

Delhi High Court
Prashant Bharti vs The State on 16 January, 2009

Â Â

IN THE HIGH COURT OF DELHI AT NEW DELHI Judgment reserved on : January 12, 2009 Judgment delivered on : January 16, 2009 Criminal Revision Petition No.08/2009

16.01.2009

Crl.M.A.No.154/2009 (stay) and Crl.M.A. No.155/2009. Prashant Bharti ... Appellant Through: Mr. Rakesh Malhotra, Advocate versus

The State ... Respondent Through: Mr. Amit Sharma, Additional Public Prosecutor for State CORAM:

HON'BLE MR. JUSTICE SUNIL GAUR

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

SUNIL GAUR, J.

Crl.M.A. 155/2008

1. Exemption application is allowed, subject to just exceptions.
2. This application stands disposed of. Criminal Revision Petition No.08/2009

Crl.M.A.No.154/2009 (stay)

1. Petitioner has been called upon by the trial court vide impugned order of 1st December, 2008, to face the trial for the offences under Section 354/328/376 of the IPC. In this petition, charge framed against the petitioner for aforesaid offences is also impugned.

2. Stand of the petitioner is that the prosecutrix was working in a private firm and on 15th February, 2007 she had accompanied the petitioner in his car and the prosecutrix was allegedly given a cold drink by the petitioner and after consuming the same, she became unconscious and the petitioner allegedly outraged her modesty and thereafter the prosecutrix went to her house in auto rikshaw and on the next day, FIR under Section 328/354 of the IPC was registered against the petitioner. Thereafter, on 21st February, 2007 prosecutrix made a supplementary statement alleging that the petitioner had established physical relations with her on the assurance of marrying her and accordingly, petitioner was also accused of raping her.

3. Taking note of the statement of the prosecutrix recorded under Section 164 of the Cr.P.C. and the chargesheet filed in this case, trial court vide impugned order has put the petitioner on trial for the aforesaid offences.

4. Learned counsel for the petitioner contends that the prosecutrix had earlier married twice and on the alleged date of incident, she was living with her husband Manoj at Tughlakabad and the allegations levelled by the prosecutrix against the petitioner are patently false. Reliance has been placed upon judgments reported in

(2003) 4 SCC 46; (2005) 1 SCC 88; 2005 (3) JCC 1611 and (2007) 7 SCC 413, to contend that the prosecutrix was aged 22 years and was already married and even if it is taken that a false promise of marriage was made, still the offence of rape is not made out. Nothing else is urged on behalf of the petitioner.

5. It is matter of record that petitioner had earlier filed Criminal Writ Petition No.1112/2007 for getting this FIR quashed and the said Writ Petition was dismissed by brother Shiv Narain Dhingra, J. on 27th August, 2007 by holding as under :-

?This court cannot quash the FIR on the ground that FIR was false FIR. In case of false FIR, it must be brought to its logical conclusion and Investigating Officer must give a report to that effect. In this case, if it is found that the petitioner has been falsely implicated and the complaint was false, it would be obligatory on the part of the Investigating Officer to register a case and book the prosecutrix for falsely implicating the person in an offence under Section 376 IPC. It is a very serious matter that a prosecutrix just by making a false statement can book somebody in offence under Section 376 IPC, which is serious in nature and invites a minimum punishment of 07 years. I consider that Investigating Officer shall submit a detailed report and in case, it is found that the petitioner was falsely implicated, he would take steps for booking the complainant for falsely implicating the petitioner. The writ petition is disposed of with above directions.?

6. Strangely, prosecutrix also sought quashing of this FIR vide Writ Petition (Criminal) 257/2008 stating that she has resolved all her differences with the accused/ petitioner herein and said Writ Petition was also dismissed by my esteemed sister Rekha Sharma, J on 25th February, 2008 while concurring with the aforesaid observations made by brother Shiv Narain Dhingra, J, while dismissing petitioner?s petition for quashing of the FIR in question.

7. The two decisions of the Apex Court reported in (2003) 4 Supreme Court Cases 46 and (2005) 1 Supreme Court Cases 88, relied upon by the petitioner are after trial and are of no assistance to the case of the petitioner as the present case is at its threshold. In the decision reported in 2005(3) JCC 1611 relied upon by the petitioner, on facts it was found that the promise of the accused to marry the prosecutrix was not false from its inception.

8. Aforesaid decision is of no avail to the petitioner as it cannot be said in the present case, at this stage, as to whether the promise to marry the prosecutrix was only to seduce the prosecutrix to sexual act or not? In the decision reported in (2007) 7 SCC 413, revision against charge was dismissed by the High Court at Patna by cryptic order and the said order was set aside by the Apex Court and the matter was remanded to the High Court to decide afresh.

9. Petitioner wants that at this initial stage, this Court to give a finding that the petitioner?s intention was to marry the prosecutrix, right from the beginning. This cannot be done while exercising revisional jurisdiction.

10. If on the facts, it is established that at the very inception of the making of promise, the accused did not really entertain the intention of marrying her and the promise to marry held out by him was a mere hoax, the consent ostensibly given by the victim will be of no avail to the accused to exculpate him from the ambit of clause Secondly of Section 375 of IPC.

11. The scope of scrutiny at the stage of charge is quite narrow and it stands highlighted in a recent verdict of the Apex Court in case of Hem Chand V. State of Jharkhand {2008 (4) AD (SC) 94} in the following words:-
?The crystallised judicial view is that at the stage of framing charge, the court has to prima facie consider whether there is sufficient ground for proceeding against the accused. The Court is not required to appreciate evidence to conclude whether the materials produced are sufficient or not for convicting the accused.

The Court at the stage of framing charge exercises a limited jurisdiction. It would only have to see as to whether a prima facie case has been made out. Whether a case of probable conviction for commission of an

offence has been made out on the basis of materials found during investigation should be the concern of the Court. It, at that stage, would not delve deep into the matter for the purpose of appreciation of evidence. It would ordinarily not consider as to whether the accused would be able to establish his defence, if any.?

12. Truthfulness or falsity of the allegations, essentially pertains to the realm of evidence and the same cannot be pre-judged at this initial stage. I do not find any illegality or infirmity in the impugned order. Consequently, this Revision Petition is dismissed in limine while making it clear that anything stated herein shall not be construed as an opinion on merits at trial.

13. This petition and pending application stands accordingly disposed. SUNIL GAUR, J

January 16, 2009

dkg

Crl.Rev.(P). 8/20090Page 1

Â