

Tilak Sarkar. Vs. the State and Another.

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Court : Kolkata Appellate

Decided On : Jan-10-2011

Judge : Kalidas Mukherjee; MD. Abdul Ghani, Jj.

Appeal No. : CRR NO. 1434 OF 2009

Appellant : Tilak Sarkar.

Respondent : The State and Another.

Advocate for Def. : Mr. Subhasish Pachal, Adv

Advocate for Pet/Ap. : Mr. Sudipto Moitra; Mr. Soumen Kr. Dutta, Advs

Judgement :

1. This is an application under Section 482 of the Code of Criminal Procedure praying for quashing of the proceedings relating to Ranaghat P.S. Case No. 65 of 2009 dated 05.3.2009 corresponding to G.R. Case No. 376 of 2009 under Section 493/376 of the Indian Penal Code.
2. The case of the petitioner, in short, is that one Kaberi Sarkar lodged complaint with the Ranaghat P.S. alleging that she was aged 23 years and had love affairs with the petitioner (aged 25 years). The love affairs continued for about 5 years and there was promise to marry her. It has further been alleged that the petitioner cohabited with the complainant on several occasions at different places.

3. It has been contended in the application under Section 482 Cr.P.C. that the petitioner was an engineering student and got a job at Durgapur and he was to join by 1.7.2009 as per the offer letter issued by Pinnacle Infotech Solutions. It has also been contended in the application that the petitioner got opportunity to go abroad for higher studies in Australia and USA. It has been contended in the application that the facts complained of do not constitute any offence and the proceedings should be quashed.

4. Mr. Moitra appearing for the petitioner submits that both the petitioner and the complainant being major had love affairs between them and there was no resistance from the side of the complainant. It is contended that there was no application of force and the love affairs, allegedly, continued for about five years. It is contended that there is no medical report and it has not been stated in the complaint as to when the last cohabitation took place and it is not the case that she conceived. Mr. Moitra submits that there is no mention in the complaint that the complainant reported the matter to anybody. It is submitted that the complainant was a consenting party. Mr. Moitra submits that when the chance of conviction is bleak and the facts complained of do not constitute any offence, the proceedings should be quashed. Mr. Moitra has referred to the decisions reported in (2009)1 C.Cr.L.R. (Cal) 266 [Shyamapada Tewari v. The State of West Bengal and another]; (2003)1 C.Cr.L.R. (SC) 555 [Uday v. State of Karnataka]; 2004 C.Cr.L.R. (cal) 945 [Krishna Pada Mahato v. The State of West Bengal] and (2008)1 C.Cr.L.R. (cal) 774 [Partho Pratim Phukan @ Meja v. The State of West Bengal & another].

5. Mr. Pachal appearing on behalf of the State submits that the charge sheet was submitted after completion of investigation and at this stage the application for quashing of the proceedings is not maintainable. Mr. Pachal has referred to the alleged love letters appearing in the case diary written by the petitioner wherein he promised to marry her. Mr. Moitra submits that the love affairs continued for 5/6 years and the nonmentioning of the dates would not be fatal.

6. Mr. Moitra submits that there was an order dated 04.5.2009 wherein it was directed that the investigation of the case could be carried out, but, report in final

form should not be submitted without the leave of the Court, but, inspite of that the I.O. being over zealous submitted charge sheet.

7. From the F.I.R. itself it is clear that the complainant being an adult girl had love affairs with the petitioner herein for about five years and there was cohabitation several times. In the statement under Section 164 Cr.P.C. she has stated that she was aged 23 years and for 5/6 years she had love affairs with the petitioner and there was cohabitation. It would not appear from the materials on record that the petitioner herein ever applied any force upon her. On the contrary, there was, admittedly, love affairs between them and the complainant consented to the sexual intercourse with the petitioner herein several times at different places. In the case reported in 1984 Cr.L.J. 1535 (Jayanti Rani Panda v. State of West Bengal and another) it has been held that when an adult girl consents to sexual intercourse and subsequently indulges in such activity, it would amount to an act of promiscuity. In such a case it cannot be said that there was misconception of fact. Section 90 Indian Penal Code is not attracted in such facts and circumstances of the case.

8. In the case of Jayanti Rani v. State of West Bengal and another it has been held in paragraph 7 as follows:

If a full grown girl consents to the act of sexual intercourse on a promise of marriage and continues to indulge in such activity until she becomes pregnant it is an act of promiscuity on her part and not an act induced by misconception of fact. Section 90 I.P.C. cannot be called in aid in such a case to pardon the act of the girl and fasten criminal liability on the other, unless the Court can be assured that from the very inception the accused never really intended to marry her.

9. In the case of Partho Pratim Phukan @ Meja v. The State of West Bengal and another reported in (2008) 1 C.Cr.L.R. (Cal) 774, the defacto complainant developed intimacy with the accused, lived together and cohabited. It was held that the intercourse was made with the consent of the defacto complainant and the proceedings were quashed.

10. In the case of Krishna Pada Mahato v. The State of West Bengal reported in 2004 C Cr.L.R.(cal) 945 the prosecutrix was a grown up girl above sixteen years of age and had long love affairs with the accused; the intercourse was made with full consent of the victim. It was held that the consent was not in consequence of misconception of fact. The conviction was found not sustainable.

11. In the case of Uday v. State of Karnataka reported in (2003)1 C.Cr.L.R. (SC) 555 the prosecutrix was an adult girl and consented to the sexual intercourse with the appellant; there was a promise of marriage. It was held that there was no misconception of fact.

12. In the case of Shyamapada Tewari v. The State of West Bengal & another reported in (2009)1 C.Cr.L.R. (Cal) 266 the prosecutrix was aged 34 years and developed intimacy with the accused and consented to sexual intercourse on the promise of marriage; the victim knew about the result of such sexual intercourse. It was held that the consent was not due to any misconception of fact and the facts alleged did not constitute any offence.

13. Considering the facts and circumstances of the instant case, I am of the considered view that facts complained of do not constitute any offence and the proceedings pending in the learned Court below should be quashed. It would be abuse of the process of the Court, if the proceedings are allowed to continue. Accordingly, the proceedings of Ranaghat P.S. case No. 65 of 2009 corresponding to G.R. case No. 376 of 2009 under Section 493/376 I.P.C. stand quashed. The accused petitioner is discharged. The application is disposed of accordingly.

14. Let a copy of this order be sent to the learned Court below immediately.

15. Urgent Photostat certified copy, if applied for, be handed over to the parties as early as possible.