

Subhash Vs. State of Rajasthan

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Court : Rajasthan

Decided On : May-29-2008

Reported in : RLW2008(4)Raj3071

Judge : Raghuvendra S. Rathore, J.

Appellant : Subhash

Respondent : State of Rajasthan

Judgement :

Raghuvendra S. Rathore, J.

1. Heard learned Counsel for the parties and perused the material on record.
2. This case has very peculiar facts and circumstances. The prosecutrix is an Advocate, by profession, who had lodged a complaint to the Superintendent of Police (South), Jaipur on 21.1.2008 and the same was registered as FIR No. 36/2008 on 4.2.2008 for the offences under Sections 415, 493, 420, 506, 376 and 120B IPC. The allegations made in the report are that as both the parties belong to the same caste, their families had agreed to solemnize the marriage of the complainant with the petitioner Subhash. Subsequently, it was found that the maternal grand-mother of the petitioner was of the same 'Gotra' as that of the complainant family. Therefore, the elder members of the family of the accused had declined to have the matrimonial relations, on that Count.

3. The complainant has alleged that the petitioner Subhash had sexual relations with her, against her will, and as such he had committed the offence inter-alia, of rape. In consequence to the initiation of the criminal case, the petitioner was arrested. Hence, the present bail application under Section 439 Cr.P.C. has been filed before this Court, after the same being rejected by the learned court below.

4. Learned Counsel for the petitioner has submitted that the complainant in this Case is an Advocate and the report had been lodged after due deliberation and a concocted story has been narrated. Even perusal of the same goes to show that facts mentioned therein do not disclose the ingredients of the offence alleged. He has also submitted that even in the statement of prosecutrix recorded during the course-of investigation, the ingredients of the offence are missing. He has further submitted, that in the beginning there was an agreement between the family members for solemnizing the marriage of the petitioner and the complainant and in furtherance thereof, 'Sagai' ceremony took-place. It has also been submitted that the complainant was having co-ordeal relation with the petitioner and it was he who had given her an amount of Rs. 35,000/- for opening office of an Advocate. In the last, he has submitted that the root cause of the whole dispute, which is revealed from the record, is that though after objection to the marriage raised by the relatives and the elder members of the family the complainant kept mum but it was on account of the dispute with the petitioner in respect of the aforesaid amount given by him that this false case came to be lodged. In support of his arguments, learned Counsel for the petitioner has relied upon the case of Pradeep Kumar @ Pradeep Kumar Verma v. State of Bihar and Anr. : 2007 CriLJ4333 .

5. On the other hand, the learned Public Prosecutor, assisted by the learned Counsel for the complainant, has seriously opposed the bail application and submitted that the accused petitioner has committed the alleged offence and the same is revealed from the evidence on record filed alongwith the challan. Learned Counsel for the complainant has read before me the statement of the prosecutrix recorded under Section 164 Cr.P.C. He has also submitted that the case of Pradeep Kumar Verma, (Supra) relied upon by the learned Counsel for the petitioner, is on a different fact situation. Moreover, he as submitted that the Apex Court, in the said case, was dealing with a matter at the stage of framing of

charges.

6. I have give my thoughtful consideration to the rival submissions made by the learned Counsel for the parties. At the out-set, it may be observed that this Court is not to go into the detail discussions of the case on merits nor to elaborate upon the evidence on record. However, the evidence on record includes the statement of the prosecutrix made under Section 164 Cr.P.C. on 13.2.2008.

7. So far as the Case of Pradeep Kumar Verma (supra) is concerned, it is noteworthy that the ratio the case was 'while determining whether consent given by the prosecutrix to sexual intercourse is voluntary, or whether it is given under a misconception of fact. In the ultimate analysis, the tests laid down by the Courts provide at best guidance to the judicial mind while considering a question of consent, but the Court must, in each case, consider the evidence before it and the surrounding circumstances, before reaching a conclusion, because each case has its own peculiar facts which may have a bearing on the question whether the consent was voluntary, or was given under a misconception of fact.'

8. In the instant case, as mentioned above, the facts of the case are certainly peculiar. However, a categorical statement has been made by the prosecutrix in her statement dated 13.2.2008, recorded under Section 164 Cr.P.C. that the sexual intercourse was committed by the petitioner against her will and by force. She has also stated that his act was repeated by the petitioner. Without expressing any opinion on the merits of the case but taking into consideration the over all facts and circumstances, I do not consider it to be a fit case for grant bail to the accused petitioner. However, the petitioner shall be at liberty to move this Court for bail in future, on subsequent development and change in circumstance, if so advised.