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MCRC-48783-2024

IN THE HIGH COURT OF MADHYA PRADESH
AT JABALPUR

BEFORE

HON'BLE SHRI JUSTICE MANINDER S. BHATTI

ON THE 10th OF FEBRUARY, 2025MISC. CRIMINAL CASE No. 48783 of 2024*VEERENDRA YADAV**Versus**THE STATE OF MADHYA PRADESH*

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Appearance:

Shri Shreyash Pandit - Advocate for applicant.

Shri Shailendra Mishra - Dy. Govt. Advocate for respondent-State.

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ORDER

This is a petition filed under Section 482 of Cr.P.C. seeking quashment of the FIR / Crime No.136/2024 at Police Station Bada Malhar District Chhattarpur in respect of offence punishable under Sections 376(2)(n) and 506 of IPC and ensued proceedings.

2. Learned counsel for the applicant contends that in the present case, the prosecutrix who is already a married lady has lodged the FIR under Sections 376(2)(n) and 506 of IPC and the offence cannot be registered at the instance of the complainant who is already married and this issue has already been settled by the Apex Court in the case of *XXX vs. State of M.P. & Anr* [2024 (3) SCC 496], in the case of *Naim Ahamed vs. State (NCT of Delhi)* [(2023) 15 SCC 385] and also by this Court in the case of *Abhishek Arjariya vs. The State of M.P. and Anr. (M.Cr.C. No.31926/2019)*. It is contended by the counsel that the factum of complainant being married was taken note of in the aforesaid cases and ultimately the Court proceedings were quashed



while holding that a married lady could not have alleged that the consent was obtained on the basis of misconception of fact. It is thus contended by the counsel that in such circumstances, the petition deserves to be allowed.

3. Per contra, learned counsel for the State has opposed the prayer and submitted that there are direct allegations against the applicant. It is contended by the counsel that the FIR prima facie discloses the commission of an offence under Section 376(2)(N) and 506 of IPC, therefore, at this stage no interference is warranted. It is also contended by the counsel that the statement of prosecutrix recorded under Section 164 of Cr.P.C. further implicate the present applicant and thus, submits that the petition filed under Section 482 of Cr.P.C. deserves to be dismissed.

4. Heard the submissions advanced on behalf of the parties and perused the record.

5. A perusal of record reflects that the prosecutrix lodged the FIR against the present applicant while submitting that the husband of the prosecutrix was working as Driver and the prosecutrix was mother of two children. The present applicant used to reside in the neighborhood, and therefore, was known to the prosecutrix. The applicant and the prosecutrix came in touch and they were in friendship for a period of 3 months and the present applicant used to promise the prosecutrix that he would enter into wedlock after giving divorce to his wife and thus, there was physical relationship between the prosecutrix and the applicant on number of occasions. Later on, the present applicant declined to enter into wedlock while saying that he was not in a position to give divorce to his wife and the



present applicant also threatened the prosecutrix.

6. The aforesaid FIR prima facie reflects that the prosecutrix is married and mother of two children. The prosecutrix, as per the FIR was in relation with the present applicant. They had physical relationship also, and therefore, in such circumstances, whether the FIR at the behest of the prosecutrix under Section 376(2)(n) is sustainable or not, is the issue which requires indulgence in the present case.

7. A question came up before the Apex Court where a married lady alleged that there was an assurance by the accused to enter into wedlock but later on declined and the said aspect dealt with by the Apex Court in the case of *Prashant Bharti Vs. State (NCT of Delhi) reported in [(2013) 9 SCC 293]*

8. The Apex Court in the case of Prashant Bharti (supra) held in paragraph 17 as under:-

"It is relevant to notice, that she had alleged, that she was induced into a physical relationship by Prashant Bharti, on the assurance that he would marry her. Obviously, an inducement for marriage is understandable if the same is made to an unmarried person. The judgment and decree dated 23-9-2008 reveals that the complainant/prosecutrix was married to Lalji Porwal on 14-6-2003. It also reveals that the aforesaid marriage subsisted till 23-9-2008, when the two divorced one another by mutual consent under Section 13-B of the Hindu Marriage Act. In her supplementary statement dated 21-2-2007, the complainant/prosecutrix accused Prashant Bharti of having had physical relations with her on 23-12-2006, 25-12-2006 and 1-1-2007 at his residence, on the basis of a false promise to marry her. It is apparent from irrefutable evidence, that during the dates under reference and for a period of more than one year and eight months thereafter, she had remained married to Lalji Porwal. In such a fact situation, the assertion



made by the complainant/prosecutrix, that the appellant-accused had physical relations with her, on the assurance that he would marry her, is per se false and as such, unacceptable. She, more than anybody else, was clearly aware of the fact that she had a subsisting valid marriage with Lalji Porwal. Accordingly, there was no question of anyone being in a position to induce her into a physical relationship under an assurance of marriage. If the judgment and decree dated 23-9-2008 produced before us by the complainant/prosecutrix herself is taken into consideration along with the factual position depicted in the supplementary statement dated 21-2-2007, it would clearly emerge that the complainant/prosecutrix was in a relationship of adultery on 23-12-2006, 25-12-2006 and 1-1-2007 with the appellant-accused, while she was validly married to her previous husband Lalji Porwal. In the aforesaid view of the matter, we are satisfied that the assertion made by the complainant/prosecutrix, that she was induced to a physical relationship by Prashant Bharti, the appellant-accused, on the basis of a promise to marry her, stands irrefutably falsified."

9. Again before the Apex Court in the case of *Naim Ahamed (supra)* also this question came up for consideration and the Apex Court, elaborately dealt with the issue.

10. The Apex Court in the case of *Naim Ahamed (supra)* held in paragraph 22 as under:-

"In the instant case, the prosecutrix who herself was a married woman having three children, could not be said to have acted under the alleged false promise given by the appellant or under the misconception of fact while giving the consent to have sexual relationship with the appellant. Undisputedly, she continued to have such relationship with him at least for about five years till she gave complaint in the year 2015. Even if the allegations made by her in her deposition before the court, are taken on their face



value, then also to construe such allegations as “rape” by the appellant, would be stretching the case too far. The prosecutrix being a married woman and the mother of three children was matured and intelligent enough to understand the significance and the consequences of the moral or immoral quality of act she was consenting to. Even otherwise, if her entire conduct during the course of such relationship with the accused, is closely seen, it appears that she had betrayed her husband and three children by having relationship with the accused, for whom she had developed liking for him. She had gone to stay with him during the subsistence of her marriage with her husband, to live a better life with the accused. Till the time she was impregnated by the accused in the year 2011, and she gave birth to a male child through the loins of the accused, she did not have any complaint against the accused of he having given false promise to marry her or having cheated her. She also visited the native place of the accused in the year 2012 and came to know that he was a married man having children also, still she continued to live with the accused at another premises without any grievance. She even obtained divorce from her husband by mutual consent in 2014, leaving her three children with her husband. It was only in the year 2015 when some disputes must have taken place between them, that she filed the present complaint. The accused in his further statement recorded under Section 313CrPC had stated that she had filed the complaint as he refused to fulfil her demand to pay her huge amount. Thus, having regard to the facts and circumstances of the case, it could not be said by any stretch of imagination that the prosecutrix had given her consent for the sexual relationship with the appellant under the misconception of fact, so as to hold the appellant guilty of having committed rape within the meaning of Section 375 IPC."

11. Thereafter again the Apex Court in the case of *XXX (supra)* held in paragraphs 11 and 12 as under:-



"11. From the contents of the complaint, on the basis of which FIR was got registered and the statement got recorded by the complainant, it is evident that there was no promise to marry initially when the relations between the parties started in the year 2017. In any case, even on the dates when the complainant alleges that the parties had physical relations, she was already married. She falsely claimed that divorce from her earlier marriage took place on 10-12-2018. However, the fact remains that decree of divorce was passed only on 13-1-2021. It is not a case where the complainant was of an immature age who could not foresee her welfare and take right decision. She was a grown up lady about ten years elder to the appellant. She was matured and intelligent enough to understand the consequences of the moral and immoral acts for which she consented during subsistence of her earlier marriage. In fact, it was a case of betraying her husband. It is the admitted case of the prosecutrix that even after the appellant shifted to Maharashtra for his job, he used to come and stay with the family and they were living as husband and wife. It was also the stand taken by the appellant that he had advanced loan of Rs 1,00,000 to the prosecutrix through banking channel which was not returned back."

12. Similar issue was considered by this Court in *Naim Ahamed case* [*Naim Ahamed v. State (NCT of Delhi)*, (2023) 15 SCC 385 : 2023 SCC OnLine SC 89] on almost identical facts where the prosecutrix herself was already a married woman having three children. The complaint of alleged rape on false promise of marriage was made five years after they had started having relations. She even got pregnant from the loins of the accused. Therein she got divorce from her existing marriage much after the relations between the parties started. This Court found that there cannot be any stretch of imagination that the prosecutrix had given her consent for sexual relationship under misconception. The accused was not held to be guilty....."

12. Even this Court also considered the identical issue in the case of



Abhishek Arjariya (supra) and this Court held in paragraphs 15 and 16 as under:-

15. Likewise, in a case of Pramod Suryabhan Pawar (*supra*), the Supreme Court has considered Section 90 of IPC and taking note of the definition of consent has observed that the consent based on misconception of fact is not a consent in eye of law. It is also observed by the Supreme Court that if a woman is engaged in sexual relations on a false promise of marriage, her consent is based on misconception of fact and that is not the consent in the eye of law and that physical relationship would amount to rape. But here in this case, the facts are altogether different because on the date of developing physical relationship, the prosecutrix was a married lady and surrendering before the petitioner on a false promise of marriage does not fall within the definition of consent obtained on misconception of fact. Here it is a case that on the date of developing physical relation, the question of promise of marriage does not arise that too with a married lady as she was continued in relationship with the petitioner for a long period of 8 years and thereafter she got decree of divorce from her husband. Therefore, the case on which the respondents have placed reliance has no relevance with the case in hand.

16. Considering the judgment of the Supreme Court and also of the High Court, in which the petitioner has placed reliance, it is clear that the prosecutrix on the date of developing physical relations with the petitioner was a married lady and physical relations developed between them in the-then existing facts can be considered that it was consensual relationship. There was no consent obtained by the accused/petitioner on the basis of misconception of fact. Accordingly, the offence of 376 is not made out in view of the judgment of the Supreme Court. Therefore, this Court is of the considered opinion that it is fit case, in which the FIR can be quashed on the ground that if the facts mentioned in the FIR are considered to be true at their face value even though the offence of 376 is not made out because the existing facts do not fulfill



the requirement of Section 375 of IPC so also the requirement of Section 90 of IPC of consent.

13. The aforesaid judgments of the Apex Court as well as this Court postulate that when the prosecutrix is married lady, and therefore, her consent for physical relationship on the garb of false promise of marriage cannot be brought within the framework of the consent obtained on the basis of "misconception of the fact". In the present case, the prosecutrix in the FIR itself has stated that she was in relationship with the present applicant since last 3 months and whenever her husband used to go out, the present applicant used to visit her home and they had physical relationship, therefore, it cannot be said that the consent was given by the prosecutrix under some misconception of fact. Moreover, if the FIR is perused carefully and subjected to microscopic scrutiny it would reveal that there are no allegations that the present applicant pressurized the prosecutrix to enter into wedlock under the garb of false promise of marriage. On the contrary, it is mentioned in the FIR that the applicant used to say that he would divorce his wife and would marry the prosecutrix but it is nowhere mentioned that there was false promise and under the garb of such false promise, the present applicant persuaded the prosecutrix to enter into sexual relationship.

14. In such a case, the FIR is required to be nipped in the bud, as the same would entail in the long drawn process of conduct of trial whereas the allegations levelled in the FIR on their face value, do not indicate the commission of offence under the aforesaid sections.

15. Resultantly, the petition under Section 482 of Cr.P.C. stands allowed. The FIR registered vide Crime No.136/2024 at Police Station Bada



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Malhar District Chhattarpur and ensued proceedings stand quashed. The applicant is discharged from the aforesaid charges. Bail bonds and Surety bonds, if any, furnished by the applicant also stand discharged.

(MANINDER S. BHATTI)
JUDGE

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