

HIGH COURT OF MADHYA PRADESH
M.Cr.C. No. 15168 of 2021
Bundel Singh Lodhi Vs. State of M.P.

Gwalior, dated 30-4-2021

Shri Rajeev Sharma, Counsel for the applicant
Shri Alok Sharma, Counsel for the State

This first application under Section 438 of CrPC has been filed for grant of anticipatory bail.

The applicant apprehends his arrest in Crime No. 65 of 2021 registered at Police Station Tyonda, Distt. Vidisha for offence under Section 376(2)(n) of I.P.C.

It is the case of the applicant, that the prosecutrix is major lady and She was given an amount of Rs. 50,000/- and in order to avoid repayment of the same, She has made false allegations of rape. It is further submitted that an affidavit was also executed by the prosecutrix acknowledging the receipt of Rs. 50,000/-.

Per contra, the application is vehemently opposed by the Counsel for the State. By reading the statement of the prosecutrix, it is submitted that an affidavit of marriage was executed by the applicant, and thereafter, an affidavit of divorce was also executed. The Counsel for the State also submits that the copies of the affidavit of marriage and divorce, as well as the register of the Notary, have also been seized.

Considered the submission made by the Counsel for the parties.

According to the State Counsel, it is clear from the register of

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Shri M.K.Choudhary, Notary, Bhopal, that an affidavit of marriage was executed on 8-5-2018 and thereafter, on 15-6-2018, an affidavit of divorce was executed.

In Hindu Law, marriage is not a contract. The marriages cannot be performed by execution of a marriage affidavit. Either, the marriage is to be performed by performing Saptpadi, or in accordance with custom. Marriage can also be performed as per the provisions of Special Marriage Act or as per the provisions of other Statutes like Anand Marriage Act, 1909 etc. However, the Counsel for the applicant, could not point out any provision, under which, a marriage can be performed by execution of an Affidavit. Similarly, he could not point out any provision of law, by which a marriage can be dissolved by execution of an Affidavit.

Notaries have never been appointed as Marriage Officers. They cannot notarize an affidavit of marriage or divorce. Further more, Divorce can be granted only by a decree of a Court of competent jurisdiction or as per custom.

Now a days, it is being observed that Marriage affidavits are being executed on large scale, thereby giving a bonafide impression to the bride that now She is legally wedded wife as her Court Marriage has taken place, thereby facilitating the boy to commit rape on the innocent girl. Section 375 *Fourthly* of I.P.C. reads as under :

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375. Rape

Fourthly.—With her consent, when the man knows that he is not her husband and that her consent is given because she believes that he is another man to whom she is or believes herself to be lawfully married.

A Notary has not been appointed as a Marriage Officer.

Section 8 of Notaries Act, reads as under :

8. Functions of notaries.—(1) A notary may do all or any of the following acts by virtue of his office, namely:—

- (a) verify, authenticate, certify or attest the execution of any instrument;
- (b) present any promissory note, hundi or bill of exchange for acceptance or payment or demand better security;
- (c) note or protest the dishonour by non-acceptance or non-payment of any promissory note, hundi or bill of exchange or protest for better security or prepare acts of honour under the Negotiable Instruments Act, 1881 (XXVI of 1881), or serve notice of such note or protest;
- (d) note and draw up ship's protest, boat's protest or protest relating to demurrage and other commercial matters;
- (e) administer oath to, or take affidavit from, any person;
- (f) prepare bottomry and respondentia bonds, charter parties and other mercantile documents;
- (g) prepare, attest or authenticate any instrument intended to take effect in any country or place outside India in such form and language as may conform to the law of the place where such deed is intended to operate;
- (h) translate, and verify the translation of, any documents from one language into another;
- (h-a) acts as a Commissioner to record evidence in any civil or criminal trial if so directed by any court or authority;
- (h-b) act as an arbitrator, mediator or conciliator, if so required;]
- (i) any other act which may be prescribed.

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(2) No act specified in sub-section (1) shall be deemed to be a notarial act except when it is done by a notary under his signature and official seal.

From the plain reading of Section 8 of Notaries Act, it is clear that execution of Marriage Affidavit and Divorce Affidavit is not the function of a Notary. Thus, it is clear that without any authority of law, marriage affidavits and divorce affidavits are being executed by Notaries, thereby, assisting the unscrupulous boys for committing rape as defined under Section 375 of I.P.C.

According to the State Counsel, Shri M.K. Choudhary, Notary, Bhopal had executed the affidavit of marriage and divorce.

Accordingly, Principal Secretary, Law and Legislative Department, State of M.P./competent authority is directed to initiate proceedings under Section 10 of Notaries Act against Shri M.K. Choudhary. The investigating officer is directed to supply a copy of the affidavits dated 8-5-2018 and 15-6-2018 along with the copy of the register of Shri M.K. Choudhary, Notary, Bhopal to the Principal Secretary, Law and Legislative Department/Competent Authority within a period of 15 days from today.

The Principal Secretary, Law and Legislative Department/Competent Authority is directed to pass a final order within a period of 4 months from today, and inform the Principal Registrar of this Court within a period of 5 months from today.

Needless to mention here that before passing the final order,

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the Principal Secretary, Law and Legislative Department/Competent Authority, shall follow the procedure as prescribed under Notaries Act/Notaries Rules.

So far as the bail application is concerned, since, the applicant had obtained the affidavits of Marriage and Divorce thereby playing fraud on the prosecutrix, therefore, it is clear that her consent was obtained, which is hit by Section 375 *Fourthly* of I.P.C.

Accordingly, no case is made out for grant of anticipatory bail.

The application fails and is hereby **Dismissed**.

(G.S. Ahluwalia)
Judge