

IN THE HIGH COURT OF MADHYA PRADESH
BENCH AT INDORE

(SB: Hon'ble Mr. Justice Alok Verma)

MCRC No.4470/2015

Mahendra Singh S/o Harpal Singh Namdev

Vs.

1. State of MP

2. Smt. Pallavi @ Shikha W/o Mahendra Singh

Shri SK Vyas, learned Senior Counsel with Shri LS Chandiramani,
learned counsel for the applicant.

Shri Romesh Dave, learned counsel for the respondent No.1/State.

Shri AK Sethi, learned Senior Counsel with Shri Prateek
Maheshwari, learned counsel for the respondent No.2/complainant.

ORDER

(Passed on this 29th day of October, 2015)

This application is filed under section 482 of Cr.P.C. for quashment of the FIR in Crime No.389/2015 under sections 384, 506 and 376 of IPC registered at Police Station – Vijay Nagar, Indore, against the present applicant.

2. The facts giving rise to this application are that respondent No.2/complainant lodged a report at Police Station – Vijay Nagar, Indore, that her mother Sudha Verma was working at the office of the applicant, due to this reason, the

applicant used to frequently visit their house. In the month of September, 2005, on the pretext of getting her admitted in Malwa College, he took her there and from the college, he took her to Atithi Niwas Hotel and there, in the hotel room, he committed rape on her. He also threatened her that if she disclosed the incident to anybody, he would defame her and her mother and also she would face dire consequences. After this incident, he continued having forcible physical relationship with her and due to such relationship, one daughter namely – Ahilya Singh was born. Thereafter, due to his forceful physical relationship, she conceived twice and she was forced to abort on both the occasions. Before he had physical relationship with her, he was married twice and claimed to be divorced but his wives live with him. He was 51 years old man. He was rich and is a liquor contractor. Taking advantage of this fact, he exploited her physically and also threatened that he would get her beaten or killed by his men. This complaint was lodged on 10.04.2015 and the incident was shown in the FIR as taken place on 11.09.2005.

3. According to learned Sr. Counsel for the applicant, he was married to respondent No.2/complainant on 19.01.2006

according to Hindu rights and rituals and thereafter, they started living together. On 16.01.2008, a daughter was born from their wedlock, whose name is Ahilya. Till July, 2013, their relationship were cordial and then, dispute arose between them, therefore, respondent No.2/complainant started living separately. He filed an application under section 9 of the Hindu Marriage Act before the Family Court, Indore, for restitution of conjugal rights, copy of which is annexed with the application as Annexure A-2. Subsequent to this, the application under section 13-B of the Hindu Marriage Act was jointly filed by the applicant which was signed by respondent No.2. In this application, it was mentioned that their marriage took place on 19.01.2006 and all other facts as stated above, this application was presented before the Court on 19.12.2013. She also filed an affidavit prepared on 28.01.2014 before the Family Court. In this affidavit also, she wrote her husband's name as Mahendra Singh Namdev, the present applicant and it was admitted that their marriage took place on 19.01.2006. The applicant also filed copy of the written mutual settlement, which is annexed as Annexure A-4 and statements recorded before the Family Court on 21.06.2014. In this statement also,

on oath, she admitted that she was married to the present applicant on 19.01.2006 and they want divorce by mutual consent. Just prior to lodging of the FIR, she also had filed an application before the Magistrate under section 23 of Protection of Women from Domestic Violence Act, 2005.

4. According to learned Sr. Counsel for the applicant, these documents show that respondent No.2 is wedded wife of applicant. Matrimonial dispute is going on between them. It is also submitted by the applicant that he had provided her three properties so that she can maintain herself and, therefore, he prays that as they were married in the year 2006 itself, no offence under section 376 of IPC for committing rape is made out. He has also implicated in the charges under section 506 and 384 of IPC falsely, as they had already entered into compromise and filed an application under section 13-B of Hindu Marriage Act and no dispute was left between present applicant and respondent No.2. Subsequently, she was misguided by somebody and she filed FIR against the present applicant.

5. In reply, learned Sr. Counsel for respondent No.2 submits that the applicant in the year 2005, took her to Atithi Niwas

Hotel room and there, he committed rape on her. Present applicant threatened her that he is a liquor contractor and had connections with high officials and if she would not follow his instructions, he would fire her mother from the job. She was taken to Bhandari Hospital forcibly and the present applicant got her child aborted. Subsequently, under pressure, she was forcibly married to the applicant.

6. According to the learned Sr. Counsel for respondent No.2, first wife of the applicant also committed suicide. His second wife was residing with him. He solemnized one more marriage in the year 1996 with one Mamta Singh, who was divorced before Panchayat at Jhasi by the applicant. The applicant always assured her that he would divorce his previous wives and show her papers, however, such papers were never shown to her. Meanwhile, he continued having physical relationship with her. Though, he purchased some properties in her name, he obtained loan from the Punjab and Sindh Bank to the tune of Rs.1 Crore and placed the property under mortgage placing her at the mercy of the applicant. The applicant and his companions are unsocial elements. They are continuously threatening her and all the matrimonial

proceedings were drawn at the behest of the present applicant. Under these circumstances, she said that her consent was not for the physical relationship with the present applicant. She was forced by the present applicant for having such relationship with him.

7. Learned Sr. Counsel for the applicant submits that report has been lodged after almost 10 years of the incident. No complaint was raised before the Family Court or before anybody, before. Now, she is married wife of the present applicant. Whether, marriage was legal or illegal under Hindu Marriage Act, does not affect the consent given by her under section 376 of IPC. Under section 376 of IPC, her consent is material which was implied when she married the present applicant.

8. Learned Sr. Counsel for the respondent No.2 submits that her consent was not a free consent, therefore, such consent cannot be taken as implied at this stage and it cannot be said that the FIR does not show commission of any cognizable offence at this stage.

9. On this point, judgment of Hon'ble the Supreme Court in the case of Satish Mehra Vs. State of NCT Delhi and

another reported in **2013 Cri.L.J. 411** can be referred to with some benefit. Hon'ble the Supreme Court observed in para 15 of the judgment as under:-

15. The power to interdict a proceeding either at the threshold or at an intermediate stage of the trial is inherent in a High Court on the broad principle that in case the allegations made in the FIR or the criminal complaint, as may be, prima facie do not disclose a triable offence there can be reason as to why the accused should be made to suffer the agony of a legal proceeding that more often than not gets protracted. A prosecution which is bound to become lame or a sham ought to be interdicted in the interest of justice as continuance thereof will amount to an abuse of the process of the law. This is the core basis on which the power to interfere with a pending criminal proceeding has been recognized to be inherent in every High Court. The power, though available, being extraordinary in nature has to be exercised sparingly and only if the attending facts and circumstances satisfies the narrow test indicated above, namely, that even accepting all the allegations levelled by the prosecution, no offence is disclosed. However, if so warranted, such power would be available for exercise not only at the threshold of a criminal proceeding but also at a relatively advanced stage thereof, namely, after framing of the charge against the accused. In fact the power to quash a proceeding after framing of charge would appear to be somewhat wider as, at that stage, the materials revealed by the investigation carried out usually comes on record and such materials can be looked into,

not for the purpose of determining the guilt or innocence of the accused but for the purpose of drawing satisfaction that such materials, even if accepted in its entirety, do not, in any manner, disclose the commission of the offence alleged against the accused.

10. At the very outset, before considering the application on merit, the objections raised by counsel for the respondent No.2 may be considered first. According to learned Sr. Counsel for the respondent No.2, on 06.08.2015, this Court directed that the Investigating Officer should consider all the papers filed by the applicant before filing final report/charge-sheet in this matter.

11. Learned Sr. Counsel for the respondent No.2 submits that as the directions were issued by this Court to the Investigating Officer, this application has been rendered infructuous, as till the final report, after submission of the documents filed by the applicant has not been filed by the Investigating Officer, quashment of the FIR would not be proper.

12. Learned Sr. Counsel for the applicant submits that it was only an interim order because by that time, FIR was in existence and was not quashed. The present applicant has sought quashment of the FIR. Once the FIR is quashed then,

there is no question of consideration of the documents filed by the Investigating Officer.

13. After due consideration, the objections raised by learned Sr. Counsel for the respondent No.2 are rejected. That was only an interim order to safeguard the interest of the applicant and also to ensure fair and proper investigation. While, the prayer in this application is quashment of the FIR, therefore, earlier order will not in anyway hinder dismissal of this application on merit.

14. Applying the principle laid down in the aforementioned case of **Satish Mehra** (supra) in the facts and circumstances of the present case, the main offence alleged in this case is under section 376 of IPC. According to the averments made in the FIR by the respondent No.2, she was given threat and subjected to extortion for giving her consent for physical relationship with the applicant. Learned Sr. Counsel for the respondent No.2 submits that her marriage with the present applicant was a nullity and as it was solemnized under threat and coercion and also due to misrepresentation by the applicant that he has already obtained divorce from his previous wives. However, such threat and coercion alleged by the respondent

No.2 has been complained of by her after nine years of the incident. Meanwhile, she continued with the applicant as his wife and also begotten a girl child from him. She has also admitted her marriage with the present applicant before the Family Court in various documents as stated above. Even if it is assumed that present applicant made misrepresentation about his divorce from his earlier wives and he was not divorced at the time of his marriage with the respondent No.2, even then, marriage of respondent No.2 with the present applicant may be illegal and void under the Hindu Marriage Act. However, so far as the consent under section 375 of IPC is concerned, such consent from a married wife is implied. This apart, in the present case, respondent No.2 filed a written complaint after almost 10 years of the incident, therefore, it amounts to abuse of process of Court.

15. Thus, in the considered opinion of this Court, the FIR does not show any commission of cognizable offence under section 376 of IPC.

16. So far as this offence under section 384 of IPC is concerned, extortion is defined under section 383 of IPC which describes extortion as dishonest inducement under fear and

injury to the person with the view to obtaining any property, valuable security or anything signed or sealed which may be converted into valuable security. Such ingredients are not present in the present case and as it was admitted by respondent No.2 that she was married wife of the present applicant, after ten years, such allegations are also baseless. Similarly, the same is also true in respect of the offence under section 506 of IPC.

17. In view of the aforesaid, no case is made out from the averments made in the FIR. Apparently, it is abuse of process of court and the FIR is liable to be quashed. The application is accordingly, allowed. The FIR registered at Police Station – Vijay Nagar, Indore in Crime No.389/2015 under sections 384, 506 and 376 of IPC is hereby, quashed. The applicant is discharged from the offence under sections 384, 506 and 376 of IPC.

C.c. as per rules.

(Alok Verma)
Judge

