

HIGH COURT OF JUDICATURE AT ALLAHABAD

Neutral Citation No. - 2024:AHC:22274

Judgment Reserved on 01.02.2024

Judgement Delivered on 08.02.2024

A.F.R

Court No. - 32

Case :- APPLICATION U/S 482 No. - 27063 of 2023

Applicant :- Anshul Kumar

Opposite Party :- State Of U.P.And Another

Counsel for Applicant :- Gulab Chandra,Rupesh Kumar Singh

Counsel for Opposite Party :- G.A.,Satish Kumar Tyagi

Hon'ble Anish Kumar Gupta,J.

1. Heard Sri Gulab Chandra, learned counsel for the applicant, Sri Satish Kumar Tyagi, learned counsel for the opposite party no.2 and Sri Vibhav Anand, learned A.G.A. for the State.
2. The instant application under Section 482 Cr.P.C. has been filed seeking quashing of the charge-sheet no.01 of 2023 dated 25.05.2023 as well as impugned cognizance order dated 05.06.2023 and entire criminal proceedings in Criminal Case No.46985 of 2023 (State of U.P. vs. Anshul Kumar), arising out of Case Crime No.0109 of 2023 u/S 376, 377, 393, 504, 506, 323, 427 I.P.C., P.S.- Madhuban Bapudham, District- Ghaziabad, pending in the court of learned Additional Chief Judicial Magistrate, .
3. The brief facts of the case are that the opposite party no.2, Shivani Dube, was previously married with one Prashant Sharma. She obtained divorce by mutual consent from said Prashant Sharma on 22.09.2020. Subsequently, the opposite party no.2 had lodged an F.I.R. under Sections 507, 376, 504, 508, 420 and 406 I.P.C. being Case Crime No. 31 of 2022 on 22.01.2022. In the said F.I.R. which was registered by the opposite party no.2 against the said Jishan Hashim, the applicant herein was the Investigation Officer (IO). During the investigation of the said F.I.R. against Jishan Hashim, the opposite party no.2 came in contact with the applicant

herein. In the meantime on 27.03.2022 the applicant herein has prepared the charge-sheet against the said Jishan Hashim, which was forwarded on 19.04.2022.

4. Subsequently, on 26.04.2022, the opposite party no.2 lodged an N.C.R. against Amita Rani (the wife of the applicant herein), her brother (Rajat) and her two sisters (Vimal and Mrs. Rakam Singh). Subsequently, on 13.06.2022, the opposite party no.2 allegedly submitted an application to the Station House Officer (S.H.O.), P.S. - Link Road, District- Ghaziabad, stating that she doesn't want any action on the N.C.R. No. 18 of 2022 dated 26.04.2022, registered by her against Amita Rani and her other relatives. Since, the opposite party no.2 used to visit the house of the applicant herein in connection of her case against Jishan Hashim, the said Amita Rani had developed suspicion over her and there was some altercation with Amita Rani and she has further stated in her application that she had filed this N.C.R. to create a pressure on the applicant herein, so that the applicant may take stringent action in the F.I.R. registered against Jishan Hashim. In the said case, Jishan Hashim was granted bail on 11.07.2022.

5. Thereafter, on 15.10.2022, the opposite party no.2 herein had lodged an F.I.R. being Case Crime No. 392 of 2022 against the applicant herein, alleging that when the applicant herein was the Beat Incharge at Surya Nagar, Ghaziabad, she came in his contact in connection to her case wherein the applicant was the IO. During the investigation, the applicant had proposed her to which the opposite party no.2 did not agree and on 05.01.2022, she had made a call to the Women Cell and complained about the applicant. Subsequently, she was afraid as it was her first case and the applicant used to take her on lonely places. Slowly, he made her to believe that he will take divorce from his wife and today when, as per his promise, he did not come, then she went to his house where he had abused her, broken her phone and beaten her with fist. She further stated that on the promise of marriage, the applicant had made physical relations with her at Hotel Country Inn Red - Kvelvet, Ghaziabad, due to which she became pregnant and after the confirmation of pregnancy at Max Hospital, Vaishali.

Subsequently, her pregnancy was aborted between 24-27, March. She further stated in the F.I.R. that the applicant is such an officer who promises to marry and then breaks his own promise, therefore, strict action be taken against such officer. During the investigation in the instant F.I.R., the opposite party no.2 refused to undergo the medical examination on 15.10.2022 itself. Subsequently, her statement under Section 164 Cr.P.C. was recorded and she has stated that during the investigation of the case lodged by her against the said Jishan Hashim, she came in contact with the applicant and both have developed a good friendly relationship with each other and due to some altercation she had lodged this false F.I.R. against the applicant herein. On the basis of such statement under Section 164 Cr.P.C., the final report in Case Crime No. 392 of 2022 was submitted by the Investigation Officer in the instant case on 02.12.2022 and vide order dated 12.12.2022, the said final report was accepted by the court below as same was admitted by the applicant herself before the court.

6. Subsequent thereto, the opposite party no.2 filed an application under Section 156 (3) Cr.P.C. alleging that earlier she had lodged an F.I.R. being Case Crime No. 392 of 2022 against the applicant herein, wherein, the entire details have been given. Subsequent to lodging of the said F.I.R., the applicant herein had another chance to correct his mistake and as per the promise he again assured the opposite party no.2 that he will take divorce from his wife and will marry her. Thereupon, after four days of registration of the said F.I.R., the applicant took the opposite party no.2 to Hotel Country Inn Kvelvet, P.S. Kavi Nagar, Ghaziabad, where he had established consensual physical relationship with the opposite party no.2 on the pretext of promise of marriage from 19.10.2022 till 31.10.2022 and subsequently, from 01.11.2022 till 15.12.2022, he kept the opposite party no.2 in a flat which he had taken on rent. On 28.10.2022, when her statement under Section 164 Cr.P.C., was to be recorded, then, the applicant through her advocate had allured her with the promise of marriage and stated that if she will not make statement under Section 164 Cr.P.C. as per their advice, then, the applicant will go to jail and life of both the applicant and the opposite party no.2 will be spoiled. After such assurance, he took a flat on rent and

kept the opposite party no.2 as his wife and continued physical relationship with her under the promise of marriage. When the opposite party no.2 realized that he is just trying to be good only for the purpose of getting her statement recorded and he has no intention to marry the opposite party no.2 then the opposite party no.2 objected to such relationship with the applicant, then, the applicant assaulted the opposite party no.2 and locked her inside the flat. When the opposite party no.2 tried to contact the guard then the applicant broke the intercom telephone and also took the phone of the opposite party no.2. When the guard came after hearing the noise, the gate was opened by him and he told the guard that there are some personal disputes between them, thereupon, the guard had went away. Thereafter, the applicant again assaulted the opposite party no.2 and threaten her that if she will not follow the instructions given by the applicant then he will kill her. It is further alleged that her signatures were taken on blank papers, which were later used as affidavits in the proceedings and with regard to the final report being accepted by the Magistrate.

7. The said application under Section 156(3) Cr.P.C., was dismissed with the observation that opposite party no.2 should approach at the first instance to the senior police officials and thereupon if no action is taken then she can again approach the court.

8. In pursuance thereof, she approached the higher police official and thereupon on 28.03.2023, the instant F.I.R., was registered being Case Crime No. 109 of 2023 under Sections 376, 377, 493, 504, 506, 323, 427 I.P.C.

9. After this F.I.R., on 03.04.2023 a medical examination of the opposite party no.2 was conducted and her statement under Section 164 Cr.P.C. was recorded before the trial court again wherein she has categorically stated that she came in contact with the applicant herein with regard to her case when he was Beat Incharge and the applicant used to keep her in the Police Beat till late night for the purpose of the investigation of the case but due to fear she could not oppose. After sometime, he stalle the opposite party no.2 and on 28.02.2022 when she was sitting with the applicant in his vehicle, then, the applicant gave her cold-drink, infiltrated with something, therefore, she

lost her consciousness, then the applicant forcibly raped the opposite party no.2 in his vehicle. Subsequently, he said sorry about the same and on 29.02.2022, he called her in his house where again the applicant raped the opposite party no.2. In April, 2022, the opposite party no.2 realised that she is pregnant then the applicant took her to the doctor and when the doctor confirmed that she is four weeks pregnant then abortion pills were given and pregnancy was aborted. Though, the applicant was married he used to promise that everything will be alright and on 13.10.2022 the applicant called her in his house and then the applicant assaulted her. Thereupon, she lodged the Case Crime No. 392 of 2022 against the applicant. When her statement under Section 164 Cr.P.C. was to be recorded then the applicant threaten her that if she did not come within five minutes then he will use very bad words for her mother. Her advocate, namely Dilshad who was also known to the applicant, has also told her that if she will not say what she is instructed in her 164 Cr.P.C. statement, then it will be very bad for her. Thereupon, in her 164 Cr.P.C. statement she told the falsehood. After the statement, the said Dilshad took her to Anshul, the applicant. Thereupon, Anshul took her to Nilaya Greens Tower, Rajnagar Extension, Ghaziabad where they lived together and maintain physical relationship and on 14.12.2022, when there was a date fixed in her previous case which she has lodged against the applicant, then, her advocate told her to sign the attendance slip. On 12.12.2022, the said Dilshad obtained signatures in his chamber and she could not read such papers as she was doing some work of her office and on 12.12.2022, Dilshad took her to the court where he assured that he was going to submit the papers related to divorce of Anshul where she heard something like FR, but she did not know what FR means, therefore, she signed it and on 16.12.2022, Anshul came to her in a drunkard position then abused and assaulted the opposite party no.2 and then she called the guard, the guard came but when the applicant told the guard that nothing had happened then the guard went away. Again, the applicant tried to have anal sex with her and raped her and since thereafter from 16.12.2022, the applicant did not come to her.

10. On the basis of this statement the charge-sheet was filed against the applicant herein. Thereupon, the cognizance was taken on 05.06.2023. The instant application has been filed challenging the charge-sheet as well as the order taking cognizance against the applicant.

11. Learned counsel for the applicant submits that there was a long-standing consensual physical relationship between the applicant and the opposite party no.2 who was a person of well understanding of all the consequences of such relationship. The applicant herein is a married man with children and the opposite party no.2 was well-aware of all the aforesaid facts. Despite that she continued her relationship with the applicant. Now, the opposite party no.2 is trying to blackmail the applicant herein for such consensual relationship and in the earlier F.I.R. lodged by the opposite party no.2, on her own statement under Section 164 Cr.P.C., the final report was filed. Thereupon, the instant F.I.R. has been lodged. After four months of the final report submitted in the earlier cases with the same allegations, the said final report was also accepted in her presence before the court. She has not raised any objection to the said final report before the court concerned. Learned counsel for the applicant further submits that the instant F.I.R. is nothing but a counterblast to the F.I.R. lodged by the mother of the applicant herein against the opposite party no.2, under the provisions of S.C./S.T. Act. Since, the opposite party no.2 is an adult person and it was a consensual relationship between the applicant and the opposite party no.2, therefore, no offence of rape is made out against the applicant herein and the instant case is nothing but a malicious prosecution on behalf of the applicant.

12. Learned counsel for the the applicant has relied upon the judgements of the Apex Court in *Vinod Kumar v. State of Kerala, (2014) 5 SCC 678, Shambhu Kharwar v. State of U.P. : 2022 SCC Online and Vineet Kumar v. State of U.P., : (2017) 13 SCC 369* and the judgement of this Court in *Jiyaullah vs. State of U.P. and Another : [2023 (10) ADJ 438]*.

13. Per contra, the learned A.G.A. for the State submits that the applicant was a Police Officer and was under obligation to protect the opposite party no.2, who has registered a case against Jishan Hashim and under the garb of

that investigation he had established physical relationship by forcing the opposite party no.2 to consume a contaminated cold-drink, therefore, when she become unconscious, he has committed a forcible physical relationship with the opposite party no.2 without her consent, which clearly tantamounts to an offence of rape. In the earlier F.I.R. lodged by the opposite party no.2, the applicant in connivance with the Advocate of the opposite party no.2 had threatening to an ill treatment of her mother, had got her statement recorded under Section 164 Cr.P.C., under coercion and again she had lodged the application under Section 156(3) Cr.P.C., through her mother against the applicant for the charges under the provisions of the S.C./S.T. Act and in the instant case, since, the applicant herein was already married, there was, from the very beginning, an element of force and subsequently thereto, the false promise of marriage by the applicant. Therefore, the subsequent relationship on such false promise of marriage which the applicant knew from the very beginning that the same is false, therefore, the offence is categorically made out against the applicant. Since, his promise to marry the opposite party no.2 was false since its inception, therefore, *prima facie* a case has been made out against the applicant and the same cannot be quashed in exercise of power under Section 482 Cr.P.C.

14. Learned counsel for the opposite party no.2 has relied upon the judgement of ***Shambhu Kharwar (supra)*** to submit that since from the inception the applicant knew that he has no intention to marry the opposite party no.2 and initially he had established forcible physical relationship by making the opposite party no.2 to consume contaminated cold drink and thereupon under the garb of false promise to marry, he had maintained the relationship, therefore, a *prima facie* case has been made out.

15. Having heard the submissions made by learned counsels for the parties, this Court has carefully gone through the record of the case. In ***Vinod Kumar (supra)***, the Apex Court having regard to the facts of that case wherein the victim was fully aware that the relationship of marriage, which she has performed with the accused in that case was a nullity and continued with such relations and had physical relationship with the accused. In that

circumstances, the Apex Court has held that such consensual relationship would not amount to rape, as the victim was fully aware about such relationship. In ***Shambhu Kharwar(supra)***, the Apex Court has held that once it is established that the promise of marriage under the garb of which the accused had made relationship with the victim was false from its inception and on such promise if the accused has induced the victim into a sexual relationship, then, the offence of rape shall be made out. If initially the promise of marriage was made in good faith and the parties have entered into a consensual physical relationship and on subsequent breach of such promise, no offence of rape shall be made out. In ***Vineet Kumar (supra)***, the Apex Court having found that the prosecution of the accused by the victim was a malicious prosecution, has allowed the appeal and quashed criminal proceedings against the accused persons. In ***Jiyaullah(supra)***, this Court having regard to the peculiar facts and circumstances of the case wherein the parties were having long-standing consensual physical relationship for more than 15 years and initially there was promise of marriage in good faith and subsequently on such breach of promise to marry, no offence of rape is made out. Therefore, the criminal proceedings were quashed.

16. In the instant case from the statement as made under Section 164 Cr.P.C., it is clear that in the first instance the applicant herein has raped the opposite party no.2 by making her to consume a contaminated cold-drinks, thereby, making her unconscious. Therefore, it was *prima facie* an act of force without consent. Thereafter, looking at the authority of the applicant, she could not resist such relationship. Subsequent thereto, the applicant had established the physical relationship with the opposite party no.2 under the garb of promise to marry her by divorcing his previous wife. However, from the allegation it is crystal clear that the applicant herein knew that such a promise which is made by the applicant was nothing but a false promise and he had no intention to marry the opposite party no.2. When the opposite party no.2 herein had tried to create pressure on the opposite party no.2 to keep his promise and divorce his wife and marry the opposite party no.2, then, the applicant as being a Police Officer filed an Application under Section 156(3) Cr.P.C., upon which an F.I.R. was registered under the

provisions of the S.C./S.T. Act through his mother. The Police Officers are duty bound to protect the victims. However, in the instant case, as per the allegations made, the applicant herein appears to have misutilized his position and has exploited the opposite party no.2. Therefore, in the considered opinion of this Court a *prima facie* case has been established against the applicant from the charge-sheet as well as statement under Section 164 Cr.P.C. of the opposite party no.2 in the instant case. With regard to the previous F.I.R. and the final report submitted in the previous F.I.R., the opposite party no.2 has categorically explained her conduct as to under what circumstances and on the pressure created by the applicant, the opposite party no.2 did not make true statement under Section 164 Cr.P.C. and did not oppose the final report as the applicant herein was continuously making false promise of marriage and continuing his relationship with opposite party no.2. Therefore, all the allegations made in the instant case are subject to evidence during the trial in the instant case. Since, a *prima facie* case has been found against the applicant, therefore, this Court do not find any good ground to interfere in the charge-sheet or in the order taking cognizance against the applicant herein. Accordingly, the instant application is *dismissed* in the light of the judgements of Apex Court in *State of Haryana v. Bhajan Lal : 1992 Supp (1) SCC 335*, *Neeharika Infrastructure Pvt. Ltd. vs. State of Maharashtra and Others : 2021 SCC OnLine SC 315* and *R. P. Kapoor Vs. State of Punjab, AIR 1960 S.C. 866*.

Order Date :- 08.02.2024

Shubham Arya

(Anish Kumar Gupta, J.)