

Anil Gupta and anr Vs. State

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Court : Delhi

Decided On : Jul-23-2014

Judge : Indermeet Kaur

Appellant : Anil Gupta and anr

Respondent : State

Judgement :

* IN THE HIGH COURT OF DELHI AT NEW DELHI % Judgment reserved on :22.07.2014. Judgment delivered on :23.07.2014 CRL.M.C. 2042/2014 & CrI. M.A. No.6850/2014 + ANIL GUPTA & ANR Petitioners Through Mr. Sunil K. Mittal and Mr. Sumit Chaudhary and Ms. Vaishali Mittal, Advs. versus STATE Respondent Through Ms. Fizani Hussain, APP CORAM: HON'BLE MS. JUSTICE INDERMEET KAUR INDERMEET KAUR, J.

1 Petitioners Anil Gupta and Naresh Gupta seek quashing of the FIR No.540/2009 registered at PS Jahangir Puri pursuant to which the charge-sheet has been filed against them under Sections 363/366/376(G)/34 of the IPC with the additional prayer that the order dated 31.10.2013 directing framing of charges against the petitioners also be quashed. 2 Record shows that on the complaint of Ansaro Khatun alleging that her daughter R aged 16 years had been kidnapped by two persons namely Niranjana and Sumit @ Santosh, FIR under Sections 363/366 read with Section 34 of the IPC had been registered. Investigation was transferred to HC Dalip. Charge-sheet was filed on 03.11.2010. 3 Facts reveal that R was

working in the house of Ashok Gupta as a maid servant. Niranjana was also working there. Sumit @ Santosh was working in the neighbour's house. The offence of kidnapping is alleged to have occurred on 18.09.2009. The complaint was lodged by Ansaro Khatun on 06.10.2009. The victim was recovered from Chaon Basti, Moradabad on 03.07.2009. 4 She was medically examined on the same day. In the MLC, it was noted that she was working in the house of Naresh Gupta; being caretaker of their baby, she used to move along with the family. One day in the evening after lunch, she became unconscious and found herself in a room with Niranjana and Santosh. They had handed her over to petitioner Anil Gupta of Moradabad where she lived with him as his wife. Missing report was lodged. She was thereafter recovered. This is the gist of the history given by the victim at the time when her medical examination was conducted. 5 The statement of the victim was recorded under Section 164 of the Cr.PC on the following day i.e. on 04.07.2010. This was recorded on oath before the learned Magistrate. In this statement, she had alleged that she was working in kothi of Naresh Gupta; Niranjana was also working as a servant in the same house. Sumit @ Santosh was employed as a servant in the neighbour's house. One day, Naresh took her to the market for shopping where Naresh, Santosh and Niranjana had committed a wrong act upon her (without her consent); she was threatened. She was confined in Delhi for two days and then handed over to Anil Gupta. Anil Gupta took her to Moradabad where he kept her in a rented accommodation. Anil Gupta had not committed rape upon her. She was later on recovered. This was her version in the statement under Section 164 of the Cr.PC. 6 On 21.07.2010, the victim had made a complaint to the SHO Jahangir Puri wherein she disclosed the fact that she was recovered from Moradabad; she had been handed over to Anil Gupta who used to administer stupefying substance to her. He had taken her nude photographs and had threatened her in that context. She has falsely named Naresh Gupta under the fear of Anil Gupta. Naresh had never committed any indecent act upon her. 7 On the same day i.e. on 22.07.2010, the victim moved an application before the concerned Court seeking a prayer that her statement may be re-recorded under Section 164 of the Cr.PC. This application was dismissed. 8 Learned counsel for the petitioners has highlighted these facts vehemently. His submission is that the prosecutrix was blowing hot and cold. In the MLC, she had not named Naresh

Gupta; she had further stated that she had lived with Anil Gupta as his wife. This was on 03.07.2010. In her statement under Section 164 of the Cr.PC which was recorded on 04.07.2010, she had again exonerated Anil Gupta but had attributed a role to Naresh Gupta stating that he had also committed rape upon her. On 22.07.2010 i.e. one day thereafter, the victim had again turned topsy turvy and had attributed a specific role to Anil Gupta. She had also exonerated Naresh Gupta at that time stating that she had named Naresh under the threat and fear of Anil Gupta. On the same day, she had also made a prayer for re-recording of her statement which was not permitted. 9 Supplementary charge-sheet was also filed wherein the investigation revealed that the prosecutrix had in fact not been recovered from Moradabad but she was in Delhi at the relevant time. 10 The victim undoubtedly is blowing hot and cold and is shifting stands but the submission of the learned counsel for the petitioners that this is only for the purpose of extorting money from Naresh Gupta (owner of the kothi where the victim was working) is not wholly answered as in her statement under Section 164 of the Cr.P.C., although she had named Naresh Gupta, yet two weeks later, she had exonerated him and on the same day, she had also sought an assistance from the Court for getting her statement re-recorded. Further submission of the learned counsel for the petitioners is that in such a situation, the trial will be a trial in futility as the changing stands of the victim at different points of view must accrue for the benefit of the accused. Learned counsel for the petitioner has placed reliance upon (2013) 9 SCC293 Prashant Bharti Vs. State of NCT of Delhi to substantiate his stand that in a similar circumstance where the factual matrix of the case was almost similar, the Court had thought it to be a fit case to quash the charge-sheet. Submission being that the judicial conscience of the Court in such a situation should not be allowed to continue with such a trial as it will be an exercise in futility. 11 Needless to state that these submissions have been refuted by the learned APP for the State. Submission of the learned APP for the State on this count being that from another point of view, this may have been done at the behest of Naresh Gupta. 12 As far as the judgment of Prashant Bharti (supra) is concerned, the factual matrix of that case was different. There were 11 narrations which were noted by the Court to hold that the sole accused in that case was not present at the time when the incident had allegedly occurred. The relevant extract reads herein as under:

Firstly, the Appellant-accused was in Sector 37, Noida in the State of Uttar Pradesh on 15.2.2007. He was at Noida before 7.55 pm. He, thereafter, remained at different places within Noida and then at Shakarpur, Ghaziabad, Patparganj, Jorbagh etc. From 9.15 pm to 11.30 pm on 15.2.2007, he remained present at a marriage anniversary function celebrated at Rangoli Lawns at Ghaziabad, Uttar Pradesh. An affidavit to the aforesaid effect filed by the Appellant-accused was found to be correct by the investigating officer on the basis of his mobile phone call details. The accused was therefore not at the place of occurrence, as alleged in the complaint dated 16.2.2007. Secondly, verification of the mobile phone call details of the complainant/prosecutrix Priya revealed, that on 15.2.2007, no calls were made by the Appellant-accused to the complainant/prosecutrix, and that, it was the complainant/prosecutrix who had made calls to him. Thirdly, the complainant/prosecutrix, on and around the time referred to in the-complaint dated 16.2.2007, was at different places of New Delhi i.e., in Defence Colony, Greater Kailash, Andrews Ganj and finally at Tughlakabad Extension, as per the verification of the investigating officer on the basis of her mobile phone call details. The complainant was also not at the place of occurrence, as she herself alleged in the complaint dated 16.2.2007. Fourthly, at the time when the complainant/prosecutrix alleged, that the Appellant-accused had misbehaved with her and had outraged her modesty on 15.2.2007 (as per her complaint dated 16.2.2007), she was actually in conversation with her friends (as per the verification made by the investigating officer on the basis of her mobile phone call details).Fifthly, even though the complainant/prosecutrix had merely alleged in her complaint dated 16.2.2007, that the accused had outraged her modesty by touching her breasts, she had subsequently through a supplementary statement (on 21.2.2007), levelled allegations against the accused for offence of rape. Sixthly, even though the complainant/prosecutrix was married to one Manoj Kumar Soni, s/o Seeta Ram Soni (as indicated in an affidavit appended to the Delhi police format for information of tenants and duly verified by the investigating officer, wherein she had described herself as married), in the complaint made to the police (on 16.2.2007 and 21.2.2007), she had suggested that she was unmarried. Seventhly, as per the judgment and decree of the Civil Judge (Senior Division), Kanpur (Rural) dated 23.9.2008, the complainant was married to Lalji Porva on

14.6.2003. The aforesaid marriage subsisted till 23.9.2008. The allegations made by the complainant dated 16.2.2007 and 21.2.2007 pertain to occurrences of 23.12.2006, 25.12.2006, 1.1.2007 and 15.2.2007, i.e., positively during the subsistence of her marriage with Lalji Porwal. Thereafter, the complainant Priya married another man Manoj on 30.9.2008. This is evidenced by a "certificate of marriage" dated 30.9.2008. In view of the aforesaid, it is apparent that the complainant could not have been induced into a physical relationship, based on an assurance of marriage. Eighthly, the physical relationship between the complainant and the accused was admittedly consensual. In her complaints Priya had however asserted, that her consent was based on a false assurance of marriage by the accused. Since the aspect of assurance stands falsified, the acknowledged consensual physical relationship between the parties would not constitute an offence under Section 376 Indian Penal Code. Especially because the complainant was a major on the date of occurrences, which fact emerges from the "certificate of marriage" dated 30.9.2008, indicating her date of birth as 17.7.1986. Ninthly, as per the medical report recorded by the AIIMS dated 16.2.2007, the examination of the complainant did not evidence her having been poisoned. The instant allegation made by the complainant cannot now be established because even in the medical report dated 16.2.2007 it was observed that blood samples could not be sent for examination because of the intervening delay. For the same reason even the allegations levelled by the accused of having been administered some intoxicant in a cold drink (Pepsi) cannot now be established by cogent evidence. Tenthly, The factual position indicated in the charge-sheet dated 28.6.2007, that despite best efforts made by the investigating officer, the police could not recover the container of the cold drink (Pepsi) or the glass from which the-complainant had consumed the same. The allegations made by the complainant could not be verified even by the police from any direct or scientific evidence, is apparent from a perusal of the charge-sheet dated 28.6.2007. Eleventhly, as per the medical report recorded by the AIIMS dated 21.2.2007 the assertions made by the complainant that the accused had physical relations with her on 23.12.2006, 25.12.2006 and 1.1.2007, cannot likewise be verified as opined in the medical report, on account of delay between the dates of occurrences and her eventual medical examination on 21.2.2007. It was for this

reason, that neither the vaginal smear was taken, nor her clothes were sent for forensic examination.

13 In that case, the call details collected by the prosecution had substantiated that the victim at that point of time was at a separate place and accused was at a separate place. Moreover, the allegation made by the victim (in that case) was that because of false promise of marriage, Prashant Bharti had made physical relations with her; the victim herself being a married woman; a promise of marriage could not have been made to an already married lady. Factual matrix being totally different, submission of the learned counsel for the petitioners that this judgment would apply on all fours to the instant case has no merit. 14 The Supreme Court in a recent judgment reported as (2012) 10 SCC303 Gian Singh Vs. State of Punjab & Another while dealing with the powers of the Court under Section 482 of the Cr.PC had noted that the inherent powers of the Court should be used sparingly in heinous offences including the offence of rape; offence being not against an individual but against society, the Courts must be still more careful. 15 The judgment of Prashant Bharti was delivered subsequently. This was also an exercise of powers by the Supreme Court under Section 482 of the Cr.PC. This itself answers the query of the learned counsel for the petitioners. There is no doubt that as and when a case is made out on its own factual matrix which persuades the conscience of the Court to hold that the criminal proceedings are nothing but an abuse of the process of the Court, the inherent powers vested in the High Court must be used. In fact in such a situation, it may become almost obligatory on the part of the Court to exercise such a power as no person should be coerced or forced into a mala-fide and frivolous litigation whose negative end is already known. A holistic approach had to be adopted. 16 Facts of the instant case do not justify such a conclusion. The trial Court while noting the discrepancies in the version of the prosecutrix had observed as under:

35. Coming to the discrepancies in the statements made by the prosecutrix, which is the point NO.13 of reference for further investigation, it is seen that IO Insp. Arti Sharma had no occasion to interact with the prosecutrix while reinvestigating the case as she has clearly mentioned in the supplementary charge sheet itself. In the supplementary charge sheet, IO has stated that prosecutrix was brought to her

office only on 29.9.2011 by her mother and advocate and her written statement was handed over to her which she reproduced in writing u/s 161 Cr.P.C. If that said statement is taken to be correct response of point NO.13 contained in the reference, then none of the four accused including accused Anil Gupta and Naresh Gupta can be discharged. Rather all the discrepancies made by the prosecutrix in her earlier statements, those under Section 161 Cr.P.C., under Section 164 Cr.P.C. and history mentioned on MLC, stand explained. The reason why prosecutrix had filed an application before learned MM for recording of a second statement under Section 164 Cr.P.C. and a complaint which was given DD No.43B dated 22.07.2010 at PS Jagangir Puri, also stand explained and point out to specific role of Sh. Rattan Lal, co-brother of accused Naresh Gupta in filing the same.

36. Moreover, the statement (s) dated 27.10.2010 of one Sudhir Kumar and Roopwati which were recorded by SI Balkar, against whom there is no allegation of mala fide, are also a pointer towards involvement of accused Anil Gupta in the crime. In her statement under Section 161 Cr.P.C., Smt.Roopwati, landlady of the premises where prosecutrix and accused Anil Gupta were staying at Muradabad, reflects that the prosecutrix was under constant fear and threat. Moreover the supplementary charge sheet filed by Inspr. Arti Sharma also shows that accused Anil Gupta was present in Delhi from 10.09.2009 to 23.09.2009, the period when prosecutrix went missing from her house (the prosecutrix was reported to have been missing from her house since 18.09.2009 and was purportedly handed over to accused Anil Gupta, in Delhi, by accused Niranjana Sardar and accused Sumit @ Santosh @ Rahul within 2/3 days thereafter). The contradictions in the statements of the neighbours recorded by SI Vinita Prasad and Inspr. Arti Sharma on one hand and SI Balkar and HC Dalip on the other would also require evidence. Further the statement of Ct. Pankaj under Section 161 Cr.P.C., recorded by SI Vinita Prasad on 12.02.2011, which shows that the temple where accused Anil Gupta claims to have solemnized marriage with prosecutrix was not being used to perform marriages also contradicts claim of accused Anil Gupta. Consequently the claimed marital status between the prosecutrix and accused Anil Gupta and the reason why she was required to live under a pseudo name instead of her actual name also requires ocular evidence of prosecutrix. At the present

stage of framing of the charge from the entire material placed on record, it is not possible to draw a conclusion that no case for framing of charge is made out against any of the accused persons including accused Naresh Gupta and Anil Gupta. Even otherwise as already observed herein above the entire re-investigation was focused on material filed by the accused or procured by the IO upon information given by the accused persons.

1. There are four persons who have been charge-sheeted. The victim, even as per the counsel for the petitioners, is shifting her stand and putting the blame on one or another. Quashing of the charge-sheet would mean that all the persons would be exonerated. Who the real culprits are would never be known. It is only after the trial and evidence adduced before the Court that the Court would be able to answer the role of each accused. 18 Trite it is to say that while framing of a charge it is the prima- facie case on the material collected by the prosecution which has to weigh in the mind of the Court. The evidence adduced and collected by the prosecution both oral and documentary does make out a prima-facie case against all the accused persons as has been rightly delineated by the trial Court. 19 No case is made out to grant the prayer of the petitioners in the exercise of powers by this Court under Section 482 of the Cr.P.C. 20 Petition is dismissed with costs quantified at Rs.20,000/-. INDERMEET KAUR, J JULY23 2014 A

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