

2024 LiveLaw (SC) 18

**IN THE SUPREME COURT OF INDIA
CRIMINAL APPELLATE JURISDICTION**

Abhay S. Oka; J., Pankaj Mithal; J.

January 03, 2024.

CRIMINAL APPEAL NO. 32 OF 2024 (Arising out of Special Leave Petition (Crl.) no.147 of 2017)

Ajeet Singh versus State of Uttar Pradesh & Ors.

Indian Penal Code, 1860; Sections 376 and 506 – Rape - False promise of marriage - The relationship between the accused and the victim was a consensual relationship which culminated in the marriage. In the legal notice issued on behalf of the victim, the factum of marriage was admitted and the victim has been described as the wife of the accused. Therefore, on the face of it, the allegation that the physical relationship was maintained due to false promise of marriage is without basis, as their relationship led to the solemnization of marriage. Therefore, this is a case where the allegations made in the FIR were such that on the basis of the statements, no prudent person can ever reach a conclusion that there is sufficient ground for proceeding against the accused. Hence, a case was made out for quashing the FIR. (Para 9)

For Appellant(s) Mr. Tripurari Ray, Adv. Mr. Yatish Mohan, Adv. Mr. Kedar Nath Tripathy, AOR

For Respondent(s) Mr. Shaurya Sahay, AOR

J U D G M E N T

ABHAY S. OKA, J.

FACTUAL ASPECTS

1. At the instance of the third respondent, a First Information Report (the FIR), being Case Crime no.106 of 2016, was registered at the Police Station Naka, District Lucknow, Uttar Pradesh, for the offences punishable under Sections 376 and 506 of the Indian Penal Code, 1860 (for short, 'IPC') wherein the appellant was shown as an accused. A writ petition was filed by the appellant before the High Court of Judicature at Allahabad, Lucknow Bench for quashing the FIR. By the impugned judgment dated 7th December 2016, the High Court declined to exercise its extraordinary jurisdiction under Article 226 of the Constitution of India.

2. In the complaint, on the basis of which the FIR was registered, the allegation of the third respondent was that his daughter (victim – name masked) was studying in Lucknow for coaching in Banking. Her age was 25 years. He stated that the appellant was running IIT coaching classes in Delhi. They met and developed a love for each other. The appellant assured the victim to marry her. When the third respondent approached the appellant's father and brother with the proposal of marriage, they declined the same. Thereafter, under the pressure exerted by the victim, the appellant got prepared a certificate of marriage from Arya Samaj Mandir. By playing fraud, the appellant maintained a physical relationship with the victim. He stated that the relatives of the appellant threatened him. He stated that after exploiting his daughter, the appellant came to Sitapur at his residence on 22nd April 2015 and left the victim there. The complaint was filed by the third respondent on 27th May 2015, on the basis of which the FIR was registered.

3. The High Court vide order dated 18th October 2016 issued a notice on the writ petition and granted interim relief restraining the Police from taking the appellant into custody, subject to the condition that the appellant must join the investigation at 10 a.m.

on 6th June 2016 at Police Station Sitapur, District Sitapur, Uttar Pradesh and thereafter, as and when required. Shri Abhay Nath Tripathi filed an affidavit in terms of the order dated 18th October 2016 passed by the High Court. He stated that he recorded the statements of both the victim and the appellant, which showed that a marriage was solemnized between them. However, he stated that the appellant did not fulfil his matrimonial obligations. The allegation is that to avoid criminal proceedings, a petition for restitution of conjugal rights under Section 9 of the Hindu Marriage Act, 1955 (for short, 'HMA') was filed by the appellant. He stated that the concerned officer conducted the investigation in a fair manner. He stated that the victim was ready to stay with the appellant, and therefore, the chargesheet, though ready, has not been filed to facilitate the amicable settlement of the dispute. The successor of the said officer filed a counter affidavit to the writ petition on 11th August 2017 justifying the registration of the FIR, which also refers to the petition filed by the appellant under Section 9 of the HMA.

SUBMISSIONS

4. The learned counsel appearing for the appellant, invited our attention to Annexure P-2, which is a notice dated 1st May 2015 issued by an advocate on behalf of the victim. The learned counsel submitted that in the notice, the victim admitted that a marriage was solemnized between her and the appellant. He pointed out that on 6th May 2015, a petition under Section 9 of the HMA was filed by the appellant against the victim for restitution of conjugal rights. He submitted that within a few days thereafter, on 27th May 2015, the third respondent lodged the FIR. He urged that the prosecution of the appellant is nothing but an abuse of the process of law. Therefore, the High Court ought to have quashed it. He pointed out that even the Investigating Officer filed an affidavit stating that as the appellant had married the victim, the allegation of rape may not be substantiated.

5. The learned Additional Advocate General appearing for the respondent–State of Uttar Pradesh, supported the impugned judgment and submitted that the ingredients of the offences under Sections 376 and 506 of the IPC were made out.

CONSIDERATION OF SUBMISSIONS

6. Shri Abhay Nath Tripathi, Circle Officer, Kaisarbagh, District Lucknow, Uttar Pradesh filed an affidavit on behalf of the State Government stating that the marriage certificate produced along with the writ petition was genuine and that the petition filed by the appellant for restitution of conjugal rights was pending. He referred to the statements of both the appellant and the victim recorded by him and stated that the main grievance of the victim was that the appellant was not performing his matrimonial obligations. However, in the counter affidavit filed subsequently by the successor of the Circle Officer, it was contended that the marriage ceremony between the appellant and the victim was a farce made only to enable the appellant to establish sexual relations with the victim.

7. Annexure P-2 is the legal notice dated 1st May 2015 issued by Shri Aftab Ahmed, Advocate, on behalf of the victim. In the notice, the victim has been described as the wife of the appellant. In the counter affidavit filed by the Circle Officer, the genuineness of Annexure P-2 is not disputed. In paragraphs 1 and 2 of the notice, it is stated thus:

“1. That through this notice I am informing Sri Satyendra Singh that on 16.2.2001 (sic), your son Ajeet Singh has solemnized marriage according to Vedic rites and ceremonies in his own wish, willingly with my client XXXX (name masked) daughter of Ram Naresh at Arya Samaj Mandir.

2. That from 16.2.2015 to 21.4.2015 your son Ajeet Singh and XXXX (name masked) both had been living as husband and wife at Lucknow and Delhi.”

8. Thereafter, in paragraphs 3 and 4, it is alleged that the victim was turned away from the matrimonial home by the appellant on the ground that his father wanted a sum of Rs.50 lakhs. By the said notice, the victim called upon the appellant to arrange "Vidai". Within five days of sending the notice, on 6th May 2015, the appellant filed a petition for restitution of conjugal rights against the victim.

9. The allegation in the FIR lodged at the instance of the third respondent is that the appellant maintained a physical relationship with the victim by giving her a false promise of marriage. It is stated that a certificate of marriage was got prepared by the appellant from Arya Samaj Mandir to put pressure on the victim. It is alleged that the appellant left the victim in her house on 22nd April 2015 and has never returned to take her back. The notice dated 1st May 2015 issued by the advocate for the victim clearly admits that the marriage between the appellant and the victim was solemnized on 16th February 2015. A copy of the statement of the victim recorded on 23rd November 2016 by an officer of Police Station Naka, Lucknow, is placed on record, in which she stated that the appellant forced her to have a physical relationship with her in a hotel in Delhi on 4th December 2014. Thereafter, the physical relationship was maintained by the appellant. She stated that on 16th February 2015, the appellant took her to Arya Samaj Mandir and solemnized the marriage where no other person was present. She stated that thereafter, they stayed in a hotel till 19th February 2015. In March 2015, she stayed with the appellant for three to four days. From the end of April 2015, the appellant stopped attending to her phone calls. Thus, the relationship between the appellant and the victim was a consensual relationship which culminated in the marriage. In the legal notice issued on behalf of the appellant, the factum of marriage was admitted. Therefore, on the face of it, the allegation that the physical relationship was maintained due to false promise given by the appellant to marry, is without basis as their relationship led to the solemnization of marriage. Therefore, this is a case where the allegations made in the FIR were such that on the basis of the statements, no prudent person can ever reach a conclusion that there is sufficient ground for proceeding against the appellant. Therefore, clause (5) of the decision of this Court in the case of **State of Haryana & Ors. v. Bhajan Lal & Ors.**¹ will apply. Hence, a case was made out for quashing the FIR.

10. Therefore, we set aside the impugned judgment of the High Court of Judicature at Allahabad, Lucknow Bench dated 7th December 2016 and quash the Case Crime no.106 of 2016 registered against the appellant at Police Station Naka, District Lucknow, Uttar Pradesh.

11. The appeal is, accordingly, allowed.

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¹ 1992 Supp (1) SCC 335