

HIGH COURT OF MADHYA PRADESH
BENCH AT INDORE

M.Cr.C.No.12146/2021

Akash S/o Pawan Agrawal

Vs.

State of Madhya Pradesh and another

Shri Harshwardhan Pathak, learned counsel for the applicant.
Shri Pranay Joshi, learned Panel Lawyer for the respondent No.1/State.

Reserved on: 20/1/2022

ORDER
(Passed on this 21st day of February, 2022)

This present petition under under Section 482 of Cr.P.C.has been preferred for quashment of FIR as well as chargesheet filed against the applicant in Crime No.64/2018 registered at Police Station, Sendhwa (Gramin), District Barwani for alleged offence punishable under Section 376(2)(n), 493, 450, 174(a) of IPC and also under Section 3(2)(5)(A) of Scheduled Caste, Scheduled Tribe (Prevention of Atrocities) Act.

2. Brief facts of the prosecution case are that applicant and prosecutrix both are resident of village Chachariya, P.S., Sendhwa (Gramin), District Barwani. They were known to each other and in the month of May,2016 applicant proposed her for marriage saying that he likes her. Prosecutrix told him that she is a member of Scheduled Caste, Scheduled Tribe community, therefore, their marriage is not possible. Applicant told her that he did not believe in castism. On 6.3.2016 applicant took her in Shiv Mandir situated near District Court, Khargone and thereafter before a Notary, notarized their marriage. On the same day at about 11.00 PM applicant came to prosecutrix's house when she was

all alone there and forcefully committed sexual intercourse with her saying that he accepted her as his wife. On next day prosecutrix went to Khargone, where she resided for her studies. Then, applicant also reached there and committed sexual intercourse with her. Applicant told her to live with him at Indore after convincing his parents he will marry her legally. Applicant took a rented house at Indore and kept her there as his wife and made physical relationship with her till 4.1.2018, but did not solemnize marriage with her. On 4.1.2018 he went from Indore saying that he was going to convince his parents and thereafter he will solemnize marriage with her. Applicant thereafter stopped talking with the prosecutrix and switched off his phone also. Prosecutrix searched him and lodged his missing report dated 19.1.2019 at Police Station, Sendhwa (Gamin), District Barwani. Thereafter, she came to know that applicant took another girl of the same village and notarized affidavit with regard to his marriage with the aforesaid girl. She lodged FIR dated 12.2.2018 against him at the same Police Station, Sendhwa (Gramin), District Barwani, on which Police registered Crime No.64/2018 for the offence punishable under Section 376(2)(n), 493, 450, 174(a) of IPC and under Section 3(2)(5)(A) of Scheduled Caste, Scheduled Tribe (Prevention of Atrocities) Act. Police seized the notarized marriage certificate, caste certificate of the prosecutrix alongwith other documents, recorded her statement as well as statement of landlord of the house, where applicant kept the prosecutrix as his wife and also father of another girl with whom he performed marriage on notary. After due investigation charge sheet has been filed showing the applicant absconding.

3. Learned counsel for the applicant submits that as the applicant and prosecutrix both are major and educated, therefore, even if the whole prosecution story is taken into account, then also no case is made out against the applicant and at the most the same can be said to be breach of promise and cannot be said to a rape under Section 375 of IPC. FIR is delayed almost about two years without any reasonable cause, which in

itself shows that it is a result of long after thought with a view to harass the applicant. It has nowhere alleged that applicant made physical relationship with the prosecutrix because she is a member of SC, ST community, therefore, offence under SC, ST Act is also not made out against the applicant. Applicant is an innocent person and has been falsely implicated in the matter. Therefore, FIR and charge sheet filed in Crime No.64/2018 be quashed.

4. To bolster his submissions, applicant has relied on the judgments of Hon'ble Supreme Court in the matter of *Deepak Gulati Vs. State of M.P.*, (2013) 7 SCC 675, *Shivshankar @ Shiva Vs. State of Karnataka* (Cr.A.No.454/2017) and *Pramod Suryabhan Pawar Vs. The State of Maharashtra* (Cr.A.No.1165/2019).

5. Learned counsel for the respondent/State has opposed the prayer and submitted that applicant and complainant both are resident of same village and applicant very well knew that prosecutrix is a member of SC, ST community assured her to marry saying he did not believe in castism. Applicant took her to the temple and also performed notarized marriage before Notary and on the false pretext of marriage established physical relationship with her and thereafter eloped without informing her and again took some other girl in the same way, which is apparent from the statement of the father of the aforesaid girl. From the aforesaid facts it is apparent that he had *mala fide* motives and had made false promise to marry prosecutrix only to satisfy his wishes. Hence, the aforesaid citations are of no help to the applicant. Applicant is absconding for a very long period since registration of FIR, therefore, he is not entitled for the relief claimed and his petition be dismissed.

6. Heard learned counsel for both the parties and perused the record.

7. In the present case applicant is absconding and learned counsel for the respondent/State has raised an objection with regard to maintainability of the petition, therefore, first of all argument advanced by learned counsel for the applicant in this regarding is being considered.

8. Learned counsel for the applicant relying on the judgment passed by Hon'ble the Apex Court in the case of *Sujit Biswas Vs. State of Assam*, reported in (2013) 12 SCC 406, submits that provisions of Section 482 of Cr.P.C. contemplates inherent jurisdiction of this Court vested into it and said inherent jurisdiction cannot be curtailed, therefore, even if applicant is absconding then petition under Section 482 of Cr.P.C. can be invoked for quashment of FIR and chargesheet.

9. Hon'ble Apex Court in the case of *Sujit Biswas Vs. State of Assam*, reported in (2013) 12 SCC 406, while taking into consideration earlier judgment of Hon'ble Apex Court in the case of *Bipin Kumar Mondal Vs. State of West Bengal*, reported in (2010) 12 SCC 91 and *Matru Vs. State of U.P.*, reported in (1971) 2 SCC 75 has held as under:-

“22. Whether the abscondance of an accused can be taken as a circumstance against him has been considered by this Court in *Bipin Kumar Mondal Vs. State of West Bengal*, wherein the Court observed:

“27. In *Matru Vs. State of U.P.*, this Court repelled the submissions made by the State that as after commission of the offence the accused had been absconding, therefore, the inference can be drawn that he was a guilty person observing as under:

“19. The appellant's conduct in absconding was also relied upon. Now, mere absconding by itself does not necessarily lead to a firm conclusion of guilty mind. Even an innocent man may feel panicky and try to evade arrest when wrongly suspected of a grave crime such is the instinct of self-preservation. The act of absconding is no doubt relevant piece of evidence to be considered along with other evidence but its value would always depend on the circumstances of each case. Normally the courts are disinclined to attach much importance to the act of absconding, treating it as a very small item in the evidence for sustaining conviction. It can scarcely be held as a determining link in completing the chain of circumstantial evidence which must admit of no other reasonable hypothesis than that of the guilt of the accused.

In the present case the appellant was with Ram Chandra till the FIR was lodged. If thereafter he felt that he was being wrongly suspected and he tried to keep out of the way we do not think this circumstance can be considered to be necessarily evidence of a guilty mind attempting to evade justice. It is not inconsistent with his innocence.”

28. Abscondence by a person against whom FIR has been lodged, having an apprehension of being apprehended by the Police, cannot be said to be unnatural. Thus, in view of the above, we do not find any force in the submission made by Shri Bhattacharjee and mere absconding by the appellant after commission of the crime and remaining untraceable for such a long time itself can establish his guilt. Absconding by itself is not conclusive either of guilt or of guilty conscience.”

While deciding the said case, a large number of earlier judgments were also taken into consideration by the Court, including *Matru and State of M.P. Vs. Paltan Mallah*.

23. Thus, in a case of this nature, the mere abscondance of an accused does not lead to a firm conclusion of his guilty mind. An innocent man may also abscond in order to evade arrest, as in light of such a situation, such an action may be part of the natural conduct of the accused. Abscondance is in fact relevant evidence, but its evidentiary value depends upon the surrounding circumstances, and hence, the same must only be taken as a minor item in evidence for sustaining conviction. (See *Paramjeet Singh Vs. State of Uttarakhand* and *Sk. Yusuf Vs. State of W.B.*)”

10. From the guidance given by the Hon'ble Apex Court it appears that abscondance of accused does not lead to a final conclusion of his guilt or *mens rea*. Therefore, even if he is absconding petition under Section 482 is maintainable for the reasons that Section 482 of Cr.P.C. contemplates inherent jurisdiction of this Court vested into it and the assertion of inherent jurisdiction is reflected in the statute, i.e. Code of Criminal Procedure through Section 482 of Cr.P.C. and said inherent jurisdiction cannot be curtailed by way of another provisions contained in Code of Criminal Procedure, like Sections 82 and 83 of Cr.P.C. by which a person is declared as proclaimed Absconder. In other words, inherent

jurisdiction of this Court cannot be circumscribed or cannot be lie at the mercy of some other provisions contained in the Code or any other Statute. Therefore, the objection raised by the learned counsel for the respondent/State with regard to maintainability of the petition seems to be not acceptable and hence, rejected.

11. So far as merit of the petition is concerned, it is specifically mentioned in the judgment passed by Hon'ble the Supreme Court in the matter of *Deepak Gulati Vs. State of Haryana*, reported in (2013) 7 SCC 675 relied upon by the applicant himself that for the offence punishable under Section 375 of IPC it has to be seen that whether at the initial stage itself accused as not having the intention whatsoever, of keeping his promise to marry the victim, the Honb'ble Apex Court has held as under :-

“It is evident that there must be adequate evidence to show that at the relevant time, i.e. at initial stage itself, the accused had no intention whatsoever, of keeping his promise to marry the victim. There may, of course, be circumstances, when a person having the best of intentions is unable to marry the victim owing to various unavoidable circumstances. The “failure to keep a promise made with respect to a future uncertain date, due to reasons that are not very clear from the evidence available, does not always amount to misconception of fact. In order to come within the meaning of the term misconception of fact, the fact must have an immediate relevance.” Section 90 of IPC cannot be called into aid in such a situation, to pardon the act of a girl in entirety, and fasten criminal liability on the other, unless the Court is assured of the fact that from the very beginning the accused had never really intended to marry her.”

12. The Hon'ble Apex Court in *Dr.Dhruvaram Murlidhar Sonar Vs. The State of Maharashtra*, which is also relied upon by the applicant himself has held as under :-

“20. Thus, there is a clear distinction between rape and consensual sex. The court, in such cases, must very carefully examine whether the complainant had actually wanted to marry the victim or had *mala fide* motives and had made a false promise to this effect only to satisfy his

lust, as the later falls within the ambit of cheating or deception.”

13. In the present case *prima facie* it is apparent that applicant's intention from the very beginning was not to marry with the prosecutrix as he never took the prosecutrix to his house nor he ever tried to meet the prosecutrix with his parents. He never met with the parents of the prosecutrix also. Instead, he took the prosecutrix before Notary and after notarizing affidavit on the false pretext of marriage established relationship with her at different places. He thereafter all of a sudden eloped and took another girl notarized another affidavit and live with her as stated by father of the aforesaid girl in the statement recorded under Section 161 of Cr.P.C. The whole conduct of the applicant *prima facie* clearly shows that he actually did not want to marry with the prosecutrix and having *mala fide* motives made false promise to this effect only to satisfy his lust, which falls within the ambit of cheating or deception.

14. All the judgments cited by learned counsel for the applicant in support of his submissions are of no assistance as in almost all the cases it was found after trial of the case that the same were the cases of breach of promise, which is not so in the present case.

15. In view of the aforesaid discussion, the instant petition sans merits and is hereby dismissed.

(Satyendra Kumar Singh)
Judge
21-2-2022