

**Ashish Gupta Vs. State and anr**

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**Court :** Delhi

**Decided On :** Jan-25-2012

**Appellant :** Ashish Gupta

**Respondent :** State and anr

**Judgement :**

§~32 \* IN THE HIGH COURT OF DELHI AT NEW DELHI + CRL.M.C.No.288/2012 % Judgment delivered on:25th January, 2012 ASHISH GUPTA ..... Petitioner Through : Mr.Sanjay Kumar,Adv. versus STATE and ANR ..... Respondents Through : Mr.Navin Sharma, APP for State with SI Yogesh Kumar, police station Lahori Gate, Delhi in person. Respondent No.2 in person. CORAM: HON'BLE MR. JUSTICE SURESH KAIT SURESH KAIT, J. (Oral).

1. Notice issued..

2. Mr.Navin Sharma, learned APP accepts notice on behalf of respondent No.1/State..

3. Respondent No.2 Smt.Meghna Aggarwal present in the Court; who accepts notice..

4. With the consent of learned counsel for parties and respondent No.2, instant petition is taken up for disposal..

5. Vide instant petition, petitioner has sought quashing of the FIR Crl.M.C.No.288/2012 *Page 1 of 6* No.141/2010 registered under Section 376/420/506 Indian Penal Code, 1860 at police station Lahori Gate, Delhi on the complaint of respondent No.2, against the petitioner, to meet the ends of justice..

6. As per the allegations made by respondent No.2/prosecutrix, the petitioner met her about two years back at Metro Walk, Rohini, Delhi. Thereafter, both become friends. The petitioner told to her that he loves her and wanted to marry. Thereafter about a year back he took her to Rishikesh, Utrakhand and there took a room on rent. When she was resting, petitioner had forcibly made physical relations with her. When she started weeping then he consoled her and asked not to worry as he will marry later on. Thereafter, petitioner used to visit her house in absence of her mother and made physical relations on the false assurance that he would marry..

7. On 30.07.2010, petitioner came to her house when her mother was away to Sharanpur, UP and made physical relations. On 31.07.2010, petitioner called her on mobile phone No.9654430052 from his mobile phone No.9654251708 and during conversation, she asked him to marry, upon which petitioner annoyed and refused to marry her and threatened her that in case she disclose the whole episode to anyone, he would eliminate her..

8. Thereafter, prosecutrix reported the matter to police and which culminated into registration of aforementioned FIR against petitioner..

9. During investigation, petitioner was arrested and released on bail on 25.11.2010 by Sessions Court, after remaining in custody for a Crl.M.C.No.288/2012 *Page 2 of 6* week. Thereafter, on 28.11.2010 petitioner and respondent No.2 married to each other. Certificate issued by Arya Samaj, Ashok Vihar, Phase- I, New Delhi is annexed at page No.40 of paper-book. The photographs of the marriage which was also attended by parents of both sides, are also on record at page Nos.38 to.

30. 10. Respondent No.2, Smt.Meghna Aggarwal present in the Court, who is duly identified by the IO/SI Yogesh Kumar, police station Lahori Gate, Delhi. She submits that she is no more interested in pursuing her case. She has forgiven the

petitioner and condoned his acts. Therefore, she has prayed to quash the aforementioned FIR, in the interest of justice and for the benefit of their family life..

11. Mr.Navin Sharma, learned APP for State on the other submits that offence is non-compoundable and grievous one under Section 376 Indian Penal Code and the maximum punishment can go upto life imprisonment. Charge-sheet has been filed in the Prosecution Branch for scrutiny. Therefore, FIR in the instant case may not be quashed..

12. In support above contention, he referred the decision of Honble Supreme Court in Gian Singh v. State of Punjab and Anr. in SLP (Crl.) No.8989/2010 wherein the Division Bench of the Supreme Court has referred three earlier decisions viz, B.S. Joshi v. State of Haryana (2003) 4 SCC 675, Nikhil Merchant v. Central Bureau of Investigation and Anr. (2008) 9 SCC 677 and Manoj Sharma v. State and Ors. (2008) 16 SCC 1 to the larger Bench for re-consideration whether the abovesaid three decisions were decided correctly or not. Therefore, he has prayed that till the matter is decided by the larger Bench of the Crl.M.C.No.288/2012 *Page 3 of 6* Apex Court, instant petition may be adjourned sine-die. Alternatively, he prayed that in the event, the FIR is quashed, heavy costs should be imposed upon the petitioner, as the government machinery has been pressed into and precious public time has been consumed..

13. The Division Bench of Mumbai High Court in Nari Motiram Hira v. Avinash Balkrishnan and Anr. in Crl.W.P.No.995/2010 decided on 03.02.2011 has permitted for compounding of the offences of non- compoundable category as per Section 320 Cr. P.C. even after discussing Gian Singh (supra)..

14. Therefore, I feel that unless and until, the decisions which have been referred above, are set aside or altered, by the larger Bench of the Supreme Court, all the above three decision hold the field and are the binding precedents..

15. In addition, the Supreme Court in Shiji @ Pappu and Ors. v. Radhika and Anr in Crl.Appeal No.2064/2011 decided on 14.11.2011 that the cases of non-compoundable nature can be compounded, certainly not after the conviction observing as under:- ..... That being so, continuance of the prosecution where the

complainant is not ready to support the allegations which are now described by her as arising out of some "misunderstanding and misconception"; will be a futile exercise that will serve no purpose. It is noteworthy that the two alleged eye witnesses, who are closely related to the complainant, are also no longer supportive of the prosecution version. The continuance of the proceedings is thus nothing but an empty formality. Section 482 Cr.P.C. could, in such CrI.M.C.No.288/2012 *Page 4 of 6* circumstances, be justifiably invoked by the High Court to prevent abuse of the process of law and thereby preventing a wasteful exercise by the Courts below..

16. Though, I find force in the submission of learned APP, however the facts of the instant case is peculiar one. On perusal of the FIR, it is transpired that petitioner and respondent No.2 were having in love affairs and having consensual physical relations. Both were roaming here and there and even stayed at Rishikesh and had sex, undisputably with the will and consent of each other. Some misunderstanding crept into and prosecutrix lodge the complaint against petitioner..

17. The prosecutrix, who is present in the Court, on realising came forward to talk to the family of petitioner and after forgiving his acts, both decided to tie the knot with each other. Consequently, on 28.11.2010 they got married..

18. In case, instant petition for quashing is not allowed, it would be a great hardship to a family and detrimental to their happy married and settled life, and shall spoil the life of two families..

19. In view of above, FIR No.141/2010 registered at police station Lahori Gate, Delhi, against the petitioner and emanating proceedings thereto, if any, are hereby quashed..

20. Finding force in the submission of learned APP regarding putting the petitioner to some terms and after ascertaining family status of the petitioner that they have sufficient means. CrI.M.C.No.288/2012 *Page 5 of 6*.

21. Therefore, petitioner is directed to provide 100 blankets for the occupants of the Night Shelters, within two weeks from today..

22. Accordingly, petitioner is directed to made available said quantity of blankets to Delhi Shelter Urban Improvement Board, Punarwas Bhawan, I.P. Estate, ITO, New Delhi. The incharge concerned shall ensure that the blankets are distributed to the needy occupants of the night shelters immediately..

22. Upon receipt of 100 blankets, incharge concerned shall issue a receipt to this effect to petitioner, which shall be placed on record by petitioner under intimation to the IO concerned..

23. Copy of order be provided to all concerned..

24. Consequently, Criminal M.C.No.288/2012 is allowed and stands disposed of..

25. Dasti. SURESH KAIT, J JANUARY 25, 2012 Mk CrI.M.C.No.288/2012 Page 6 of 6

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