

\* IN THE HIGH COURT OF DELHI AT NEW DELHI + Criminal M.C. No.3877 of 2009 & C.M. Appl. No.13231/2009 % 29.07.2010 HARISH KUMAR ... Petitioner Through: Mr. Manoranjan & Mr. Gurusharan Singh,

Advocates.

Versus

STATE ...Respondent Through: Mr. Sunil Sharma, APP for the State.

Reserved on: 13th July, 2010

Pronounced on: July 29, 2010

JUSTICE SHIV NARAYAN DHINGRA

1. Whether reporters of local papers may be allowed to see the judgment? Yes.
2. To be referred to the reporter or not? Yes.
3. Whether judgment should be reported in Digest? Yes. JUDGMENT

1. The present petition has been filed by the petitioner under Section 482 Cr.P.C. for quashing of F.I.R. No.314 of 2006 registered at Police Station Bhajanpura against the petitioner under Sections 376/493 IPC. The allegations made by the prosecutrix in her complaint to the police are as under :-

"Opposite to our house in Bhajanpura, there was house of Sh. Ramdhan and I and my family used to visit house of Sh. Ramdhan as a neighbourer. Accused Harish also used to visit house of Sh. Ramdhan since he was a cousin of Sh. Ramdhan. Harish started expressing his love for me but I did not give positive response. However, after sometime, I fell in love with Harish and Harish started assuring me that he would marry me. About four years back (from the date of filing complaint), Harish was alone at Sh. Ramdhan's house and I was also there when Harish put vermilion in my hair and assured me that Crl. M.C. No.3877/2009 Page No.1 of 2 when time comes, he would marry me and thereafter, he started having intercourse with me. This continued for about four years. I did not tell anybody at my home about this relationship. For the last one month, I was telling Harish that he should tell his relatives about the marriage so that we could live together. Since then Harish neither talks to me nor he want to live with me. Harish had been having intercourse with me on the promise of marriage. Action should be taken against Harish as per law."

2. On the basis of above statement of prosecutrix, a case under section 376/493 IPC was registered against the accused. The statement makes it apparent that the prosecutrix was aware that she was not married to Harish and marriage between her and Harish was yet to take place. She had developed intimacy and she herself was in love with Harish and she and Harish with consent of each other were enjoying each other's body and having sexual relationship. Since it is a case of obvious consent of the prosecutrix, who was aware that no marriage had taken place and marriage between parties was yet to take place, no case either under Section 376 or 493 IPC is made out.

3. The F.I.R. registered against the accused is a gross misuse of powers by the police and is liable to be quashed and is hereby quashed.

4. The petition stands disposed of.

SHIV NARAYAN DHINGRA

[JUDGE]

JULY 29, 2010

'AA'

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