

IN THE HIGH COURT OF MADHYA
PRADESH
AT JABALPUR
BEFORE

HON'BLE SHRI JUSTICE VISHAL DHAGAT
ON THE 15th OF MAY, 2024

CRIMINAL REVISION No. 4421 of 2022

BETWEEN:-

SANDEEP KUMAR SONI

.....PETITIONER

*(BY SHRI MANISH DATT - SENIOR ADVOCATE WITH SHRI NISHANK
PAL VARMA - ADVOCATE)*

AND

1. THE STATE OF MADHYA PRADESH
THROUGH POLICE STATION GOVINDPURA
DISTRICT BHOPAL (M.P.) (MADHYA
PRADESH)
2. VICTIM A THROUGH P.S. GOVINDPURA
BHOPAL (MADHYA PRADESH)

.....RESPONDENTS

*(BY SHRI SANTOSH YADAV - DY. GOVT. ADVOCATE FOR
RESPONDENT NO.1 AND SHRI MAYANK SHRIVASTAVA - ADVOCATE
FOR RESPONDENT NO.2)*

MISC. CRIMINAL CASE No. 10051 of 2022

BETWEEN:-

SANDEEP SONI

.....PETITIONER

(BY SHRI MANISH DATT - SENIOR ADVOCATE WITH SHRI NISHANK
PAL VARMA - ADVOCATE)

AND

1. THE STATE OF MADHYA PRADESH
THROUGH POLICE STATION GOVINDPURA
DISTRICT BHOPAL M.P. (MADHYA PRADESH)
2. VICTIM A S/O NOT MENTION OCCUPATION:
NIL NOT MENTION (MADHYA PRADESH)

.....RESPONDENTS

(BY SHRI SANTOSH YADAV - DY. GOVT. ADVOCATE)
.....

*This revision coming on for admission this day, the court passed
the following:*

ORDER

1. Subject matter of revision/petition under Section 482 of the Cr.P.C. and application under Section 397/401 of the Cr.P.C. is same, therefore, analogous hearing is given and both the cases are being decided by this common order.

2. Petitioner has filed revision/petition under Section 482 of the Code of Criminal Procedure for quashing of the First Information Report registered for offence punishable under Sections 376(2)(n) and 506-II of the Indian Penal Code at Police Station Govindpura District Bhopal.

3. After filing of the charge sheet, charges were framed by the trial Court vide order dated 31.10.2022 in Sessions Trial No. 476/2022 under Sections 376(2)(N) and 506-II of the Indian Penal Code. Due to said subsequent development, petitioner has filed a criminal revision challenging said charges. Revision is filed against the order dated 31.10.2022. By the said order, application filed by the petitioner for discharge under Section

227/228 of Cr.P.C.. Said application was dismissed.

4. As per prosecution case, prosecutrix has filed a complaint at Police Station Govindpura District Bhopal. Said complaint was registered at Crime No. 13/22 under Sections 376(2)(n) and 506-II of the IPC. Complainant and petitioner were husband and wife. They got married on 27.10.2021 in Arya Samaj Mandir Nehru Nagar, Bhopal. On dispute between them they appeared before Parivar Paramarsh Kendra along with their counsel.

5. On going through the FIR, 161, 164 statement of prosecutrix, it is found that petitioner made false promise of marriage to prosecutrix and repeatedly established physical relationship with her. He also threatened her to kill. For pulling wool over the eyes of law, marriage was done in Arya Samaj Temple and after 2-3 days of marriage petition was filed for declaring marriage void. Offence under Sections 376(2)(n) and 506-II of the IPC is made out and application IA1 was dismissed.

6. Learned Senior Counsel for the petitioner submitted that no offence under Sections 376(2)(n) and 506-II of the IPC is made out. Prosecutrix has given an affidavit that she is aged about 31 years and she has done inter-caste marriage with petitioner. Petitioner has also given an affidavit regarding his age, mental condition and marriage with prosecutrix. Both were married in Arya Samaj Mandir. Since petitioner and prosecutrix both were husband and wife, therefore, relationship established between them will not be rape by virtue of exception II of Section 375 Indian Penal Code. There is marital dispute between husband and wife & false report

is lodged under influence of some persons. In these circumstances, order dated 31.10.2022 may be quashed and application for discharge may be allowed.

7. Govt. Advocate for the State opposed the prayer for reliefs as prayed for by the petitioner. It is submitted by him that petitioner has committed rape on prosecutrix by extending false promise of marriage. Marriage between petitioner and prosecutrix was sham. Immediately after marriage, petitioner has filed a petition under Section 12 of the Hindu Marriage Act for declaring marriage to be null and void. In these circumstances, trial Court has not committed any error in dismissing the application filed by the petitioner. Application as well as revision under Section 482 of the Cr.P.C filed by the petitioner may be dismissed.

8. Heard learned counsel for the parties.

9. Exception 2 of Section 375 of Indian Penal Code is quoted as under:-

Exception 2.- Sexual intercourse or sexual acts by a man with his own wife, the wife not being under 18 years of age, is not rape.

10. Exception 2 of Section 375 Indian Penal Code makes it clear that sexual intercourse by a man with his own wife is not rape. Since exception clause is carved out under Section 375 IPC, therefore, condition of rape as defined under condition mentioned in Section 375 IPC occurs between man and woman, who are husband and wife then offence under Section 375 IPC will not be made out. Questions to be considered by this Court are as follows:-

Question (i) Whether intercourse happened between petitioner and prosecutrix during subsistence of marriage ?

Question (ii) Whether petitioner has committed intercourse by making false promise of marriage ?

11 . **Answer to question 1:** Marriage between petitioner and prosecutrix in Arya Samaj Mandir occurred on 27.10.2021. Prosecutrix alleged that rape was committed on her prior to marriage. Intercourse under false promise which is said to have been done by petitioner happened between the parties prior to marriage, therefore, petitioner will not fall within the Exception 2 of Section 375 of Indian Penal Code.

12. **Answer to question 2:** In 164 Cr.P.C. statement prosecutrix has stated that she met petitioner in March, 2021. On said date, he proposed her and made offer for marriage. Prosecutrix stopped advances of petitioner towards her. Petitioner is said to have forced himself on her despite opposition from prosecutrix. He is said to have forcefully raped her. When prosecutrix told him that she will lodge police complaint petitioner again assured her that he will do marriage with her. Second time, he is said to have committed rape on her in April, 2021. After committing rape, he again promised to marry her. On 29.8.2021, prosecutrix went to Tikamgarh on birthday of petitioner where petitioner served her liquor and non veg food and pressurized and forced her to consume the same and thereafter committed unnatural sex on her. Prosecutrix told petitioner to marry her in August, 2021, but petitioner refused. Petitioner is also said to have taken Rs. 1.5 lakhs from prosecutrix. She filed an application before PHQ Special Branch, but no action against him was taken. She also went

to Govindpura Police Station, but no FIR was lodged. On 26.10.2021, when woman constable put pressure on her to do counselling petitioner agreed to marry her. Petitioner in police station before councillor agreed to marry her. Prosecutrix does not want to marry petitioner but under pressure from police and petitioner, she agreed to marry. Police Constable was consistently putting pressure on her to do marriage and under pressure she has given affidavit and got married. She was also in wrongfully restrained in the house of friend of petitioner namely Sanjay Kushwaha and also detained in police station with woman constable. Said woman constable abused and threatened her consistently. She threatened her to implicate her brother in police case. Under such pressure, she did marriage with petitioner and thereafter petitioner left her and did not answer her phone calls. Prosecutrix and petitioner was in relationship for 5 years. During the course of argument, learned senior counsel appearing for the petitioner submitted that application for declaring marriage to be void was filed as prosecutrix was in relationship with many other boys and men.

13. After carefully considering the statement of prosecutrix recorded under Section 164 of the Code of Criminal Procedure and arguments which is raised by the learned Senior Counsel appearing for the petitioner and respondents, it is found that prosecutrix never surrendered to petitioner believing false promise of marriage to be true. From statement, it is evident that after making false promise of marriage, prosecutrix did not believe petitioner and she did not surrender to him. She has stated that she opposed the advances of petitioner but petitioner

being a man and stronger committed forceful rape on her. Consent of prosecutrix was not there. She opposed the advances of petitioner on first occasion i.e. in March, 2021 and did not surrender to him believing false promise of marriage. In second incident on 29.8.2021, she did not believe on false promise of marriage. Petitioner again said to have been committed forceful rape on her. Thereafter, she has stated that in police station that she was forced by police constable, petitioner and his friend to get married. Under such pressure, she married the petitioner.

14. From going through the entire story as narrated by the prosecutrix, it is clear that she did not surrender to petitioner for making sexual intercourse on believing false promise of marriage to be true. She did not give any consent for establishing physical relationship. After incident of rape which is said to have occurred, prosecutrix did not lodge any FIR against the petitioner. She remained quite and after incident of rape she has also done marriage with the petitioner in Arya Samaj Mandir.

15. Since there was marital dispute, therefore, petitioner has filed a petition for divorce. Prosecutrix is major aged more than 31 years. Petitioner and prosecutrix were having long standing relationship for more than 5 years as has been stated by her. She did not lodge any report of rape against petitioner though she did not believe false promise of marriage made by him. She also married the petitioner in Arya Samaj Mandir. Affidavit is also placed on record by the petitioner. In pre MLC, no injury was found on her body. From her statement, it is clear that there is no case that prosecutrix has surrendered to petitioner under false promise of marriage but forceful rape has been committed on her. Despite forceful

rape being committed by the petitioner on her repeatedly for long time, she did not lodge FIR against petitioner on the contrary she also married the petitioner. Said circumstances show that no reasonable man will believe on the story which prosecutrix is narrating before the police station regarding commission of rape on her. In these circumstances, petition filed under Section 482 of the Code of Criminal Procedure and application under Section 397/401 of the Code of Criminal Procedure filed by the petitioner are **allowed**. Order dated 31.10.2022 is **quashed**. FIR and charge sheet filed against the petitioner by police are also **quashed**.

AD/



(VISHAL DHAGAT)
JUDGE