

IN THE HIGH COURT OF JHARKHAND AT RANCHI
Cr.M.P. No.579 of 2024

Rashid Ansari @ Md. Rashid @ Md. Rasid, aged about 33 years, son
of Late Md. Mojahid, resident of near Samudayik Bhawan, Manitola,
Pokhar Toli, P.O. and P.S.-Doranda, District-Ranchi.

... Petitioner

Versus

1. The State of Jharkhand
2. Afreema Parween, D/o Md. Khalid Ansari, aged about 33 years,
R/o Paras Toli, P.O. + P.S.-Doranda, District-Ranchi.

... Opposite Parties

For the Petitioner : Mr. Nilesh Kumar, Advocate
: Ms. Sonal Sodhani, Advocate
For the State : Mr. V.K. Vashistha, Spl.P.P.

P R E S E N T

HON'BLE MR. JUSTICE ANIL KUMAR CHOUDHARY

By the Court:- Heard the parties.

2. This Criminal Miscellaneous Petition has been filed invoking the jurisdiction of this Court under Section 482 of the Code of Criminal Procedure with a prayer to quash and set aside the entire criminal proceeding including the order taking cognizance dated 16.09.2023 passed by learned Judicial Magistrate-1st Class-XXIX, Ranchi in connection with G.R. Case No.2568 of 2023 arising out of Mahila P.S. Case No.07 of 2023 by which cognizance has been taken by the learned Judicial Magistrate-1st Class-XXIX, Ranchi for the offences punishable under Sections 376 & 417 of the Indian Penal Code against the petitioner and committed case to the court of Session.

3. The allegation against the petitioner is that the petitioner established physical relationship with the informant on the promise of marriage and thereafter, spent some time with the informant and her son from her first marriage with someone else, in a rented accommodation, but consequent upon quarrel between the informant and the petitioner, the petitioner severed his relationship with the informant.

4. On the basis of written report submitted by the informant, police registered Ranchi Sadar Mahila P.S. Case No.07 of 2023 and took up investigation of the case and after completion of the investigation, police submitted charge sheet consequent upon which the cognizance of the said offences was taken.

5. Learned counsel for the petitioner relying upon the judgment of Hon'ble Supreme Court of India in the case of **XXXX vs. State of Madhya Pradesh & Another** reported in **(2024) 3 SCC 496**, paragraph-12 of which reads as under:-

"12. 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."

Submits that therein the Hon'ble Supreme Court of India keeping in view the facts of that case, where the complainant was not of an immature age, who could not foresee her welfare and take right decision and that 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, considering the said facts quashed the entire criminal proceeding of that case.

6. Learned counsel for the petitioner next relies upon the judgment of the Hon'ble Supreme Court of India in the case of **Naim Ahamed vs. State (NCT of Delhi)** reported in **(2023) 15 SCC 385** and submits that in para-22, it was observed by the Hon'ble Supreme Court of India that keeping in view the facts and circumstances of that case, the victim gone to stay with the accused person during the subsistence of her marriage with her husband, to live a better life with the accused. It is next submitted that in that case the Hon'ble Supreme Court of India has held that it could not be said by any stretch of imagination that the prosecutrix had given her consent for the sexual relationship with the petitioner under the misconception of fact, so as to hold the petitioner guilty of having committed rape within the meaning of Section 375 of the Indian Penal Code.

7. Learned counsel for the petitioner then submits that the allegation against the petitioner is false and even if the entire allegations made against the petitioner are considered to be true in their entirety, still no offence is made out against the petitioner. It is next submitted that the prosecutrix is aged about 33 years and mother of two children and still having a subsisting marriage with her husband, other than the petitioner, hence, it is submitted that the prayer as prayed for, in this Cr.M.P., be allowed.

8. Learned Spl.P.P. appearing for the State on the other hand vehemently opposes the prayer of the petitioner made in the instant Cr.M.P and submits that there is direct and specific allegation against the petitioner of committing rape upon the victim. Therefore, it is submitted that this Cr.M.P., being without any merit, be dismissed.

9. Having heard the rival submissions made at the Bar and after carefully going through the materials available in the record, it is pertinent to mention here that the Hon'ble Supreme Court of India in the case of **Sonu @ Subhash Kumar vs. State of Uttar Pradesh** reported in **AIR 2021 SC 1405** paragraphs-9 to 11 of which read as under:-

"9. In Pramod Suryabhan Pawar (supra), while dealing with a similar situation, the principles of law which must govern a situation like the present were enunciated in the following observations:

"Where the promise to marry is false and the intention of the maker at the time of making the promise itself was not to abide by it but to deceive the woman to convince her to engage in sexual relations, there is a "misconception of fact" that vitiates the woman's "consent". On the other hand, a breach of a promise cannot be said to be a false promise. To establish a false

promise, the maker of the promise should have had no intention of upholding his word at the time of giving it..."

10. Further, the Court has observed: "To summarise the legal position that emerges from the above cases, the "consent" of a woman with respect to Section 375 must involve an active and reasoned deliberation towards the proposed act. To establish whether the "consent" was vitiated by a "misconception of fact" arising out of a promise to marry, two propositions must be established. The promise of marriage must have been a false promise, given in bad faith and with no intention of being adhered to at the time it was given. The false promise itself must be of immediate relevance, or bear a direct nexus to the woman's decision to engage in the sexual act."

11. Bearing in mind the tests which have been enunciated in the above decision, we are of the view that even assuming that all the allegations in the FIR are correct for the purposes of considering the application for quashing under Section 482 of CrPC, no offence has been established. There is no allegation to the effect that the promise to marry given to the second respondent was false at the inception. On the contrary, it would appear from the contents of the FIR that there was a subsequent refusal on the part of the appellant to marry the second respondent which gave rise to the registration of the FIR. On these facts, we are of the view that the High Court was in error in declining to entertain the petition under Section 482 of CrPC on the basis that it was only the evidence at trial which would lead to a determination as to whether an offence was established." (Emphasis supplied)

held that it is to be established that the maker of the promise had no intention of upholding his word at the time of giving it.

10. Now, coming to the facts of the case, there is no allegation against the petitioner to the effect that the promise of marriage given by the petitioner was false at the very inception, rather it is the admitted case of the informant herself that the petitioner and the prosecutrix led conjugal life as a husband and wife in a rented accommodation for a considerable period of time.

11. In view of the settled principle of law, this Court is of the considered view that by considering the fact both the petitioner and the victim are major persons and the victim was having a subsisting marriage, but still she chose to lead a conjugal life with the petitioner as wife and husband, hence, this Court is of the considered view that neither the offence punishable under Section 376 of the Indian Penal Code nor the offence punishable under Section 417 of the Indian Penal Code is made out, even if the entire allegations made against the petitioner are considered to be true in their entirety, hence, this Court is of the considered view that the continuation of this criminal proceeding against the petitioner will amount to abuse of process of law and this is a fit case where the entire criminal proceeding including the order taking cognizance dated 16.09.2023 passed by learned Judicial Magistrate-1st Class-XXIX, Ranchi in connection with G.R. Case No.2568 of 2023 arising out of Mahila P.S. Case No.07 of 2023, be quashed and set aside.

12. Accordingly, the entire criminal proceeding including the order taking cognizance dated 16.09.2023 passed by learned Judicial Magistrate-1st Class-XXIX, Ranchi in connection with G.R. Case No.2568 of 2023 arising out of Mahila P.S. Case No.07 of 2023, is quashed and set aside.

13. In the result, this Cr.M.P., stands allowed.

(Anil Kumar Choudhary, J.)