



IN THE HIGH COURT OF MADHYA PRADESH

AT GWALIOR

BEFORE

HON'BLE SHRI JUSTICE G. S. AHLUWALIA

ON THE 4th OF MARCH, 2025

MISC. CRIMINAL CASE No. 23671 of 2024

MUNSHILAL DHAKAD

Versus

THE STATE OF MADHYA PRADESH AND OTHERS

Appearance:

Shri Trishant Mishra – Advocate for applicant.

Dr. Anjali Gyanani – Public Prosecutor for respondent/State.

ORDER

This application, under Section 482 of CrPC, has been filed for quashing the FIR in Crime No.164/2024 registered at Police Station Sabalgarh, District Morena (M.P.) for offence under Section 376(2)(n) of IPC as well as consequential proceedings in RCT No.230 of 2024.

2. Applicant is an Advocate by profession.
3. Challenging the FIR lodged by the prosecutrix, it is submitted by counsel for applicant that prosecutrix lodged an FIR stating that she is a labourer by profession. She married Deewan about 12 years back and was blessed with two daughters. Her elder daughter is aged about 12 years, whereas the younger daughter is aged about 9 years. Since her husband Deewan was continuously harassing her, therefore, a case for divorce is pending in the Sabalgarh Court,



District Morena. Applicant is contesting her case. About 2 years back, on 15/3/2022, at around 12:00 p.m., applicant came to her house and informed her that the pending divorce case has no legs to stand, but still he would ensure that the case is won by her, but for that respondent No. 2 will be required to execute each and every instruction of applicant. Thereafter, applicant had physical relationship with her and also stated that in case she informs this incident to anybody, then he would defame her in society and, as a result, the future of prosecutrix and her children would be destroyed. Taking advantage of her helplessness, applicant used to visit her house and was making physical relations with her. About 25 days back, i.e., on 19.03.2024, at around 3:00 p.m., applicant came to her house and started having physical relations with her. When it was objected by the prosecutrix, then applicant stated that if she does not allow him, then he would ensure that she loses the case. It was further alleged that applicant also stated that if she disclosed this to anyone, then he would get her defamed in Society. The prosecutrix also claimed that she had already paid entire fees to the applicant. However, taking advantage of her precarious condition, applicant raped her on multiple occasions, leading to registration of FIR.

4. It is submitted by counsel for applicant that thereafter, the statement of prosecutrix was recorded under Section 164 of Cr.P.C and she did not support the allegations of rape and, instead, alleged that on 12.04.2024, a dispute had arisen between her and applicant on the question of Advocate's fee. Since applicant had called the police and the police had taken her to police station, she fell ill. She was taken by police to hospital, where her signatures were obtained. It was alleged that applicant had not raped her but had merely given threat with regard to his fees. It is submitted that, in view of the statement of prosecutrix recorded under Section 164 of CrPC, it is clear that applicant has been falsely implicated. Even otherwise, it is evident that the prosecutrix was a consenting party.



Therefore, it is prayed that the FIR may be quashed.

5. *Per contra*, application is vehemently opposed by counsel for the State.
6. The moot question for consideration is as to whether respondent No.2 can be said to be a consenting party or not ?
7. It is an undisputed fact that respondent no.2 is a married woman. However, a divorce case is pending between her and her husband and applicant who was representing her had assured her that he would ensure that the case is won by her, and accordingly, on that pretext, he committed rape on her on multiple occasions. It is specifically alleged by respondent No. 2 that her consent was taken by coercion and pressure. Thus, it is clear that the consent of respondent No. 2 was not free and was obtained under pressure.
8. Even otherwise, applicant has also filed copy of the divorce decree, which was granted under Section 13B of the Hindu Marriage Act. It also appears that the trial pertaining to offence under Section 498A of IPC resulted in acquittal of husband of prosecutrix on the ground that prosecutrix has compromised the matter. Thus, it is clear that the case filed by prosecutrix for grant of divorce from her husband was pending at the relevant time.
9. The applicant is an Advocate by profession and was representing respondent No.2. If applicant has misused his position & committed rape on the prosecutrix, who was his client, then it cannot be said that consent of prosecutrix was free consent.
10. So far as the statement of prosecutrix recorded under Section 164 of CrPC is concerned, the same cannot be given preference over the FIR and the statement recorded under Section 161 of CrPC. The statement recorded under Sections 164 as well as 161 of CrPC can be used for omission and contradiction purposes, but the statement of the prosecutrix recorded under Section 161 of CrPC cannot be ignored merely on the ground that she has not supported her allegations in her



statement recorded under section 164 of Cr.P.C.

11. Considering the fact that applicant, who is an Advocate by profession, has allegedly misused his professional relationship with the prosecutrix and committed rape on her by extending threats that he would otherwise ensure that the case is lost by her, this Court is of considered opinion that no case is made out warranting quashment of FIR or the criminal prosecution.

12. Accordingly, application fails and is hereby *dismissed*.

(G.S. Ahluwalia)
Judge

(and)