

Mayank Pandey Vs. State and ors

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Court : Delhi

Decided On : Dec-16-2013

Judge : Sunita Gupta

Appellant : Mayank Pandey

Respondent : State and ors

Advocate for Def. : Mr. Pramod Saxena

Advocate for Pet/Ap. : Mr. Rohit Chaudhary

Judgement :

\$~ * IN THE HIGH COURT OF DELHI AT NEW DELHI + CRL.M.C. 2206/2013
Date of Decision:

16. h December, 2013 MAYANK PANDEY Petitioners Through: Mr. Rohit Chaudhary, Advocate. versus STATE & ORS Respondents Through: Mr. Pramod Saxena, APP for State. CORAM: HONBLE MS. JUSTICE SUNITA GUPTA

JUDGMENT

: SUNITA GUPTA, J.

1. This is a petition under Section 482 of the Code of Criminal Procedure 1973 for quashing of FIR No.100/2013 dated 13.03.2013 under Section 376 IPC registered

at PS Malviya Nagar, District South, New Delhi.

2. The ground for quashing of the aforesaid FIR is that the matter has been compromised. The petitioner and respondent No.2 are living happily as husband and wife. Marriage certificate along with marriage photographs have been placed on record.

3. I have heard the learned counsel for the petitioner as well as the learned Additional Public Prosecutor for the State and have gone through the record.

4. The main contention of the counsel for the petitioner is that the petitioner is married to respondent No.2 and therefore both of them are now living happily. The prosecutrix has agreed not to pursue the complaint and as such keeping in view the larger interest of justice, the FIR be quashed. Reliance was placed on Pradeep Kumar @ Pradeep Kumar Verma vs. State of Bihar and Anr. (2007) 7 SCC413 5. On the other hand, learned Public Prosecutor for the State has opposed the quashing of the aforesaid FIR and the consequent proceedings on the ground that the offence is non compoundable. Reliance was placed on Gian Singh vs. State of Punjab and Anr. (2012) 10 SCC303 for submitting that even if the prosecutrix has settled the dispute with the petitioner since the offence has a serious impact on society, the FIR cannot be quashed.

6. I have given my considerable thoughts to the respective submissions of learned counsel for the parties and have gone through the record.

7. The FIR in the instant case was registered on 13.03.2013 on the statement of the prosecutrix wherein she alleged that she was working with Sun Pharmaceuticals as National Head Auditing. She had done MBA from IMM, Qutab Institutional Area in the year 2005-07 and the petitioner was in the same branch. From January, 2011 she and petitioner started conversing on phone and started meeting each other. During this period they visited each other several times at different places in Delhi. Petitioner was residing in Flat No.11, Aastha Apartments, Savitri Nagar, Near Shiv Mandir as a tenant from October, 2011 to 13th September, 2012. She frequently used to go to his place and used to stay there for 2-3 days in 15 days every month. They were physically involved with each other.

During this period, in December, 2011 Mayank tried to forcefully impose himself on her physically and he was drunk also. She stopped him several times, but he assaulted her sexually. In January and February, 2012 he tried the same attempts on her, because of which she got pregnant in the month of February, 2012. She conceived because of forceful sexual assault on her. After knowing this fact he started beating her due to which miscarriage took place in the month of May, 2012 of 10-12 weeks baby. In the month of October, 2011, his family agreed for the marriage but later on refused to marry her. It seems he used her and was never having intention of marrying her. She prayed for necessary action against him.

7. As per the status report, the statement of prosecutrix was recorded under Section 164 Cr.P.C. wherein she reiterated the averments made in the complaint. However, it was further stated that Mayank was arrested and he was granted bail on 18th March, 2013. On 20.03.2013, they got married in Arya Samaj Mandir with the consent of both the families. Now she is living happily with her husband and does not want to pursue the case.

8. The charge sheet was submitted in the Court and the case is pending trial. In *Gian Singh (Supra)*, Honble Supreme Court dealt with the scope of powers of High Court to quash criminal proceedings involving non compoundable offences in view of the compromise arrived at between the parties. Various guidelines were laid down and categories of cases in which such powers can be exercised. It will be in fitness of things to reproduce the observations as under:

The position that emerges from the above discussion can be summarised thus: the power of the High Court in quashing a criminal proceeding or FIR or complaint in exercise of its inherent jurisdiction is distinct and different from the power given to a criminal court for compounding the offences Under Section 320 of the Code. Inherent power is of wide plenitude with no statutory limitation but it has to be exercised in accord with the guideline engrafted in such power viz; (i) to secure the ends of justice or (ii) to prevent abuse of the process of any Court. In what cases power to quash the criminal proceeding or complaint or F.I.R may be exercised where the offender and victim have settled their dispute would depend on the facts and circumstances of each case and no category can be prescribed. However,

before exercise of such power, the High Court must have due regard to the nature and gravity of the crime. Heinous and serious offences of mental depravity or offences like murder, rape, dacoity, etc. cannot be fittingly quashed even though the victim or victim's family and the offender have settled the dispute. Such offences are not private in nature and have serious impact on society. Similarly, any compromise between the victim and offender in relation to the offences under special statutes like Prevention of Corruption Act or the offences committed by public servants while working in that capacity etc; cannot provide for any basis for quashing criminal proceedings involving such offences. But the criminal cases having overwhelmingly and predominately civil favour stand on different footing for the purposes of quashing, particularly the offences arising from commercial, financial, mercantile, civil, partnership or such like transactions or the offences arising out of matrimony relating to dowry, etc. or the family disputes where the wrong is basically private or personal in nature and the parties have resolved their entire dispute. In this category of cases, High Court may quash criminal proceedings if in its view, because of the compromise between the offender and victim, the possibility of conviction is remote and bleak and continuation of criminal case would put accused to great oppression and prejudice and extreme injustice would be caused to him by not quashing the criminal case despite full and complete settlement and compromise with the victim. In other words, the High Court must consider whether it would be unfair or contrary to the interest of justice to continue with the criminal proceeding or continuation of the criminal proceeding would tantamount to abuse of process of law despite settlement and compromise between the victim and wrongdoer and whether to secure the ends of justice, it is appropriate that criminal case is put to an end and if the answer to the above question(s) is in affirmative, the High Court shall be well within its jurisdiction to quash the criminal proceeding.

9. A perusal of the aforesaid observations goes to show that offence of rape was considered to be one of the heinous and serious offences which is not private in nature but has a serious impact on society and therefore despite the fact that the parties have settled the disputes, the court should not exercise its inherent jurisdiction for quashing of the FIR in such cases.

10. Shimbhu and Anr. vs. State of Haryana 2013IX AD (S.C.) 109, 2013 was a case where SLP was preferred before the Honble Supreme Court against the order passed by the High Court whereby the appeals filed by the appellant were dismissed and the order of conviction and sentence awarded by the Additional Sessions Judge was upheld. During the pendency of the appeal the affidavits signed by the victim was placed on record for showing that she has compromised the matter with the accused. It was observed that a compromise entered into between the parties cannot be construed as a leading factor based on which lesser punishment can be awarded. Rape is a non-compoundable offence and it is an offence against the society and is not a matter to be left for the parties to compromise and settle. Since the Court cannot always be assured that the consent given by the victim in compromising the case is a genuine consent, there is every chance that she might have been pressurized by the convicts or the trauma undergone by her all the years might have compelled her to opt for a compromise. In fact, accepting this proposition will put an additional burden on the victim. The accused may use all his influence to pressurize her for a compromise. So, in the interest of justice and to avoid unnecessary pressure/harassment to the victim, it would not be safe in considering the compromise arrived at between the parties in rape cases to be a ground for the Court to exercise the discretionary power under the proviso of Section 376 (2) of Indian Penal Code.

11. Anil Kumar & Ors. vs. State of NCT of Delhi in terms of Crl. M.C. 3216/2012 was again a case where joint petition under Sections 376/420/34 IPC was filed on the ground that the parties have entered into marriage. However, the petition was dismissed by observing that it was not a fit case where Court should come to the rescue of a perverted person and give him a relief. The offence of rape is a crime against the society. The FIR in such like cases if quashed, will only give impetus to persons with like-minded mentality to commit the crime. Therefore, it is not a fit case where Court ought to exercise its inherent power under Section 482 Cr.P.C. and quash the proceedings.

12. Pradeep Kumar (Supra) relied upon by the learned counsel for the petitioner does not help him in as much as, SLP was filed against the order of High Court whereby the application filed by the appellant for discharge was rejected. In that

case, the FIR alleged that accused had physical relationship with the informant on the promise that he would marry her and they were married in a temple but accused denied of that and married another girl. However, statement of informant was recorded under Section 164 Cr.P.C. and a charge sheet was submitted. An application was moved by the accused under Section 227 Cr.P.C. for discharge which was rejected. The matter was remitted for further consideration to see whether the provisions of Section 376/406 IPC have any application to the facts of the case in hand and the application could not have been dismissed in a summary manner.

13. In the instant case charge sheet has already been submitted. It will be open to the petitioner to make necessary submissions as to whether the provisions of Section 376 IPC are made out or not before the Trial Court at the time of hearing arguments on charge and any observation made herein shall have no reflection on merits of the case and it will be for the learned Trial Court to see whether offences under Section 376/406 IPC are made out or not.

14. However, so far as quashing of the petition is concerned, in view of the discussions made above, same is not warranted.

13. That being so, the petition is dismissed. SUNITA GUPTA (JUDGE)
DECEMBER16 2013 cl

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