
(2012) 08 SHI CK 0005
In the High Court Of Himachal Pradesh
Case No : Criminal Revision No. 157 of 2012

Rajesh Rana

APPELLANT

Vs

State of Himachal Pradesh

RESPONDENT

Date of Decision : 21-08-2012

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 156(3), 161, 173, 375
Evidence Act, 1872 — Section 114A
Penal Code, 1860 (IPC) — Section 376, 406, 420, 493

Citation : (2012) 3 ShimLC 1766

Hon'ble Judges : Kuldeep Singh, J

Bench : Single Bench

Advocate : R.K. Gautam, with Mr. Vikrant Chandel, for the Appellant; Ruma Kaushik, Additional Advocate General, for the Respondent

Judgement

Kuldeep Singh, J.—This revision is directed against the order dated 3.5.2012 passed by learned Sessions Judge, Kangra at Dharamshala in SC No. 59-D/VII/10/08 framing charge against the petitioner for offences punishable under Sections 376, 420, 406, 493 IPC. The facts in brief are that prosecutrix filed complaint before learned Chief Judicial Magistrate, Kangra at Dharamshala u/s 156(3) of the Code, which was sent to the Police Station, Dharamshala for investigation. The police registered FIR No. 241/07 dated 2.12.2007 for offences punishable under Sections 376, 420, 406, 493 IPC. On completion of investigation, challan was submitted and thereupon the trial Court on 3.5.2012 has framed the charge against the petitioner for offences punishable under Sections 376, 420, 406, 493 IPC.

2. The order dated 3.5.2012 has been assailed on the grounds that perusal of FIR and other documentary evidence including statements u/s 161 Cr.P.C., no case is made out for which charge has been framed by the trial Court. It has been alleged that there seems to be some civil dispute between petitioner and the prosecutrix. Some lending of money seems to be the bone of contention between the parties, but no criminal case is made out on the basis of police

report u/s 173 Cr.P.C.

3. There is no question from the side of the petitioner to make any alleged promise to marry the prosecutrix nor any question arises for sexually harassing the prosecutrix by the petitioner. The learned Sessions Judge has erred in framing the charge against the petitioner under Sections 376, 420, 406, 493 IPC.

4. Heard. The learned Counsel for the petitioner has submitted that from the perusal of report u/s 173 of the Code no case is made out for which petitioner has been charged by learned Sessions Judge on 3.5.2012. The learned Counsel has relied the definition of "rape" u/s 375 of the Code. He has submitted that sexual intercourse by a man with a woman on the promise of marriage does not fall in any of the exceptions enumerated u/s 375 of the Code. He has submitted that the charge under Sections 420, 406 IPC is also not made out, the dispute if any, between the parties is of a civil nature. It has been submitted that charge u/s 376 and Section 493 IPC is not legally tenable.

5. The scope of proving accusation at the time of framing of charge is very limited. It is not necessary for the prosecution at the time of framing of charge to establish beyond reasonable doubt that the accusation is bound to bring home guilt against the accused. At the time of framing of charge the Court is to see that the accused has committed an offence and if the answer is in affirmative the order of discharge cannot be passed and the accused is to face the trial, only prima facie case is to be seen. In order to appreciate the contentions raised by learned Counsel for the petitioner it will be appropriate to refer some case law on the point before considering the material on record.

6. The Supreme Court in Uday Vs. State of Karnataka, has held as follows:--

21. It therefore appears that the consensus of judicial opinion is in favour of the view that the consent given by the prosecutrix to sexual intercourse with a person with whom she is deeply in love on a promise that he would marry her on a later date, cannot be said to be given under a misconception of fact. A false promise is not a fact within the meaning of the Code. We are inclined to agree with this view, but we must add that there is no straitjacket formula for determining whether consent given by the prosecutrix to sexual intercourse is voluntary, or whether it is given under a misconception of fact. In the ultimate analysis, the tests laid down by the Courts provide at best guidance to the judicial mind while considering a question of consent, but the Court must, in each case, consider the evidence before it and the surrounding circumstances, before reaching a conclusion/ because each case has its own peculiar facts which may have a bearing on the question whether the consent was voluntary, or was given under a misconception of fact. It must also weigh the evidence keeping in view the fact that the burden is on the prosecution to prove each and every ingredient of the offence, absence of consent being one of them.

7. The Supreme Court in Deelip Singh @ Dilip Kumar Vs. State of Bihar, has noticed paragraph 21 of Uday Singh (supra) and has held as follows:--

Reading the judgment in Uday case as a whole, we do not understand the Court laying down a broad proposition that a promise to marry could never amount to a misconception of fact. That is not, in our understanding, the ratio of the decision. In fact, there was a specific finding in that case that initially the accused's intention to marry cannot be ruled out.

The Supreme Court further held as follows:--

Whether the tacit consent given by the prosecutrix was the result of a misconception created in her mind as to the intention of the accused to marry her? These are the questions which have to be answered on an analysis of the evidence. The last question raises the allied question/ whether the promise to marry, if made by the accused, was false to his knowledge and belief from the very inception and it was never intended to be acted upon by him. As pointed out by this Court in Uday case the burden is on the prosecution to prove that there was absence of consent. Of course, the position is different if the case is covered by Section 114A of the Evidence Act. Consent or absence of it could be gathered from the attendant circumstances. The previous or contemporaneous acts or the subsequent conduct can be legitimate guides.

8. In Gopal Chauhan Vs. Smt. Satya and Another, , it has been held as follows:--

So far as Section 420 is concerned, the complainant has alleged that from the beginning the intention of the petitioner was to exploit her physically and, therefore, by practising fraud and deceit he used to show affection to her and also had sexual intercourse with her many a time. If these allegations are true, it cannot be said that it would never make out a case of cheating.

9. Now coming to the facts of the present case. It has been alleged that accused firstly obtained the consent of the prosecutrix on false promise to marry her. The accused had made representation deliberately to elicit assent of prosecutrix without having intention or inclination to marry her. The prosecutrix would not have consented for sexual intercourse if there was no promise to marry. The accused by deceitful mean obtained the consent of the prosecutrix for sexual intercourse and obtaining money from the prosecutrix. The accused by deceitful means and promise to marry her took away about Rs. 11,00,000/- and made the prosecutrix to part with her money on false relationship. The accused played fraud with the prosecutrix. The statements of Nain Sharma, Ankita Sharma, children of the prosecutrix, Narender Sharma brother of the prosecutrix u/s 161 Cr.P.C. indicate the relationship of the prosecutrix with the accused. The prosecutrix was married with Anup Sharma who died in the year 1998.

10. The Forensic Science Laboratory has reported that Human semen was detected on the exhibit-ib. But blood was not detected on the exhibit. As per Deelip Singh alias Dilip Kumar (supra) whether the tacit consent given by the prosecutrix was the result of a misconception created in her mind as to the intention of the accused to marry her is to be answered on an analysis of the evidence. In Uday (supra) also it has been held that Court must, in each case,

consider the evidence before it and the surrounding circumstances, before reaching a conclusion, because each case has its own peculiar facts which may have a bearing on the question whether the consent was voluntary, or was given under a misconception of fact.

11. The contention of the petitioner that charge u/s 376 and Section 493 IPC is not legally tenable is also without substance. In the FIR the prosecutrix has alleged that she was taken to Kunal Pathari temple where in presence of deity the accused had promised to marry her. In the FIR, it has been stated that accused playing fraud with the prosecutrix cohabited with her inducing a belief of lawful marriage, therefore, it cannot be said that prima facie charge under Sections 376 and Section 493 IPC is not tenable.

12. In Md. Ibrahim and Others Vs. State of Bihar and Another, , it has been held that criminal Courts should ensure that proceedings before it are not used for settling scores or to pressurize parties to settle civil disputes. But at the same time, it should be noted that several disputes of a civil nature may also contain the ingredients of criminal offences and if so, will have to be tried as criminal offences, even if they also amount to civil disputes. The contention of the learned Counsel for the petitioner that dispute between petitioner and complainant is of civil nature and therefore, charge under Sections 420, 406 IPC is not tenable has no force. The prosecution will have to prove the charge in order to secure conviction of the petitioner. The learned Sessions Judge has committed no illegality in framing charge against the petitioner under Sections 376, 420, 406, 493 IPC on 3.5.2012. There is no merit in the revision which is dismissed. Cr. M.P. No. 687 of 2012 is also disposed of in view of dismissal of the revision.