, an application has been submitted on 10.02.2021 at Police station Lasudiya, Indore by the complainant/prosecutrix by submitting that she is living in Indore since 2017 and worked as a Architect designer, since 2018 she is working at lotus company, she met with the applicant Inderjeet, they become good friends and like each others. Inderjeet told her that he like her and wants to liver with her and in the Month of January, 2019, he made physical relationship till December 2020 on the pretext of marriage. She always asked him for marriage but he ignored her. She tried to leave him, but he could not made it possible. Thereafter, she has also asked about some other in

his life but, he refused the same then she has stated that they have already made physical relations and she loved her and cannot live without him and she has no option except suicide if he left her. Thereafter, on 05.02.2021 he was going to marry with his girl friend Gitika Israni as he was her since 2015. As such, petitioner Inderjeet has made physical relations with her even after having relations with another lady and cheated her. On the basis of said complaint, the police has registered the FIR against the applicant under Section 366-A, 376, 376(2)(n) of IPC.

3. Thereafter, vide the impugned order, the the learned trial Court has dismissed the application of the applicant filed under Section 227 of IPC and charges under Sections 376 (2)(n) of IPC was framed by the learned trial Court.

4. Learned counsel for the petitioner submits that the impugned order passed by learned judge is contrary to the law, facts and circumstances of the case and the material available on record. It is also submitted that the FIR registered against the applicant under Section 376 of IPC is bad in law and prima facie requirement given in the definition provided under Section 375 of IPC is not fulfilled as there is no apprehension of their marriage on the facts of the case. It is also submitted that the prosecutrix was a consenting party and they both live together for a long period. It is further submitted that the cognizance as well as the charges framed against the applicant are irrelevant. It is submitted that no evidence has been submitted by the complainant in support of her complainant. It is further submitted that the learned trial has committed grave error of law in not considering the fact that the prosecutrix was a consenting party, she has not given any evidence even no dates of offence have been provided. The complaint is afterthought and completely based on the concocted story. There is no incriminating circumstances against the applicant, but the learned trial Court has wrongly dismissed the application of the petitioner and framed the charges against him. Hence, prays for setting aside the same.

5. In support of his contention, learned counsel for the petitioner has placed reliance over the judgement of Hon'ble Apex Court passed in the case of Prashant Bharti vs. State of NCT of Delhi AIR 2013 SC 2753, Sonu @ Subhash Kumar vs. State of Uttar Pradesh and Another AIR 2021 SC 1405, Maheshwar Tigga vs. State of Jharkhand (2020) 10 SCC 108 as well as over the judgment of co-ordinate Bench of this Court passed in the case of Mohit Maheshwari vs. State of Madhya Pradesh & Anr. passed in CRR No.1238 of 2023 decided on 18.04.2023. Learned counsel further submits that the Hon'ble Apex Court as well as co-ordinate Bench of this Court (Gwalior Bench) have considered the similar allegations and discharged/acquitted the accused from the charged under Section 376(2)(n) of IPC.

6. On the other hand, counsel for the State has opposed the prayer by submitting that looking to the allegations leveled against the petitioner the learned trial Court has not committed any error of law in dismissing the application of the petitioner filed under Section 227 of Cr.P.C. and framed the

charges rightly. It is further submitted that the petitioner has made physical relations with the prosecutrix even after having relations with another girl, therefore, the act and conduct of the petitioner is covered under the definition of rape. Hence, prays for dismissal of the petition.

7. Having heard the rival submissions of counsel for the parties, the record of the case has been perused.

8. In the case at hand, the allegations against the petitioner is that he has committed rape with the prosecutrix on the pretext of marriage. As per the prosecution, he knows that he could not going to perform marriage with the prosecutrix as per the promise since, the petitioner was also in relation with another lady. For example, a person who is already married, if he is making promise falsely it shall be treated as "promise" given "under misconception". Similarly, a person is having another girlfriend and wanted to marry with her girlfriend only, but instead of that, he made relations with another lady on the basis of false promise, such act of the person shall be treated as "misconception of fact". Meaning thereby, the petitioner has intention to cheat another lady from initial stage. Certainly, in this case, provisions of Section 375/376 of IPC will be applicable.

9. Further, on the similar aspect, The apex Court discussed the concept of "misconception of fact" as mentioned in Section 90 of the Indian Evidence Act and cited other judgements of Apex Court and was of the view that the prosecutrix continued to maintain physical relations with the accused from 2008 to 2016 knowing that the accused had expressed his reservations against marrying the prosecutrix due to her belonging to another caste. The prosecutrix despite being aware of disinclination of accused to marry her, had continued to maintain physical relations with him, thus, there was no misconception of fact on her part.

10. The Apex Court also highlighted the concept of consent as defined in the second explanation of Section 375 of IPC which is as follows:-

"375. Rape – A man is said to commit "rape" is he-

.....

Under the circumstances falling under any of the following seven descriptions-

Firstly.....

Secondly,- without her consent.

.....

.....

Explanation 2.- Consent means an unequivocal voluntary agreement when the woman by words, gestures or any form of verbal or non-verbal communications, communicates willingness to participate in the specific sexual act:

Provided that a woman who does not physically resist to the act of penetration shall not by the reason only of that fact, be regarded as consenting to the sexual activity.”

11. Further, the term “misconception” figures in Section 90 of IPC which is as under:

“90. Consent known to be given under fear or misconception – A consent is not such a consent as is intended by any section of this Code, if the consent is given by a person under fear or injury, or under a misconception of fact, and if the person doing the act knows, or has reason to believe, that the consent was given in consequence of such fear or misconception; or.....”

12. It will have to be seen that as to whether there is prima facie consent apparent on the part of the prosecutrix in this case, and if yes, whether consent was given under a misconception of fact?.

13. A perusal of the charge-sheet shows that the whole edifice of acquaintance between the prosecutrix and the petitioner was based on and originated in a firm where they both were working. Thereafter, they both have started to chat with each other and maintained the relations as mutual friends, but later on, on the promise of marry with the prosecutrix, the petitioner has made physical relations with her. The prosecutrix made queries from him as to whether he would marry her or not and applicant gave evasive replies. Prosecutrix also came to know that the petitioner had given such promise of marriage to another lady as well and had exploited her as well physically, which led to lodging of this report against the petitioner. The factum of relations with another lady was admittedly admitted by the petitioner himself and the same has been stated by the prosecutrix in her statements recorded under Section 164 of Cr.P.C. that the petitioner is having affairs with another lady namely Gitika and he is going to marry her.

14. As already stated, mutual understanding and expression of love followed by giving way to the demands of petitioner on the part of prosecution were based upon the prospects of marriage to the petitioner. A perusal of statements of prosecutrix recorded under Section 164 of Cr.P.C. shows that the petitioner appears to be aimed at establishing sexual relations with the prosecutrix on the pretext of marriage whereas the prosecutrix has expressed her doubts on petitioner as to whether he would marry her or not? Thus, it prima facie appears that the petitioner responding to the prosecutrix, took steps to gain confidence of prosecutrix, ultimately promising to marry her and then sexually exploiting her. The manner in which evasive denials have been given by the petitioner on the queries made by prosecutrix seeking affirmation of marriage shows that he was not inclined to marry her and ultimately, he has stated that he want to marry with another lady. It is also clear that, the petitioner has made physical relations with the prosecutrix even after having another girlfriend and he was already in relations with her, therefore, promise to the prosecutrix to marry, is the clear mind set of the petitioner to only made physical relations with her whereas he

want to marry with another lady. It is also clear that if a person is in relation with a lady and want to marry with her, cannot promise for marry to another lady, and if that be so, such promise can only be aimed at physical relations only.

15. The Hon'ble Apex Court, in the case of Deepak Gulati vs. State of Haryana AIR 2013 SC 2071 has held as under:-

"17. Rape is the most morally and physically reprehensible crime in a society, as it is an assault on the body, mind and privacy of the victim. While a murderer destroys the physical frame of the victim, a rapist degrades and defiles the soul of a helpless female. Rape reduces a woman to an animal, as it shakes the very core of her life. By no means can a rape victim be called an accomplice. Rape leaves a permanent scar on the life of the victim, and therefore a rape victim is placed on a higher pedestal than an injured witness. Rape is a crime against the entire society and violates the human rights of the victim. Being the most hated crime, rape tantamounts to a serious blow to the supreme honour of a woman, and offends both, her esteem and dignity. It causes psychological and physical harm to the victim, leaving upon her indelible marks.

17. Consent may be express or implied, coerced or misguided, obtained willingly or through deceit. Consent is an act of reason, accompanied by deliberation, the mind weighing, as in a balance, the good and evil on each side. There is a clear distinction between rape and consensual sex and in a case like this, the Court must very carefully examine whether the accused had actually wanted to marry the victim, or ad malafide motives, and had made a false promise to this effect only to satisfy his lust, as the latter falls within the ambit of cheating and deception. There is a distinction between the mere breach of a promise, and not fulfilling a false promise. Thus, the Court must examine whether there was made, at an early stage a false promise of marriage by the accused; and whether the consent involved was given after wholly, understanding the nature and consequences of sexual indulgence. There may be case where the prosecutrix agrees to have sexual intercourse on account of her love and passion for the accused, and not solely on account of misrepresentation made to her by the accused, or where an accused on account of circumstances which he could not have foreseen, or which were beyond his control, was unable to marry her, despite having every intention to do so. Such cases must be treated differently. An accused can be convicted for rape only if the court reaches a conclusion that the intention of accused was malafide, and that he had clandestine motives."

(emphasis supplied)

16. Thus, prima facie, it appears that the petitioner had handed out a false promise of marriage to prosecutrix and there is no simplicitor a breach of promise of marriage. Consent for sexual relations obtained by false promise of marriage would vitiate such consent as such false promise would amount to "misconception of fact". The petitioner was having malafide intentions to satisfy his lust only. In such circumstances, in view of the settled proposition of law in

the case of Deepak Gulati (Supra) the offence of rape would be made out.

17. What is material, is not whether petitioner had ultimately declined to marry the prosecutrix or not. What is material is whether the facts of the case showed that there was disinclination or false promise from the very inception and in the facts of the present case, it is found that there was indeed disinclination on the part of petitioner to marry the prosecutrix since he want to marry with another lady.

18. After duly considering the submissions in the light of facts of the case, the learned trial Court has framed the charge rightly and no interference is required in the findings of learned trial Court and the petitioner does not deserve to be discharged from the charges framed under Section 376(2)(n) of IPC. Accordingly, the criminal revision petition stands rejected.

19. It is also well established that when the case is prima facie established from the material available on record it would not apposite for the High Court to quash the criminal proceedings considering the chances of conviction or acquittal. Where material evidence is available against the applicant it should be left to be decided by the trial Court which is the appropriate forum for the evaluation of the said materials and evidences.

On this aspect the view of Hon'ble Apex Court recently held in the case of Just Rights for Children Alliance & Anr. vs. S. Harish & Ors., reported in 2024 LawSuit(SC) 847 is condign to quote here as under:-

189. Once the foundational facts are prima facie established from the materials on record, it would be improper for the High Court in a quashing petition to conduct an intricate evidentiary inquiry into the facts and ascertain whether the requisite mental elements are present or not. All these aspects should be left to be decided by the trial court which is the appropriate forum for the evaluation of the same, especially where the statutory presumption has been attracted prima facie from the material on record.

190. When the High Court quashes any criminal proceedings without considering the legal effect of the statutory presumption, it effectively scuttles the process of trial and thereby denies the parties the opportunity to adduce appropriate evidence and the right to a fair trial. This would not only defeat the very case of the prosecution but would also thwart the very object of a particular legislation and thereby undermine the public confidence in the criminal justice system.

20. So far as the authorities cited by counsel for the petitioner in the cases of Prashant Bharti (supra), Sonu @ Subhash Kumar (supra) & Maheshwar Tigga (supra) and Mohit Maheshwari (supra) are concerned, all the cases have not similar facts and circumstances to the present case, because, in the present case, the petitioner has already intention to marry with another lady, but not in that cases, therefore, intention to commit rape with the prosecutrix shall be treated as rape as per the settled provisions of law, hence, the same are

discarded.

21. In view of the aforesaid discussion in entirety as well as the material available on record, the law laid down by Hon'ble Apex Court in the aforesaid case, this Court does not find any illegality, irregularity or impropriety in the impugned order passed by the learned trial Court. Therefore, no interference is warranted.

22. At this stage, this revision petition filed by the petitioners fails. Resultantly, the present petition is dismissed and the impugned order of the learned trial Court is affirmed.

23. Pending application, if any, also closed.

24. It is made clear that this Court has not made any observations on the merits of the case and this order shall not be come in the way of the learned trial Court while passing the final judgment.

25. A copy of this order be sent to the leaned trial Court concerned by the Registry for information