2024 LiveLaw (SC) 242

IN THE SUPREME COURT OF INDIA
CRIMINAL APPELLATE JURISDICTION
B.R. GAVAI; J., RAJESH BINDAL; J., SANDEEP MEHTA; J.
MARCH 18, 2024.
CRIMINAL APPEAL NO. OF 2024 (Arising out of SLP(Criminal) No. 3187 of 2023)
MS. X *versus* MR. A AND OTHERS

Indian Penal Code, 1860; Section 375 – "Consent" of a woman – 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. Held, the allegations in the FIR so also in the restatement made before the Dy. S.P., do not, on their face, indicate that the promise by accused was false or that the complainant engaged in the sexual relationship on the basis of such false promise. No error has been committed by the learned Single Judge of the High Court by holding that permitting further proceedings to continue would be an abuse of process of law and result in miscarriage of justice. *(Para 11, 15 & 18)*

Criminal Procedure Code, 1973; Section 482 and Constitution of India; Article 226 – Exercise of extraordinary power to quash proceedings – Such power could be exercised either to prevent abuse of the process of any court or otherwise to secure the ends of justice. Some instances where such power can be exercised is: (1) Where the allegations made in the first information report or the complaint, even if they are taken at their face value and accepted in their entirety do not prima facie constitute any offence or make out a case against the accused. (2) Where the allegations in the first information report and other materials, if any, accompanying the FIR do not disclose a cognizable offence, justifying an investigation by police officers under Section 156(1) of the Code except under an order of a Magistrate within the purview of Section 155(2) of the Code. (3) Where the uncontroverted allegations made in the FIR or complaint and the evidence collected in support of the same do not disclose the commission of any offence and make out a case against the accused. (4) Where, the allegations in the FIR do not constitute a cognizable offence but constitute only a non-cognizable offence, no investigation is permitted by a police officer without an order of a Magistrate as contemplated under Section 155(2) of the Code. (5) Where the allegations made in the FIR or complaint are so absurd and inherently improbable on the basis of which no prudent person can ever reach a just conclusion that there is sufficient ground for proceeding against the accused. (6) Where there is an express legal bar engrafted in any of the provisions of the Code or the concerned Act (under which a criminal proceeding is instituted) to the institution and continuance of the proceedings and/or where there is a specific provision in the Code or the concerned Act, providing efficacious redress for the grievance of the aggrieved party. (7) Where a criminal proceeding is manifestly attended with mala fide and/or where the proceeding is maliciously instituted with an ulterior motive for wreaking vengeance on the accused and with a view to spite him due to private and personal grudge. Held, present case would squarely fall under categories (1), (3) and (5) and even if the allegations made in the FIR and the material on which the prosecution relies, are taken at its face value, there are no sufficient grounds for proceeding against

the accused. *(Para 17 & 18) State of Haryana and Others v. Bhajan Lal and Others, 1992 Supp (1) 335; referred.*

For Petitioner(s) Mr. Sabarish Subramanian, AOR Mr. Naman Dwivedi, Adv. Mr. Vishnu Unnikrishnan, Adv. Mr. C Kranthi Kumar, Adv. Mr. Danish Saifi, Adv.

For Respondent(s) Mr. M Yogesh Kanna, Adv. Mr. Raghunatha Sethupathy B, AOR Mr. S. Sabari Bala Pandian, Adv. Mr. Vasu Kalra, Adv. Ms. Monica Saini, Adv.

J U D G M E N T

B.R. GAVAI, J.

1. Leave granted.

2. The present criminal appeal challenges the order dated 3rd September 2022, passed by the learned Single Judge of the High Court of Karnataka at Bengaluru in Criminal Petition No. 8468 of 2021, whereby the High Court allowed the petition filed under Section 482 of the Criminal Procedure Code, 1973 ('Cr.P.C.' for short) preferred by the accused persons and quashed the entire proceedings pending against them before the 2nd Additional District and Sessions Judge, Chitradurga (hereinafter referred to as 'trial court') in Special Case (SC/ST) No. 1 of 2021.

3. Shorn of details, the facts leading to the present appeal are as under:

3.1. The prosecution case is that in the year 2016, while the complainant/appellant was still a minor, having been born on 12th September 1998, accused No.1 after becoming acquainted with the complainant/appellant while they both were preparing for the competitive examination, made her fall in love with him. Thereafter, they entered into a relationship and were intimate with each other. Subsequently, in the year 2019, accused No. 1 took the complainant/appellant to his aunty's house in Chitradurga whereupon he had sexual intercourse with her, after leading her to believe that he would marry her. A few days thereafter, accused No. 1 took the complainant/appellant to his house near the Gate of Siddapura Village in order to introduce her to his parents. In his family's absence, accused No. 1 forcibly engaged in sexual intercourse with the complainant/appellant on multiple occasions. As a consequence, the complainant/appellant got pregnant. Six months into the pregnancy, upon gaining knowledge of the same, accused No.1 and his brother accused No.2 forcibly took her to Krishna Nursing Home, Challakere and compelled her to undergo an abortion.

3.2. Subsequently, accused No. 1 reiterated his promise to marry her, however, he stated that such marriage would take place only after he finished his preparation for the Karnataka Administrative Service Examination. He further compelled her to maintain silence by threatening her that if she discloses any information about the termination of her pregnancy to her parents, he would kill her and would also kill himself by consuming poison. Accused No.3 and accused No.4, parents of accused No. 1 also assured the complainant/appellant that she and accused No. 1 would get married after the latter finished with his studies.

3.3. On 22nd September 2020, after the complainant/appellant's parents became aware of her relationship with accused No. 1 and the termination of her pregnancy, the complainant/appellant along with her parents visited the house of the accused persons with the request that the complainant/appellant and accused No. 1 be married to each other. However, the accused persons turned down the request and asserted that no such marriage would be possible since the complainant/appellant was a prostitute belonging to the Scheduled Caste, Madigha.

3.4. While this version of events was brought out in her original complaint, which was the basis of the First Information Report ("FIR" for short) being Case Crime No. 456 of 2020, lodged on 1st October 2020 at Police Station Challakere, District Chitradurga, the complainant/appellant in her restatement (Annexure P-6) made before the Dy. S.P., Challakere, changed the narrative with respect to the manner in which the termination of pregnancy had been carried out. She clarified that she had not been taken to Krishna Nursing Home. She stated, instead, that accused No. 1 upon gaining knowledge of her pregnancy, had informed her that he would like to continue with

his studies and had thereafter brought her Ayurvedic medicine which would cause the termination of her pregnancy. Upon the said medicine being administered to the complainant/appellant by accused No.1, her pregnancy was terminated. The complainant/appellant requested that the restatement be made a part of her original complaint. Accordingly, the relevant alteration was made in the original complaint, which fact is reflected in the brief summary of the case contained in the charge-sheet, subsequently filed.

3.5. After the conclusion of the investigation, a charge-sheet came to be filed before the trial court on 22nd December 2020 against all the accused persons for the offences punishable under Sections 354D, 376(2)(n), 504 and 506 read with 34 of the Indian Penal Code, 1860 ("IPC" for short) and Sections 3(1)(r), 3(1)(s), 3(1)(w)(i), 3(2)(v) and 3(2)(v-a) of The Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989 ("SC/ST Act" for short).

3.6. On the charge-sheet being filed, the trial court took cognizance of the charges and initiated criminal proceedings against the accused persons vide Special Case (SC/ST) No. 01 of 2021.

3.7. Being aggrieved thereby, the accused persons preferred a petition under Section 482 of Cr.P.C. before the High Court, praying for quashing of the proceedings pending before the trial court. The High Court, by the impugned order, allowed the petition and quashed the afore-stated proceedings in respect of all the accused persons.

4. Being aggrieved thereby, the present appeal has been filed by the original complainant.

5. We have heard Shri Naman Dwivedi, learned counsel appearing on behalf of the appellant and Shri M. Yogesh Kanna, learned counsel appearing on behalf of the respondents.

6. Shri Dwivedi submitted that the learned Single Judge of the High Court has grossly erred in quashing the proceedings. It is submitted that the learned Single Judge almost conducted a mini-trial while considering a petition filed under Section 482 of Cr.P.C. It is submitted that the learned Single Judge of the High Court ought to have taken into consideration that the exercise of powers under Section 482 Cr.P.C. was permissible only when the material placed on record along with the charge-sheet was sufficient enough to come to a conclusion that the case, even if it went to trial, would not culminate into conviction. It is submitted that from the statement of the prosecutrix as well as the witnesses, the prosecution has *prima facie* shown that accused No.1, on the false promise of marriage, had entered into a forcible relationship with the victim. It is submitted that the material placed on record was also sufficient to *prima facie* point out that accused No. 1 had forced the complainant to undergo abortion when the complainant had become pregnant.

7. Per contra, Shri Kanna submitted that the learned Single Judge of the High Court has considered the material placed on record to come to a conclusion that the prosecution case, even if taken at its face value, does not constitute the ingredients of the offences charged with. The learned counsel submitted that the learned Single Judge of the High Court, relying on the judgments of this Court in the cases of ***Dr. Dhruvaram Murlidhar Sonar v. State of Maharashtra and Others***[1] and ***Shambhu Kharwar v. State of Uttar Pradesh and Another***[2], has rightly held that there was no material placed on record to constitute the offences punishable under Section 376 of IPC. He submitted that no error could be found with the finding of the High Court that permitting the continuation of the proceedings would become an abuse of process of law and result in miscarriage of justice.

---

[1] (2019) 18 SCC 191
[2] 2022 SCC OnLine SC 1032

It is submitted that the prosecutrix has gone to the extent of dragging the entire family only in order to harass the accused persons.

8. The High Court, in the impugned order, has referred to the original complaint filed by the appellant, the restatement of the appellant (Annexure P-6) made before the Dy. S.P., Challakere and the statement of the doctor/Head of the Krishna Nursing Home. After considering the material placed on record, the High Court found that the complainant has totally changed her version of events in her restatement (Annexure P-6) made before the Dy. S.P., Challakere from the statement given in the original complaint filed by her. The learned Single Judge of the High Court has also referred to the report of the medical examination of the prosecutrix dated 19th December 2020.

9. We have also perused the material placed on record along with the charge-sheet. It can be seen that though the initial version of the complainant is that after she became pregnant, she was taken to the Krishna Nursing Home wherein she was compelled to undergo abortion, however, the statement of the doctor/Head of Krishna Nursing Home would show that the version of the complainant that she was brought to the Krishna Nursing Home on 17th August 2020 to abort her six months pregnancy, was completely false. The doctor/Head of Krishna Nursing Home has denied any acquaintance with the prosecutrix or the accused persons. The doctor/Head of Krishna Nursing Home has also stated that during the relevant period, on account of lockdown due to COVID virus, no patient was admitted in the hospital. It is further to be noted that the complainant, in her restatement (Annexure P-6) made before the Dy. S.P., Challakere, has changed her version and stated that she was not taken to the Krishna Nursing Home. The prosecutrix has stated that she was administered some medicine which was not allopathy which led to the termination of her pregnancy.

10. Even the statement of Anitha (CW-6) would reveal that both the prosecutrix and accused No. 1 had come together to her house and accused No. 1 informed her that the prosecutrix was his relative. According to the statement of Anitha (CW-6), six months prior to the date of recording her statement, accused No. 1 along with the prosecutrix had come to her house in the morning and had taken breakfast. After that, Anitha (CW-6) had left the house leaving both of them in the house. Anitha (CW-6) stated that when she came back in the room at around 02.00 pm, accused No. 1 and the prosecutrix took their meals and in the evening, they went to Challakere.

11. The issue similar to the one which arises for consideration in the present matter also arose for consideration before this Court in the case of ***Pramod Suryabhan Pawar v. State of Maharashtra and Another***[3], wherein this Court observed thus:

"**18.** 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.

19. The allegations in the FIR indicate that in November 2009 the complainant initially refused to engage in sexual relations with the accused, but on the promise of marriage, he established sexual relations. However, the FIR includes a reference to several other allegations that are relevant for the present purpose. They are as follows:

---

[3] (2019) 9 SCC 608

19.1. The complainant and the appellant knew each other since 1998 and were intimate since 2004.

19.2. The complainant and the appellant met regularly, travelled great distances to meet each other, resided in each other's houses on multiple occasions, engaged in sexual intercourse regularly over a course of five years and on multiple occasions visited the hospital jointly to check whether the complainant was pregnant.

19.3. The appellant expressed his reservations about marrying the complainant on 31-1-2014. This led to arguments between them. Despite this, the appellant and the complainant continued to engage in sexual intercourse until March 2015."

12. This Court, in the facts of the said case, set aside the judgment of the High Court which refused to exercise its jurisdiction under Section 482 of Cr.P.C. to quash the proceedings. The Court found that this was a fit case wherein the High Court ought to have invoked its jurisdiction under Section 482 of Cr.P.C. to quash the proceedings.

13. In the present case also, the facts are almost similar. Even as per the version of the complainant, the following facts have been emerged:

(i) 4 years prior to the FIR being lodged on 1st October 2020, accused No. 1 followed the prosecutrix and told her that he loved her and she should also love him;

(ii) After a period of 2 years, she agreed to love him and both were intimate with each other;

(iii) One year prior to the date of the incident, accused No. 1 took the prosecutrix to his aunty's house in Chitradurga and they stayed there. On that day at about 09.00 am, in his aunty's house, by giving trust and belief that he would marry her, accused No. 1 forcibly made sexual contact with the prosecutrix;

(iv) Thereafter, accused No. 1 took the prosecutrix to various places including his own house and committed sexual intercourse with her; and

(v) As per the version of the prosecutrix, the first incident has taken place in the year 2019. As per Karnataka Secondary Education Examination Board Certificate, her date of birth is 12th September 1998. Even if it is assumed that the incident has taken place in January 2019, she would have been over the age of 18.

14. After the prosecutrix became pregnant, accused No. 1 caused her abortion on 17th August 2020. Though her initial version was that she was admitted in the hospital for two days, it is falsified by the statement of the doctor/Head of Krishna Nursing Home. After this incident, she discussed the matter with her elders in the family and decided to lodge the complaint.

15. We find that, in the present case also like the case of ***Pramod Suryabhan Pawar*** (supra), the allegations in the FIR so also in the restatement (Annexure P-6) made before the Dy. S.P., Challakere, do not, on their face, indicate that the promise by accused No. 1 was false or that the complainant engaged in the sexual relationship on the basis of such false promise. This apart from the fact that the prosecutrix has changed her version. The version of events given by the prosecutrix in the restatement (Annexure P-6) made before the Dy. S.P., Challakere is totally contrary to the one given in the FIR.

16. Similar facts arose for consideration before this Court in the case of ***Shambhu Kharwar*** (supra). In the said case, the prosecutrix had filed a complaint that there was love affair between her and the accused for a period of three years. The accused had given an assurance to her regarding solemnization of marriage. They started living under the same roof and also made sexual relationship. Thereafter, the accused entered into a ring ceremony with someone else. In this background, the prosecutrix had lodged the

complaint that the accused had forcible sexual intercourse with her on the false promise of marriage. After considering the material placed on record, the Court observed thus:

"**13.** .....Taking the allegations in the FIR and the charge-sheet as they stand, the crucial ingredients of the offence under Section 375 IPC are absent. The relationship between the parties was purely of a consensual nature. The relationship, as noted above, was in existence prior to the marriage of the second respondent and continued to subsist during the term of the marriage and after the second respondent was granted a divorce by mutual consent."

17. This Court, in the case of ***State of Haryana and Others v. Bhajan Lal and Others***[4], has observed thus:

"**102.** In the backdrop of the interpretation of the various relevant provisions of the Code under Chapter XIV and of the principles of law enunciated by this Court in a series of decisions relating to the exercise of the extraordinary power under Article 226 or the inherent powers under Section 482 of the Code which we have extracted and reproduced above, we give the following categories of cases by way of illustration wherein such power could be exercised either to prevent abuse of the process of any court or otherwise to secure the ends of justice, though it may not be possible to lay down any precise, clearly defined and sufficiently channelised and inflexible guidelines or rigid formulae and to give an exhaustive list of myriad kinds of cases wherein such power should be exercised.

(1) Where the allegations made in the first information report or the complaint, even if they are taken at their face value and accepted in their entirety do not prima facie constitute any offence or make out a case against the accused.

(2) Where the allegations in the first information report and other materials, if any, accompanying the FIR do not disclose a cognizable offence, justifying an investigation by police officers under Section 156(1) of the Code except under an order of a Magistrate within the purview of Section 155(2) of the Code.

(3) Where the uncontroverted allegations made in the FIR or complaint and the evidence collected in support of the same do not disclose the commission of any offence and make out a case against the accused.

(4) Where, the allegations in the FIR do not constitute a cognizable offence but constitute only a non-cognizable offence, no investigation is permitted by a police officer without an order of a Magistrate as contemplated under Section 155(2) of the Code.

(5) Where the allegations made in the FIR or complaint are so absurd and inherently improbable on the basis of which no prudent person can ever reach a just conclusion that there is sufficient ground for proceeding against the accused.

(6) Where there is an express legal bar engrafted in any of the provisions of the Code or the concerned Act (under which a criminal proceeding is instituted) to the institution and continuance of the proceedings and/or where there is a specific provision in the Code or the concerned Act, providing efficacious redress for the grievance of the aggrieved party.

(7) Where a criminal proceeding is manifestly attended with mala fide and/or where the proceeding is maliciously instituted with an ulterior motive for wreaking vengeance on the accused and with a view to spite him due to private and personal grudge."

18. We find that the present case would squarely fall under categories (1), (3) and (5) as reproduced hereinabove for the reasons which we have already recorded in the earlier paragraphs. No doubt, that the power of quashing the criminal proceedings should be exercised very sparingly and with circumspection and that too in the rarest of rare cases, it is also equally settled that the Court will not be justified in embarking upon an enquiry

[4] 1992 Supp (1) 335

as to the reliability or genuineness or otherwise of the allegations made in the FIR or the complaint. However, in the present case, even if the allegations made in the FIR and the material on which the prosecution relies, are taken at its face value, we find that there are no sufficient grounds for proceeding against the accused. We find that no error has been committed by the learned Single Judge of the High Court by holding that permitting further proceedings to continue would be an abuse of process of law and result in miscarriage of justice. The High Court has correctly applied the law on the issue and come to a just finding warranting no interference.

19. In the result, the appeal is dismissed.

20. Pending application(s), if any, shall stand disposed of.