

Jitender Vs. State and anr.

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Court : Delhi

Decided On : Nov-29-2012

Judge : P.K.Bhasin

Appellant : Jitender

Respondent : State and anr.

Advocate for Def. : Mr. M.N. Dudeja

Advocate for Pet/Ap. : Mr. O.P. Wadhwa, Ms. Ritu Gupta

Judgement :

* IN THE HIGH COURT OF DELHI AT NEW DELHI % CrI. M.C. No. 2287/2012
Date of Decision:

29. h November, 2012 + # ! JITENDER Through:Petitioner Mr. O.P. Wadhwa & Ms. Ritu Gupta, Advocates Versus \$ * STATE & ANR. Through: Respondents Mr. M.N. Dudeja, APP for State with W/ASI Ms.Darshna, PS Mianwali Nagar Mr.RajatGulati, Advocate for R-2 CORAM: HON'BLE MR. JUSTICE P.K.BHASIN ORDER P.K.BHASIN, J: This petition has been filed by the petitioner-accused under Section 482 of the Code of Criminal Procedure, 1973 for quashing of the FIR no. 94/2012 dated 26th April, 2012 registered against him at Mianwali Nagar Police Station at the instance of respondent no. 2 under Sections 376/506 of the Indian Penal Code, 1860.

2. During investigation the respondent no. 2/ complainant, however, had made a statement on 30/04/2012 under Section 164 of the Criminal Procedure Code before the Magistrate exonerating the petitioner against whom she had in her FIR alleged that he had raped her. However, the police charge-sheeted the petitioner.

3. The petitioner has now filed this petition for quashing of the FIR as well as the charge sheet filed in the Court on the ground that the complainant/respondent no. 2 having herself repudiated the fact that rape was committed on her by the petitioner before the Magistrate in her statement under Section 164 of Cr.P.C. no useful purpose would be served by continuing his prosecution.

4. An affidavit dated 10th July, 2012 was filed by the complainant/respondent no.2 in this matter that she had rightly stated in her statement under Section 164 of Cr.P.C. that she was not raped by the petitioner and so the FIR could be quashed. She appeared in Court also on 30.08.2012 and had reiterated the same thing and had also stated that matter had been compromised also.

5. The learned counsel for the petitioner while arguing before this Court for quashing of the FIR and charge-sheet relied upon an order dated 22.02.2010 of the Honble Supreme Court in SLP (Crl.) No. 2900/2009 (arising from the judgment and the order dated 16.01.2009 in 113/2009 of the Delhi High Court) in which case also quashing of FIR under Section 376 IPC was sought in view of some settlement between the accused and the prosecutrix. The Apex Court passed the following order: An affidavit has also been filed by respondent no.2, inter alia, stating that since the matter has been compromised with the petitioner and for the purpose of rehabilitation, she has decided that the alleged offence of rape, giving rise to FIR No. 111 of 2007, registered at Police Station Aadarsh Nagar, be treated as consented and may not be treated as an offence punishable under Section 376 of the Indian Penal Code. Deponent/respondent No. 2 is present in Court and has been identified by her counsel. She affirms the contents of the affidavit. In the light of the said affidavit and having regard to the peculiar facts and circumstances of the case, when both the parties are now trying to rehabilitate themselves, we feel that no useful purpose would be served in keeping the said FIR alive. Accordingly, without going into the merits of the FIR it is quashed. The amount deposited by the

petitioner in this Court shall be disbursed to respondent no.2 by means of a demand draft in her favour. The amount of Rs. 4 lakhs stated to have been deposited in the high Court shall also be paid to the said respondent. The special leave petition stands disposed of in the above terms. However, in my view the petitioner cannot derive any benefit from the said order of the Apex Court since it was passed in the peculiar facts and circumstances of the case. The Apex Court in its detailed judgment dated 24/09/2012 in Gian Singh v. State of Punjab, (2012) 9 SCALE 2 clearly laid down that FIRs involving heinous offences like rape, murder etc. cannot be quashed by the High Court in exercise of its inherent powers under Section 482 Cr.P.C. even if the victim and the offender have arrived at some settlement as these offences are not private in nature and have a serious impact on the society. And as far as the statement of the prosecutrix under Section 164 Cr.P.C. is concerned I am of the view that the criminal proceedings cannot be quashed even if the prosecutrix has exonerated the petitioner in that statement. Effect of that statement can be considered only by the trial Court if the prosecutrix supports the prosecution case after entering the witness box and the accused confronts her with her statement under Section 164 Cr.P.C. This Court simply by taking note of that statement cannot quash the trial of the petitioner in which prosecution evidence is being recorded and prosecutrix is yet to be examined.

7. Accordingly, this petition is dismissed. P.K. BHASIN, J NOVEMBER 29 2012

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