

**IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH.**

Crl. Misc. No.M-28695 of 2010

Date of Decision: 29.10.2010

Anjali Aggarwal and anr.

....Petitioners

Versus

State of Haryana

...Respondent

CORAM : Hon'ble Ms. Justice Nirmaljit Kaur

Present:- Mr. Kunal Dawar, Advocate
for the petitioners.

Mr. Deepak Jindal, D.A.G., Haryana
for the respondent-State.

1. Whether Reporters of Local Newspapers may be allowed to see the judgment ?
2. To be referred to the Reporters or not ?
3. Whether the judgment should be reported in the Digest ?

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NIRMALJIT KAUR, J.

This is a petition under Section 482 Cr.P.C for quashing of FIR No.347 dated 04.06.2010 under Sections 366 and 376 IPC and Section 25 of the Arms Act registered at Police Station Central Faridabad, District Faridabad, Haryana along with all subsequent proceedings arising therefrom.

The FIR was got registered at the behest of petitioner No.1 herself against petitioner No.2. The facts, in brief, are admitted by the complainant herself that she was having an affair with petitioner No.2. As per the averments made by the petitioner herself in the petition, the parents of petitioner No.2 got his marriage solemnized with one Rita on 15.02.2009 as his parents did not approve of her alliance with petitioner No.2.

However, in spite of the said facts, the petitioners continued their relationship and the complainant solemnized their marriage on 29.05.2010. The marriage of the petitioners was solemnized during the subsistence of the first marriage of petitioner No.2. After the marriage of petitioners, parents of petitioner No.1 by giving false assurance that they would settle everything and under threat that they would kill Rajesh and his family members, forced the petitioner No.1 to give a false complaint to the police of Sector 16, Faridabad upon which FIR No. 347 dated 04.06.2010 under Sections 366, 376 IPC and Section 25 of Arms Act was got registered. To save the life of petitioner No.2, petitioner No.1 got the above mentioned FIR registered and thereafter, also got her statement recorded before the Illaqa Magistrate, Faridabad under the pressure and influence of her parents. Thereafter, the petitioner No.2 was arrested and petitioner No.1 could not bear the pain of the person whom she loved having been falsely implicated by her and she tried to persuade her parents and relatives to take the case back but her parents and the relatives threatened that they would kill both of them if she revealed the true facts.

Finally, the petitioner No.1 managed to flee from her house and filed a complaint against her father in the Court of Additional Chief Judicial Magistrate, Faridabad. In the said complaint, all the facts of the case have been detailed and it has been stated by petitioner No.1 that FIR No.347 dated 04.06.2010 under Sections 366, 376 IPC and Section 25 of Arms Act at Police Station Central Faridabad has been got registered under the pressure of her uncle and father and further that she had married petitioner No.2 out of her own will and consent.

The petitioner No.1 also approached this Court vide Crl. Misc. No.M-20054 of 2010 for protection of her life and liberty against her father. In the said petition, it was stated that petitioner No.1 had married petitioner No.2 of her own will and that she does not want to go back with her father.

The said petition was disposed of vide Order dated 22.07.2010 after recording the statement of the complainant and her father. The complainant had clearly stated before this Court that she does not want to go back to her parents and the father of the complainant had stated that he will not harm her in any manner and she was at liberty to stay anywhere.

The petitioner No.1 appeared in the Court at her own behest and stated that she is more than 21 years of age and had a right to take her own decisions in life. Admittedly, the petitioner No.2 seems to have entered into the second marriage with petitioner No.1 during the pendency and subsistence of his first marriage.

Section 376 of the IPC reads as under :-

“376. Punishment for rape.--(1) Whoever, except in the cases provided for by sub-section (2), commits rape shall be punished with imprisonment of either description for a term which shall not be less than seven years but which may be for life or for a term which may extend to ten years and shall also be liable to fine unless the woman raped is his own wife and is not under twelve years of age, in which case, he shall be punished with imprisonment of either description for a term which may extend to two years or with fine or with both:

In the case of ***Uday v. State of Karnataka reported in (2003) 1 C Cr LR (SC) at page 555***, it has been held that the consensus of judicial opinion is in favour of the view that the consent given by the prosecutrix to sexual intercourse with a person with whom she is deeply in love on a promise that he would marry her on a later date, cannot be said to be given under a misconception of fact. A false promise is not a fact within the meaning of the Code.

The Calcutta High Court, in the case of ***Shyamapada Tewari vs. The State of West Bengal & Anr.*** reported as 2008(1) F.J.C.C. 169,

while relying on the judgment of Hon'ble the Supreme Court in the case of **Uday** (supra) also held in para 15 as under :-

“15. To the contrary, the principles laid down in the case of **Uday v. State of Karnataka and Jayanti Rani Panda** are applicable in this case. The case under Section 376 IPC does not lie. There is nothing to show that the accused had no intention to marry the prosecutrix from the very beginning and the representation made by the accused was false to the knowledge of the accused at the time it was made. The case under Section 417 IPC is also not made out.”

Aurangabad Bench of Bombay High Court in the case of **Sunil Vishnu Salve and another vs. State of Maharashtra** reported as 2006 Crl. L.J. 587, while holding that breach of promise does not amount to an offence under Section 375 of the IPC held in para 9 as under :-

“ 9. On perusal of the provision contained in clause Fourthly of Section 375 of the India Penal Code, it would be seen that the provisions do not apply in the present situation. Clause Fourthly of Section 375 of the Indian Penal Code applies when a man induces a married woman to have sexual intercourse with him by impersonating her husband. When consent by a woman to a man under misconception of fact that he was her husband, it amounts to rape by a person to whom the woman believes to be her husband. In the present case, Vandana and accused No.1 were residing in the neighbourhood. Prosecutrix Vandana was major and there was consent to the sexual intercourse by her. It is a case of the prosecutrix that she consented to sexual intercourse believing that the accused would marry her. Under such circumstances, the act of sexual intercourse in January 1992 and repeated sexual intercourse between the two subsequently cannot be said to be illegal. The sexual intercourse

which is not illegal would not become illegal by refusal by accused No.1 to marry. It would be at the most breach of promise. But the act of sexual intercourse with consent of a major girl cannot be termed as rape as a consequences of breach of promise even if it is assumed that there was breach of promise.”

In view of the above discussion and even if the FIR is taken at its face value, offence under Sections 376 IPC are not made out in the facts of the present case.

Even otherwise, the matter has been compromised and the complainant herself has come forward for cancellation of the said FIR.

Learned Single Bench of this Court, while accepting the compromise under same offence in the case of ***Surinder Kamboj and others vs State of Punjab and another*** reported in 2008(1) RCR (Criminal) 21, held as under :-

“9. Normally courts may be reluctant to cut short prosecution in such like cases and quash FIR on the basis of compromise, but this case appears to be different and strange in nature. The prosecutrix apparently has blown hot and cold at different stages of the case. She first approached Human Rights Commission but then withdrew her complaint when it was found not substantiated on enquiry. She then approached this Court for proper enquiry into the FIR but again made a somersault by moving application for withdrawing her petition at subsequent stage. She seems to be somewhat consistent now and does not wish to prosecute this FIR registered at her instance. This matter was enquired into under the directions of Human Rights Commission. This independent probe has revealed that the allegations are not substantiated. It appears that the prosecutrix has been playing into the hands of some persons and has been used as pawn in some political game. This perhaps is the only

explanation for her changing stances at different stages of the pendency of this case. The fact remains that now the prosecutrix is no more interested in prosecuting this FIR against the petitioners. The proceedings against the petitioners would thus appear to be an abuse of process of Court.

10. xxx xxx xxx xxx

11. There is nothing to suggest that compromise in this case is abhorrent to lawful composition of the society or would promote savagery. Considering the facts as noticed in detail, it will be futile to allow this prosecution to continue and if allowed to continue, it may lead to abuse of the process of Court.”

Taking into account the facts of the present case, wherein, it is admitted that the petitioner No.1 got married to petitioner No.2 out of her own free will, the offence under Sections 366, 376 IPC and Section 25 of the Arms Act cannot be said to be made out just because the petitioner No.2 had entered into second marriage with petitioner No.1 during the pendency and subsistence of his first marriage. Moreover, the petitioner No.1 is happy to have entered into this wedlock with petitioner No.2. She has entered into the said wedlock out of her own free will and still wants to live with him. Thus, the offence under Sections 366 and 376 IPC and Section 25 of the Arms Act are not made out against petitioner No.2.

Accordingly, the present petition is allowed and the FIR No.347 dated 04.06.2010 under Sections 366 and 376 IPC and Section 25 of the Arms Act registered at Police Station Central Faridabad, District Faridabad, Haryana along with all subsequent proceedings arising therefrom are, hereby, quashed.

29.10.2010
gurpreet

(NIRMALJIT KAUR)
JUDGE