

(2024) 05 J&K CK 0061

In the Jammu And Kashmir High Court

Case No : Criminal Miscellaneous Case (M) No. 424 Of 2020

Tara Singh

APPELLANT

Vs

Union Territory Of Jammu And Kashmir And Others

RESPONDENT

Date of Decision : 30-05-2024

Acts Referred:

Indian Penal Code, 1860 — Section 376, 420
Code Of Criminal Procedure, 1973 — Section 164, 164A
Protection Of Children From Sexual Offences Act, 2012 — Section 4

Citation : (2024) 05 J&K CK 0061

Hon'ble Judges : Rajnesh Oswal, J

Bench : Single Bench

Advocate : Ankur Sharma, Dewakar Sharma, Rajnish Sharma

Final Decision : Dismissed

Judgement

Rajnesh Oswal, J

1. The petitioner has sought quashing of the FIR bearing No. 20/2020 dated 26.10.2020 registered with respondent No. 2 under section 376 IPC at the instance of respondent No. 3, on the ground that no offence under section 376 IPC is made out against the petitioner, as the respondent No. 3 in the FIR, has herself stated that she got married to another man, namely, Narinder Kumar on 06.07.2019 and after the marriage of respondent No. 3, the petitioner neither communicated with her nor maintained any sexual relationship with her. It has been falsely stated by the respondent No. 3 that the petitioner instigated her to get divorce from her husband and assured that after divorce, he would marry her. The petitioner has also urged that the FIR has been lodged with ulterior motive for wrecking vengeance on the petitioner and the allegations leveled in the FIR are so absurd and improbable that no prudent person can reach to a just conclusion that there are sufficient grounds for proceeding against the petitioner.

2. The official respondents have filed the status report stating therein that on 06.10.2020 at 1530 hours, the respondent No. 3 along with her mother came to

the Police Station and submitted an application in English which was endorsed by the Senior Superintendent of Police for registration of FIR. It was stated in the complaint that she was in a relationship with the petitioner for four long years and they also maintained physical relations. They both had decided to get married. But before they could solemnize marriage. Her parents fixed her marriage somewhere else, and she got married. But after the marriage, the petitioner asked her to get divorce from her husband and assured he would marry her, as such, she took the divorce. Thereafter, they entered into a relationship again and had physical relations also. When she asked the petitioner to marry her, he refused. It is also stated that the petitioner had ruined her life. On enquiry, the complainant orally disclosed that the petitioner had lastly raped her on 12.10.2020 in his own fields between 1830 to 1900 hours and thereafter, refused to marry her. FIR bearing No. 20/2020 for offence under section 376 IPC was registered by the respondent No. 2 and investigation was entrusted to Sanjeevan Jyoti.

The medical examination of the respondent No. 3/victim was conducted at Government Medical College, Kathua. The Investigating Officer also obtained the call details report of phone numbers of the petitioner and the respondent No. 3 and as per CDR/SDR details, mobile No. xxxxxxxxxx was found in the name of the accused/petitioner and mobile No. xxxxxxxxxx was found in the name of victim girl. As per call details reports, hundreds of calls were found to have been made by the petitioner to respondent No. 3 during the last three months. The statement of victim was also recorded under section 164 Cr.P.C. As per the Birth Certificate, the Date of Birth of the victim is 01.01.2003 and as per her statement, first incident of rape took place on 15.05.2019 in the room of a Poultry Farm situated Chack Sardar Desa Singh and on that date of incident, the age of the victim was 16 years, 04 months and 15 days and she was minor at that time. As per the statement of the girl and Birth Certificate, offences under section 420 IPC and section 4 of the POCSO Act were added in the case. As per the investigation conducted by the Investigating Officer, offences under sections 376 and 420 IPC and 4 POCSO Act have been proved against the petitioner.

3. Learned counsel for the petitioner has vehemently argued that a false and frivolous FIR has been registered against the petitioner by the respondent No. 3 and that too after she got divorced from her first husband.

4. Per contra, Mr. Dewakar Sharma, Dy.AG appearing for the official respondents has vehemently argued that the petitioner has not only cheated the respondent No. 3 but also sexually assaulted her when she was minor.

5. Mr. Rajnish Raina, learned counsel appearing for the victim has argued that the petitioner has exploited the minor girl and merely she was married and divorced by her first husband, would not absolve the petitioner as he sexually assaulted the victim again on 12.10.2020, when she was still minor.

6. Heard and perused the record.

7. The verbatim contents of application submitted by the respondent No.3 with the respondent No.2 are extracted as under:

"To, The Station House Officer of SSP Office Kathua, Sir, I need your help I need justice, I am 19 years old, my boyfriend and I have been in a relationship for 4 years and we also have physical relations. We both had to get married, the boy mother and father also agreed. But before that my parents said and fixed my marriage. And I got married. But after marriage, my boyfriend asked me to get the divorced and said that I will marry you and I took you to divorce. After that we are in the relationship again and then he had a physical relationship with me. But now when I told him that we get married he refused me. He uses me and throw him he is not marrying me only use me I need your help. He ruined my life. Now, I just have to marry him my father is not there I am daughter of the fatherless so I have come to you. So I want justice so kindly help me sir. Please provide me justice. My boyfriend name Rinku Son of Mohinder Pal Mother Sushma Ward No. 17 Mobile xxxxxxxxxxxx, xxxxxxxxxxxxxx, xxxxxxxxxxxxxx.

Yours faithfully, Name xxxxxxxx Ward No. 4 Dis/Teh Kathua, Mobile No. xxxxxxxxxxxx Dated 26.10.2020"

8. After the receipt of this application and the oral enquiry of the prosecutrix that the last time she was sexually assaulted by the petitioner in the month of October 2020, FIR No. 20/2020 was registered for offence under section 376 IPC. During investigation, the statement of the prosecutrix was recorded initially on 27.10.2020 before the court of JMIC Munsiff Kathua wherein she stated that when she was studying in Shiva Public High School Kathua, the petitioner used to follow her. In the month of July 2018, they came into contact with each other and the petitioner would talk to her very politely. On 15.05.2019, the petitioner called her in the night at 2/2.30. He asked her to come outside the house as he had to talk to her. When she came out, he while conversing with her, took away to a poultry farm which was at some distance and forcefully maintained physical relation with her and told her he would solemnize marriage with her. The petitioner forcibly maintained physical relations four/five times with her. When her parents came to know, her marriage was solemnized with some other person. Even after marriage, the petitioner continued to call her and would persuade her to get a divorce from her husband, as he would marry her. He also used to blackmail her that if she did not agree, he would disclose everything to her husband. She remained in her matrimonial house for 2½ months and thereafter came back. On 06.07.2020, she obtained divorce from her husband in Pathankot Court. After the respondent No. 3 obtained divorce, the petitioner again maintained physical relationship with her. On 12.10.2020, the petitioner again made physical relationship with her in his fields. The statement of the prosecutrix was recorded again on 07.05.2024 before the court of District Judicial Mobile Magistrate, Kathua, wherein she reiterated what she had stated in her earlier statement. During the investigation, the Investigating Officer obtained the call detail reports and also obtained the Date of Birth of respondent No. 3 from

her School, namely, Shiva Public High School, Kathua where she had studied. As per the Date of Birth Certificate, the age of the victim is 01.01.2003 meaning thereby, on 15.05.2019 when the petitioner made sexual relationship with respondent No. 3 for the first time, she was minor and also when on 12.10.2020, he maintained physical relations with respondent No. 3, she was minor. The Investigating Officer has added the offences under section 420 IPC and Section 4 of the POCSO Act. It appears that the marriage of the victim was solemnized before she attained majority, she obtained divorce before majority and the petitioner also maintained physical relations with her when she was minor. The position would have been different had the victim been major but even when the FIR was registered, the respondent No. 3 was 17 years old. This Court has examined the Case Diary and as per the Birth Certificate issued by the Shiva Public High School dated 08.01.2020, the date of birth of respondent No. 3 is 01.01.2003 and as per the Birth Certificate issued by the Municipal Council Kathua also, the Date of Birth of respondent No. 3 is 01.01.2003. Respondent No. 3 was minor when the petitioner made and maintained physical relationship with the minor.

9. The contention of the petitioner that he never was in contact with respondent No. 3 after her marriage is also belied by the status report filed by official respondents, wherein it has been stated that the call detail reports clearly demonstrate that hundreds of calls were made by the petitioner to respondent No. 3 three months prior to registration of FIR. The statement of victim has been recorded under section 164-A Cr.P.C. and in view of the statement of the prosecutrix, her age and the call detail reports obtained by the Investigating Officer, it cannot be said that the petitioner was not in contact with respondent No. 3 after her marriage, therefore, no offence is made out. The judgment relied upon by the petitioner and annexed with the petition, is not applicable in the present facts and circumstances of the case.

10. Viewed thus, this Court does not find any reason to show indulgence to quash the FIR impugned, as such, the present petition is dismissed being devoid of any merit. Interim direction, if any, stands vacated.

11. Case diary be returned to Mr. Dewakar Sharma.