

In the Court of Addl. Sessions Judge- I**Vaishali at Hajipur,****STR No.- 154/2020****Order**

The petition dated 23.01.2021 has been filed on behalf of accused Subodh Kumar, u/s 227 of CrPC, praying therein that the material disclosed in the case diary and produced by investigating officer before court along with charge sheet does not disclose any case against petitioner and as such he deserves to be discharged from the case. The re-joinder dated 11.05.2020 to the said petition has been filed on behalf of state. The parties have been heard on the petitions.

Before advertng to the contention so raised in the petition, it appears beneficial to this court that the prosecution case be referred at a glance for proper appreciation of the case. The prosecution case is that the informant has been enticed into an affair by Subodh Kumar since last 3 years and he established physical relation with her under promise to solemnize marriage with her. It is alleged that in course of relationship when the informant was asking the accused to solemnize marriage then he always deferred the matter on the one or the other pretext. It is further alleged that in course of relationship the informant got pregnant 2-3 times but she was compelled to abort the child by the accused. The further prosecution case is that on the 4th time when the informant got pregnant she refused the pressure so put by accused Subodh Kumar to abort the child and further threatened him that if he does not marry her then she will disclose the matter to society. It is alleged that on the threatening said Subodh Kumar solemnized marriage with her in the lord Shiva temple at Bhagwanpur Adda on 05.10.2018 but insisted her that for some time she shall remain in her father's house. It is even further alleged that in course of time after the informant's pregnancy got apparent then the accused has taken her to Hajipur in a rented accommodation and he used to maintain the informant there in the seclusion. It is even further alleged that on 22.02.2019 the informant gave birth to a girl child in Alok Nursing home, Mahua but on 24.02.2019 the accused Subodh Kumar arrived there with 2 unknown persons and removed the child from her lap saying that the child is not well and she has to be shifted in child care hospital at Hajipur. It is further alleged that thereafter the informant and her family members tried

to find out the child in different hospitals but no trace of child could be found. It is alleged that the accused persons were abetting the informant to commit suicide as her being alive will cause shame to her family. It is alleged that on 21.05.2019 when the informant went there at the house of Subodh Kumar and inquired about her daughter then he demanded Rs. 5 Lakh in dowry and upon refusing the same he abused the informant and her relatives and removed them away by assaulting and making attempt to commit their murder. Accordingly, with the said allegation FIR has been instituted.

The learned counsel for petitioner submitted that petitioner is innocent and he has committed no offence whatsoever as alleged. It is further submitted that there is nothing on the record to disclose the involvement of petitioner into any offence alleged and the material so collected and produced by investigating officer before this court does not make out any case against petitioner. It is further submitted that instant case has arisen on a complaint which subsequently was instituted upon being sent u/s 156(3) of Cr.P.C for institution of the case. It is further submitted that the investigation so conducted in the matter is bad and even the supervision has not been made by the senior police officer. The learned counsel further submitted that from the prosecution case itself it is apparent that the relation between informant and the accused was consensual and as such there is no question of commission of rape in the matter. It is further submitted that it has come in the FIR itself that the accused solemnized marriage with informant and as such there is no application of section 376 of IPC. It is even further submitted that there is no evidence at all of birth of any infant by informant and as such in the absence of material thereof no case u/s 302 of IPC is made out against petitioner. It is at last submitted that there is no material whereof charge can be framed against petitioner and hence it is prayed that petitioner be discharged from the case.

The learned Additional Public Prosecutor opposed the prayer.

Heard the parties. The allegation against petitioner is that he enticed the informant into physical relationship and got her pregnant 3 to 4 times before the lady got adamant and gave birth to a girl child. It is alleged that informant has disappeared the girl child and committed her murder. In the beginning a complaint in the matter was instituted by informant before court of Learned Chief Judicial Magistrate, Vaishali at Hajipur and the said learned court upon taking cognizance of the matter sent the same for institution of the case by police u/s 156(3) of Cr.P.C. The petitioner Subodh Kumar is the protagonist

against whom there is the allegation of establishing sexual relationship on the false promise of solemnizing marriage with informant. In course of argument the learned prosecutor has submitted that witnesses mentioned in para 5,8,9 and 10 have supported the prosecution case whereas the statement of victim lady so recorded u/s 164 of CrPC is mentioned there in para 75 of the case diary. The witnesses have supported the prosecution case. In para 88 the supervision note made by senior police officer is mentioned wherein the supervising authority has found the case true and direction to make further investigation has been made. Upon perusal of case diary it further appears that in para 44 thereof the statement of doctor has been recorded which clarifies the birth of a girl child from informant. The learned counsel for petitioner has relied over case laws respectively reported in (i) AIR-2019, Supreme Court 327 (ii) 2011(14) SSC 475, (iii) 2007(4) PLJR (Supreme Court) Page 64, (iv) 2017(4) PLJR 162 (v) PLRR-2012(2) Page no. 764, however none of the case law is apparently applicable in the given factual matrix. The main contention of learned counsel for petitioner is that the consensual relation even on the false promise of solemnizing marriage does not make out any case of rape against petitioner however this court is of the view that it being a settled proposition of law that establishing physical relationship on the false promise of marriage makes out a case u/s 376 of IPC. Further it being a settled proposition of law that at the stage of framing of charge only a strong prima facie case has to be looked into on the basis of material so produced before court by prosecution. It is in the opinion of this court there is sufficient material for calling upon the accused to face trial for the charge alleged against him in the charge sheet. Accordingly, in that view of the matter the petition so filed on his behalf is hereby rejected.

The accused shall remain physically present on the next date for framing of charge.

Addl. Sessions Judge-I
Vaishali at Hajipur.
05.04.2022