

IN THE HIGH COURT OF JHARKHAND AT RANCHI
Cr. Revision No.355 of 2022

.....
..... Petitioner
Versus

1. The State of Jharkhand

2.

..... Opposite Parties

CORAM : HON'BLE MR. JUSTICE SUBHASH CHAND

For the Petitioner : Mr. Rajesh Kumar, Advocate

For the State : Mr. Bholu Nath Ojha, A.P.P.

For the O.P. No.2 : Mr. C.S. Pandey, Advocate
Mrs. Bina Pandey, Advocate

Order No.08/ Dated: 30th August, 2023

1. This Criminal Revision has been preferred on behalf of the petitioner against the order dated 24.03.2022 passed by the learned A.J.C.-XV-cum-FTC (CAW), Ranchi in Miscellaneous Criminal Application No.405 of 2022 arising out of S.T. Case No.111 of 2022, corresponding to Dhurwa P.S. Case No.179 of 2021, whereby the discharge petition filed under Section 227 of the Code of Criminal Procedure has been rejected.

2. The learned counsel for the petitioner has submitted that from the allegations made in the FIR and the evidence collected by the Investigating Officer, no alleged offence is made out against the petitioner. The victim was major and widow lady. She was consenting party and much aware in regard to the consequences of establishing physical relation with any person. The consent was never obtained by playing any fraud for deceiving the victim.

3. Learned counsel for the State and learned counsel for the opposite party No.2 vehemently opposed the contentions made by the learned counsel for the petitioner and contended that the prosecution case is well

corroborated with the testimony of the victim and the alleged offence is made out against the petitioner at the stage of framing charge, the evidence cannot be evaluated. Only the ground to proceed with the trial against the accused is to be taken into consideration.

4. It is settled law that the Court while framing the charge has to take into consideration the allegations made in the FIR and also the evidence collected by the Investigating Officer during investigation. If from the allegations made in the FIR and the evidence collected by the Investigating Officer there are sufficient ground to proceed against the accused for the alleged offence, the Court should decline in allowing the discharge application. At the time of framing charge, the Court cannot appreciate the evidence. The marshaling of the evidence or appraisal of the evidence is not permissible at the time of framing charge. The Court cannot conduct mini trial at the time of framing charge.

5. The prosecution case is that the written information was given by the informant-victim with these allegations that she had married with Dinesh Sahu on 15.10.2012 and her husband died on 18.12.2015. After his death, the younger brother of her husband, namely, Rabindra Mahto, the petitioner herein used to look after her. He began to keep eye on her and assured that he would marry with her and he had been sexually assaulting her for last six years. Twice the victim was conceived each time the child was aborted. The accused had been sexually exploiting her having deceived her on the pretext to marry with her. Thereafter, he refused to marry with the victim-informant and this FIR was lodged.

6. In **paragraph No.2** of the **case diary**, the **restatement of victim was recorded**, in which, she corroborated the prosecution story. In **paragraph**

Nos.6 and 7, the statement of [REDACTED] who were the friends of victim were recorded. Both have also corroborated the prosecution story. In paragraph No.8 of the case diary, the statement of the Sarita Kumari was recorded, who is the neighbour of victim also corroborated the prosecution story. In paragraph No.40 of the case diary, the statement of victim under Section 164 of the Code of Criminal Procedure was recorded, in which, she also reiterated the allegations made in the FIR. As per the medical examination report, the age of victim is shown as 30 years old.

7. From the allegations made in the FIR, which are being corroborated with the testimony of the victim and other witnesses, the Court has to see whether the offence under Section 375 of the Indian Penal Code is made out against the accused or not. As per the FIR allegations, victim was 30 years old on the date of closing FIR and she was married with one Dinesh Sahu on 15.10.2012 and her husband died on 18.12.2015. It is also alleged that, thereafter, the younger brother of her husband had allured her to marry and continued to establish sexual relation with her for last six years and twice she was conceived and abortion were also done two times. **Admittedly, the victim was major and a married lady, she was very much aware in regard to sexual relations being established with her brother-in-law. The consent cannot be said to be obtained under misconception in view of Section 90 of the Indian Penal Code reason being that she had been continuously in establishing sexual relation with the petitioner for six years. Being a major and married lady, she was very much aware the consequences to establish sexual relation without getting married. From the allegations made in the FIR on their face do not indicate that the**

consent was obtained by playing fraud upon the victim. Herein, it would be pertinent to give the certain legal propositions of law as laid down by the Hon'ble Supreme Court.

8. The Hon'ble Supreme Court in the case of ***Pramod Suryabhan Pawar Vs. State of Maharashtra and Anr.***, reported in (2019) 9 SCC 608 has held at paragraph No.21 as under:

21. The allegations in the FIR do not on their face indicate that the promise by the appellant was false, or that the complainant engaged in sexual relations on the basis of this promise. There is no allegation in the FIR that when the appellant promised to marry the complainant, it was done in bad faith or with the intention to deceive her. The appellant's failure in 2016 to fulfil his promise made in 2008 cannot be construed to mean the promise itself was false. The allegations in the FIR indicate that the complainant was aware that there existed obstacles to marrying the appellant since 2008, and that she and the appellant continued to engage in sexual relations long after their getting married had become a disputed matter. Even thereafter, the complainant travelled to visit and reside with the appellant at his postings and allowed him to spend his weekends at her residence. The allegations in the FIR belie the case that she was deceived by the appellant's promise of marriage. Therefore, even if the facts set out in the complainant's statements are accepted in totality, no offence under Section 375 IPC has occurred.

8.1. The Hon'ble Supreme Court in the case of ***Mandar Deepak Pawar Vs. the State of Maharashtra & Anr.*** reported in 2022 Live Law (SC) 649 has held as under:

“The appellant and respondent No.2 were undisputedly in a consensual relationship from 2009 to 2011 (or 2013 as stated by the respondent No.2). It is the say of the respondent No.2 that the consensual physical relationship was on an assurance of marriage by the appellant. The complaint has been filed only in 2016 after three years, pursuant whereto FIR dated 16.12.2016 was registered under Section 376 and 420, IPC.

On hearing learned counsel for parties, we find ex facie the registration of FIR in the present case is abuse of the criminal process.

The parties chose to have physical relationship without marriage for a considerable period of time. For some reason, the parties fell apart. It can happen both before or after marriage.

Thereafter also three years passed when respondent No.2 decided to register a FIR.

The facts are so glaring as set out aforesaid by us that we have no hesitation in quashing the FIR dated 16.12.2016 and bringing the proceedings to a close. Permitting further proceedings under the FIR would amount to harassment to the appellant through the criminal process itself.

We are fortified to adopt this course of action by the judicial view in (2019) 9 SCC 608 titled "**Pramod Suryabhan Pawar Vs. State of Maharashtra & Anr.**" where in the factual scenario where complainant was aware that there existed obstacles in marrying the accused and still continued to engage in sexual relations, the Supreme Court quashed the FIR. A distinction was made between a false promise to marriage which is given on understanding by the maker that it will be broken and a breach of promise which is made in good faith but subsequently not fulfilled. This was in the context of Section 375 Explanation 2 and Section 90 of the IPC, 1860."

9. The Hon'ble Supreme Court in the case of **Dr. Dhruvaram Murlidhar Sonar Vs. the State of Maharashtra & Anr.** reported in (2019) 18 SCC 191 has held at paragraph Nos.20 and 21 as under:

"20. With this factual background, the Court held that the girl had taken a conscious decision, after active application of mind to the events that had transpired. It was further held that at best, it is a case of breach of promise to marry rather than a case of false promise to marry, for which the accused is prima facie accountable for damages under civil law. It was held thus : (Deelip Singh [Deelip Singh v. State of Bihar, (2005) 1 SCC 88 : 2005 SCC (Cri) 253] , SCC p. 106, para 35)

"35. The remaining question is whether on the basis of the evidence on record, it is reasonably possible to hold that the accused with the fraudulent intention of inducing her to sexual intercourse, made a false promise to marry. We have no doubt that the accused did hold out the promise to marry her and that was the predominant reason for the victim girl to agree to the sexual intimacy with him. PW 12 was also too keen to marry him as she said so specifically. But we find no evidence which gives rise to an inference beyond reasonable doubt that the accused had no intention to marry her at all from the inception and that the promise he made was false to his knowledge. No circumstances emerging from the prosecution evidence establish this fact. On the other hand, the statement of PW 12 that "later on", the accused became ready to marry her but his father and others took him away from the village would indicate that the accused might have been prompted by a genuine intention to marry which did not

materialise on account of the pressure exerted by his family elders. It seems to be a case of breach of promise to marry rather than a case of false promise to marry. On this aspect also, the observations of this Court in Uday case [Uday v. State of Karnataka, (2003) 4 SCC 46 : 2003 SCC (Cri) 775] at para 24 come to the aid of the appellant.”

21. *In Deepak Gulati v. State of Haryana [Deepak Gulati v. State of Haryana, (2013) 7 SCC 675 : (2013) 3 SCC (Cri) 660], the Court has drawn a distinction between rape and consensual sex. This is a case of a prosecutrix aged 19 years at the time of the incident. She had an inclination towards the accused. The accused had been giving her assurances of the fact that he would get married to her. The prosecutrix, therefore, left her home voluntarily and of her own free will to go with the accused to get married to him. She called the accused on a phone number given to her by him, to ask him why he had not met her at the place that had been pre-decided by them. She also waited for him for a long time, and when he finally arrived, she went with him to a place called Karna Lake where they indulged in sexual intercourse. She did not raise any objection at that stage and made no complaints to anyone. Thereafter, she went to Kurukshetra with the accused, where she lived with his relatives. Here too, the prosecutrix voluntarily became intimate with the accused. She then, for some reason, went to live in the hostel at Kurukshetra University illegally, and once again came into contact with the accused at Birla Mandir there. Thereafter, she even proceeded with the accused to the old bus-stand in Kurukshetra, to leave for Ambala so that the two of them could get married at the court in Ambala. At the bus station, the accused was arrested by the police. The Court held that the physical relationship between the parties had clearly developed with the consent of the prosecutrix as there was neither a case of any resistance nor had she raised any complaint anywhere at any time, despite the fact that she had been living with the accused for several days and had travelled with him from one place to another. The Court further held that it is not possible to apprehend the circumstances in which a charge of deceit/rape can be levelled against the accused.”*

10. Therefore, in view of the allegations made in the FIR and the evidence collected by the Investigating Officer and also keeping in view the above settled propositions of law as laid down by the Hon'ble Supreme Court as given hereinabove, the allegations made in the FIR are belied that the victim was deceived by the petitioner to marry with her. Taking into account the totality of the facts and allegations made in the FIR, no offence under Section 375 of the Indian Penal Code is made out.

11. So far as the contentions made by the learned counsel for the petitioner that after rejecting the discharge application of the petitioner, the charge was framed, trial was commenced and four witnesses were examined.

If the charge has been framed and trial has commenced on the sole ground, it cannot be accepted that this Criminal Revision has become infructuous.

12. The Hon'ble Supreme Court in the case of ***Madhu Limaye Vs. State of Maharashtra***, reported in (1977) 4 SCC 551 at paragraph No.21 held as under:

21. It may be somewhat necessary to have a comparative examination of the powers exercisable by the court under these two provisions. There may be some overlapping between these two powers because both are aimed at securing the ends of justice and both have an element of discretion. But, at the same time, inherent power under Section 482 of the Code being an extraordinary and residuary power, it is inapplicable in regard to matters which are specifically provided for under other provisions of the Code. To put it simply, normally the court may not invoke its power under Section 482 of the Code where a party could have availed of the remedy available under Section 397 of the Code itself. The inherent powers under Section 482 of the Code are of a wide magnitude and are not as limited as the power under Section 397. Section 482 can be invoked where the order in question is neither an interlocutory order within the meaning of Section 397(2) nor a final order in the strict sense. Reference in this regard can be made to Raj Kapoor v. State. In that very case, this Court has observed that inherent power under Section 482 may not be exercised if the bar under Sections 397(2) and 397(3) applies, except in extraordinary situations, to prevent abuse of the process of the Court. This itself shows the fine distinction between the powers exercisable by the Court under these two provisions. In that very case, the Court also considered as to whether the inherent powers of the High Court under Section 482 stand repelled when the revisional power under Section 397 overlaps. Rejecting the argument, the Court said that the opening words of Section 482 contradict this contention because nothing in the Code, not even Section 397, can affect the amplitude of the inherent powers preserved in so many terms by the language of Section 482. There is no total ban on the exercise of inherent powers where abuse of the process of the court or any other extraordinary situation invites the court's jurisdiction. The limitation is self-restraint, nothing more. The distinction between a final and interlocutory order is well known in law. The orders which will be free from the bar of Section 397(2) would be the orders which are

not purely interlocutory but, at the same time, are less than a final disposal. They should be the orders which do determine some right and still are not finally rendering the court functus officio of the lis. The provisions of Section 482 are pervasive. It should not subvert legal interdicts written into the same Code but, however, inherent powers of the Court unquestionably have to be read and construed as free of restriction.

13. The Hon'ble Supreme Court in the case of ***Sanjay Kumar Rai Vs. State of Uttar Pradesh & Anr.*** passed in ***Criminal Appeal No.472 of 2021*** arising out of ***Special Leave Petition (Crl.) No.10157 of 2019*** decided on ***17.05.2021*** at paragraph Nos.15 held as under:

“15. The correct position of law as laid down in Madhu Limaye (supra), thus, is that orders framing charges or refusing discharge are neither interlocutory nor final in nature and are therefore not affected by the bar of Section 397 (2) of CrPC. That apart, this Court in the above-cited cases has unequivocally acknowledged that the High Court is imbued with inherent jurisdiction to prevent abuse of process or to secure ends of justice having regard to the facts and circumstances of individual cases. As a caveat it may be stated that the High Court, while exercising its afore-stated jurisdiction ought to be circumspect. The discretion vested in the High Court is to be invoked carefully and judiciously for effective and timely administration of criminal justice system. This court, nonetheless, does not recommend a complete hands off approach. Albeit, there should be interference, may be, in exceptional cases, failing which there is likelihood of serious prejudice to the rights of a citizen. For example, when the contents of a complaint or the other purported material on record is a brazen attempt to persecute an innocent person, it becomes imperative upon the Court to prevent the abuse of process of law.”

14. Therefore, in view of the allegations made in the FIR itself and the evidence collected by the Investigating Officer, this Court is of definite opinion that there is no sufficient ground to make out the offence under Section 375 of the Indian Penal Code, which is punishable under Section 376 of the Indian Penal Code against the accused. As such, the impugned order passed by the learned Court below in rejecting the discharge application of the petitioner bears illegality and the same needs interference.

Accordingly, the order passed by the learned Court below is set-aside.

15. In consequence thereof, this Criminal Revision is hereby allowed. The petitioner is discharged from the charge framed under Section 376 of the Indian Penal Code.

16. Let a copy of this judgment be communicated to the learned Court below.

(Subhash Chand, J.)

Madhav/- A.F.R.