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* IN THE HIGH COURT OF DELHI AT NEW DELHI

+ BAIL APPLN. 1225/2024

PANKAJ BIDHURI

.....Petitioner

Through: Mr. Ramit Malhotra and Mr. Vikas Bakshi, Advocates.

versus

STATE NCT OF DELHI

.....Respondent

Through:

Mr. Utkarsh, APP for the State with Mr. Aayush Kumar Natrajan, Mr. Hiralal, Ms. Neeru Dua, Mr. B. L. Mittal and Mr. Aash Mohammd, Advocates with SI Usha Yadav, P.S.: Mehrauli.

Ms. Yashima Sharma, Mr. Zubair Hanifi, Mr. Saba Tasleem and Mr. Mustafa Alam, Advocates for the complainant.

CORAM:

HON'BLE MR. JUSTICE ANUP JAIRAM BHAMBHANI

ORDER

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30.08.2024

As recorded in order dated 05.08.2024, this court was inclined to examine whether the concept of a 'false promise of marriage', which attracts the offence of rape under section 375 of the Indian Penal Code, 1860 ('IPC'), would also include a promise of marriage *which is fulfilled* but results in a marriage which is void, voidable or otherwise untenable in law.

2. Notice on this petition was issued on 08.04.2024.
3. Status Report dated 13.05.2024 has been filed.
4. Nominal Roll dated 29.04.2024 has also been received from the Jail Superintendent.



5. The court has heard Mr. Ramit Malhotra, learned counsel appearing for the petitioner; Mr. Utkarsh, learned APP appearing for the State; and Ms. Yashima Sharma, learned counsel appearing for the complainant/prosecutrix. Learned counsel for the parties have cited various judgments in support of their rival contentions.
6. The principal contention raised on behalf of the petitioner is, that since the petitioner had performed a marriage with the prosecutrix on 24.07.2023, he had fulfilled the promise that he is alleged to have extended to the prosecutrix; and that therefore it cannot be said that the promise of marriage was false.
7. Furthermore, it is submitted on behalf of the petitioner, that the factum of the previous marriage of the petitioner was known to the prosecutrix, even before she associated and engaged in physical relations with the petitioner; and therefore there was no deception on the part of the petitioner.
8. Before proceeding further, it would be beneficial to recapitulate the enunciation of law in relation to a 'false promise of marriage' in the context of rape. The following judgements of the Supreme Court are relevant in this context. In ***Pramod Suryabhan Pawar vs. The State of Maharashtra & Anr.***¹ the Supreme Court has observed as follows :

"16. 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

¹ (2019) 9 SCC 608



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. The “consent” of a woman under Section 375 is vitiated on the ground of a “misconception of fact” where such misconception was the basis for her choosing to engage in the said act. In Deepak Gulati [Deepak Gulati v. State of Haryana, (2013) 7 SCC 675 : (2013) 3 SCC (Cri) 660] this Court observed : (SCC pp. 682-84, paras 21 & 24)

“21. ... There is a distinction between the mere breach of a promise, and not fulfilling a false promise. Thus, the court must examine whether there was made, at an early stage a false promise of marriage by the accused; and whether the consent involved was given after wholly understanding the nature and consequences of sexual indulgence. There may be a case where the prosecutrix agrees to have sexual intercourse on account of her love and passion for the accused, and not solely on account of misrepresentation made to her by the accused, or where an accused on account of circumstances which he could not have foreseen, or which were beyond his control, was unable to marry her, despite having every intention to do so. Such cases must be treated differently.

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“24. Hence, it is evident that there must be adequate evidence to show that at the relevant time i.e. at the initial stage itself, the accused had no intention whatsoever, of keeping his promise to marry the victim. There may, of course, be circumstances, when a person having the best of intentions is unable to marry the victim owing to various unavoidable circumstances. The “failure to keep a promise made with respect to a future uncertain date, due to reasons that are not very clear from the evidence available, does not always amount to misconception of fact. In order to come within the meaning of the term “misconception of fact”, the fact must have an immediate relevance”. Section 90 IPC cannot be called into aid in such a situation, to pardon the act of a girl in entirety, and fasten criminal liability on the other, unless the court is assured of the fact that from the very beginning, the accused had never really intended to marry her.”

(emphasis supplied)

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“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."

(emphasis supplied)

In the aforementioned case however, there was no allegation in the FIR that the promise to marry had been extended by the man in bad faith or with the intention to deceive the woman. The Supreme Court therefore held that the appellant's failure to fulfil his promise in 2016, which promise was made in 2008, cannot be construed to mean that the promise itself was false.

9. The next judgment by the Supreme Court that is relevant in this context is *Shambhu Kharwar vs. State of Uttar Pradesh & Anr.*² in which the Supreme Court Court has held as under :

"13. In this backdrop and taking the allegations in the complaint as they stand, it is impossible to find in the FIR or in the charge-sheet, the essential ingredients of an offence under Section 376 IPC. The crucial issue which is to be considered is whether the allegations indicate that the appellant had given a promise to the second respondent to marry which at the inception was false and on the basis of which the second respondent was induced into a sexual relationship. 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."

(emphasis supplied)

² 2022 SCC OnLine SC 1032



Based on the aforesaid discussion, the Supreme Court yet again held that the ingredients of the offence under section 376 of IPC were not established in that case.

10. On the other hand, in support of his contentions, Mr. Malhotra, learned counsel appearing for the petitioner has relied-upon the following judgments of the Supreme Court. First, counsel refers to ***Ajeet Singh vs. State of Uttar Pradesh and Ors.***³ in which the Supreme Court has said :

“11. 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 22-4-2015 and has never returned to take her back.

“12. The notice dated 1-5-2015 issued by the advocate for the victim clearly admits that the marriage between the appellant and the victim was solemnised on 16-2-2015. A copy of the statement of the victim recorded on 23-11-2016 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 4-12-2014. Thereafter, the physical relationship was maintained by the appellant. She stated that on 16-2-2015, the appellant took her to Arya Samaj Mandir and solemnised the marriage where no other person was present. She stated that thereafter, they stayed in a hotel till 19-2-2015. 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

³ (2024) 2 SCC 422



the legal notice issued on behalf of the appellant, the factum of marriage was admitted.

"13. 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 solemnisation 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 State of Haryana v. Bhajan Lal [State of Haryana v. Bhajan Lal, 1992 Supp (1) SCC 335 : 1992 SCC (Cri) 426] will apply. Hence, a case was made out for quashing the FIR."

Second, learned counsel for the petitioner relies upon the decision of the Supreme Court in ***Sheikh Arif vs. The State of Maharashtra and Ors.***⁴, to point-out the following observation in that judgement:

"12. If this material, which is a part of the investigation papers, is perused carefully, it is obvious that the physical relationship between the Appellant and the second Respondent was consensual, at least from 2013 to 2017. The fact that they were engaged was admitted by the second Respondent. The fact that in 2011, the Appellant proposed her and in 2017, there was engagement is accepted by the second Respondent. In fact, she participated in the engagement ceremony without any protest. However, she has denied that her marriage was solemnised with the Appellant. Taking the prosecution case as correct, it is not possible to accept that the second Respondent maintained a physical relationship only because the Appellant had given a promise of marriage."

(emphasis supplied)

⁴ 2024 INSC 70



11. Upon a careful consideration of the foregoing judgments cited on behalf of the petitioner, it is seen that those were not cases of a man *who was already married*. Since, in the aforesaid two cases, the accused was not a married man, therefore the factual matrix obtaining in those cases is clearly distinguishable from the one obtaining in the present case.
12. The petitioner has also placed reliance on another judgment of the Supreme Court in ***Dhruvaram Murlidhar Sonar vs. The State of Maharashtra and Ors.***⁵ which was a case of a married man, *who had informed the prosecutrix about his marital status*, but he was engaging in a sexual relationship with the woman, since he had *differences with his wife*, in which context the Supreme Court held that :

“23. Thus, there is a clear distinction between rape and consensual sex. The court, in such cases, must very carefully examine whether the complainant had actually wanted to marry the victim or had mala fide motives and had made a false promise to this effect only to satisfy his lust, as the latter falls within the ambit of cheating or deception. There is also a distinction between mere breach of a promise and not fulfilling a false promise. If the accused has not made the promise with the sole intention to seduce the prosecutrix to indulge in sexual acts, such an act would not amount to rape. There may be a case where the prosecutrix agrees to have sexual intercourse on account of her love and passion for the accused and not solely on account of the misconception created by accused, or where an accused, on account of circumstances which he could not have foreseen or which were beyond his control, was unable to marry her despite having every intention to do. Such cases must be treated differently. If the complainant (sic. accused) had

⁵ (2019) 18 SCC 191



any mala fide intention and if he had clandestine motives, it is a clear case of rape. The acknowledged consensual physical relationship between the parties would not constitute an offence under Section 376 IPC.”

(emphasis supplied)

13. Upon considering the legal landscape as set-out above, and on a conspectus of the facts and circumstances of the case, what weighs with the court *at this stage* are the following considerations :
 - 13.1. Firstly, it is undisputed that the petitioner *was already married with two children*;
 - 13.2. Secondly, despite being married, the petitioner *admittedly extended a promise of marriage* to the prosecutrix, which is seen from the narration in the FIR as well as the chargesheet, which is also the reason why the petitioner *purported* to contract a marriage with the respondent on 24.07.2023. However, since both parties are admittedly Hindus, in view of section 5 of the Hindu Marriage Act 1955, as interpreted by the courts, the marriage solemnised between them was void, since one of them (namely the petitioner) had a spouse living at the time of their marriage;
 - 13.3. Thirdly, as per what is recorded in the FIR and also subsequently in the charge-sheet, the prosecutrix says that she was not aware of the petitioner's subsisting marriage; and it is therefore for the petitioner to prove to the contrary in the course of the trial. In the circumstances, it cannot be said that the promise of marriage extended by the petitioner to the prosecutrix was an *honest* promise.



14. Ergo, based on the material on record at this stage, and subject to what may come through at the trial, it would appear that the promise of marriage extended by the petitioner to the prosecutrix *was false at the inception* in the words of the Supreme Court in *Shambhu Kharwar* (supra), since the petitioner could not have extended a promise of marriage to the prosecutrix when he was already married.
15. Therefore, on a *prima-facie* appreciation of the matter, it is evident that the petitioner extended a false promise of marriage to the prosecutrix.
16. It also appears believable, at least at this stage, and subject to any contrary evidence being brought on record in the course of trial, that the prosecutrix engaged in physical relations with the petitioner since he had promised to marry her. Added to this is the fact, that not only did the petitioner extend a false promise to marry, but he also pretended to fulfil that promise by contracting a marriage with the prosecutrix, which was another step that he took towards misrepresentation, deceit and falsehood *vis-a-vis* the prosecutrix.
17. The matter is stated to be at the stage of framing of charge, which is scheduled on 12.09.2024 before the learned Trial Court.
18. The petitioner's Nominal Roll dated 29/30.04.2024 shows that as of 29.04.2024, he had been in judicial custody for about 05 months.
19. In the circumstances, this court is not satisfied *at this stage* that if enlarged on bail, the petitioner would not attempt to indulge in similar conduct, which is likely to interfere and prejudice the course of trial.
20. In the above view of the matter, the present bail petition is dismissed.



21. Pending applications, if any, also stand disposed-of.
22. Nothing in this order shall be taken as an expression on the merits of the matter.

ANUP JAIRAM BHAMBHANI, J

AUGUST 30, 2024/ak