

Parmanand Mishra & Anr vs The State Nct Of Delhi & Anr on 5 August, 2022

Author: Yogesh Khanna

Bench: Yogesh Khanna

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* IN THE HIGH COURT OF DELHI AT NEW DELHI
+ CRL.M.C. 3076/2021
PARMANAND MISHRA & ANR.

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Through: Mr.Subodh Kumar Pathak, Mr.
Swami, Advocates.

versus

THE STATE NCT OF DELHI & ANR.

Through: Mr.Sunil Kumar Ga
State with WSI Pr
R2 in person.

CORAM:
HON'BLE MR. JUSTICE YOGESH KHANNA
ORDER

% 05.08.2022

1. This petition is filed for quashing of FIR No.24/2018 under Sections 376/313/354 IPC registered at PS Moti Nagar, Delhi and the proceedings emanating therefrom.

2. It is the submission of the learned counsel for the petitioner the matter has been amicably settled between the parties and he points out to copy of the chargesheet, more specifically at page no.42 of the paper book to say even the prosecutrix had agreed that she met with the petitioner in train in August, 2016 when she was going to Gorakhpur from Delhi. Thereafter they both become friends as they belong to same caste and the family members of the prosecutrix has also a talk of marriage of prosecutrix with the accused. She further stated both of them made consensual physical relations from September, 2016 till December, 2017 and she got pregnant twice but got aborted. Thereafter they had an argument and she went to her family home, and since the petitioner switched off his mobile phone, the prosecutrix thought the petitioner has left her and she filed this complaint.

3. Being aggrieved and frustrated of this fact she lodged the present FIR but now everything is settled and she does not want to take these proceedings further. She says despite her statement being recorded under Section 164 Cr.P.C. the matter went in trial and her deposition was recorded by the learned Trial Court on 24.05.2019.

4. In her deposition also she has categorically averred the petitioner never committed any rape upon her and the physical relations were consensual and she made the complaint on being frustrated because the petitioner had switched off his mobile phone but later the said misunderstanding got removed but by that time she had already filed the complaint which became the basis of this FIR.

5. The learned counsel for the petitioner has referred to her deposition dated 24.05.2019 wherein she stated the marriage talks were going on between them and though she was insisting the petitioner for marriage but the petitioner sought some time as he was still studying and wanted to settle down before marriage.

6. During her cross-examinations, she deposed she had given consent to the petitioner for making physical relation as he had promised to marry her. Further in her cross-examination she again stated about the consensual relationship with the petitioner and her family also known about her friendship with the accused.

7. The prosecutrix admitted when the accused stopped talking to her she felt hopeless and lodged the present FIR. She further admitted one week prior to lodging of FIR she had a talk with the accused. Thus, she admitted of her physical relationship with the accused being consensual and rather admitted she got terminated her pregnancy on two occasions with her consent. The affidavit of the prosecutrix is on record as annexure P4 wherein she has stated though they both intended to marry but because of some circumstances beyond their control the marriage could not be solemnized. Now the prosecutrix is living happily in her matrimonial home and does not wish to pursue the matter further.

8. The learned counsel for the petitioner submits they shall also file a compromise deed on record. Be placed on record, prior to the next date.

9. Since the prosecutrix never intended to pursue the matter further after lodging the FIR and had stated so in her statement under Section 164 Cr P C and since she has also given her consent for quashing of present FIR as misunderstanding between the two had sorted out even prior to the initiation of the trial, it is thus prayed the FIR be quashed.

10. In Mandar Deepak Pawar vs. The State of Maharashtra in CRL.A.442/2022 it was held as under:

"We are fortified to adopt this course of action by the judicial view in (2019) 9 SCC 608 titled "Pramod Suryabhan Pawar Vs. State of Maharashtra & Anr." where in the factual scenario where complainant was aware that there existed obstacles in marrying the accused and still continued to engage in sexual relations, the Supreme Court quashed the FIR. A distinction was made between a false promise to marriage which is given on understanding by the maker that it will be broken and a breach of promise which is made in good faith but subsequently not fulfilled. This was in the context of Section 375 Explanation 2 and Section 90 of the IPC, 1860."

11. In Anand D.V. vs. State & Anr. in CRL.A.Nos.394-95/2021 the Hon'ble Supreme Court held as under:

"It is not in dispute that after the registration of FIR, the parties were able to resolve their differences and eventually got married on 11.10.2014. The appellant as well as private respondent represented by Ms. Meenakshi Arora, learned senior counsel jointly state that they are enjoying happy married life. A joint request is, therefore, made on behalf of the appellant and the private respondent that the FIR registered on 17.09.2013 be quashed as it was the outcome of some misunderstanding between the parties. Considering the nature of allegations in the FIR and the realization of the fact that due to miscommunication FIR came to be registered at the relevant point of time which issues/misunderstanding have now been fully resolved and the parties are happily married since 11.10.2014, the basis of FIR does not survive. Rather registering such FIR was an ill-advised move on the part of the private respondent, is the stand now taken before us. It is seen that the appellant and private respondent are literate and well-informed persons and have jointly opted for quashing of the stated FIR. Taking overall view of the matter, therefore, in the interest of justice, we accede to the joint request of quashing of FIR in the peculiar facts of the present case."

12. In Ganesh Shankar Pilane vs. The State of Maharashtra and Anr. in W.P.(CRL.)272/2022 it was held:

"5. An affidavit-in-reply is filed on behalf of Respondent No. 2 i.e., victim herself. Perusal of the affidavit-in-reply shows that at the time of filing of the reply i.e. on 27.01.2022 the Respondent No. 2 had attained the majority and she is of 20 years of age. It would be useful to refer to the statements appearing on the affidavit-in-reply and they read thus:

2. I say that, we are residing in same vicinity and on account of intervention of close friends, respectable persons from the society and elder ones, we have resolved the dispute, to live with peace and amity. I say that, the deponent want to lead peaceful life and further concentrate on education and career.

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7. In view of the above referred affidavits as well as in view of the statements made in the Petition, it can safely be said that quashing of the FIR and proceedings is sought for by consent of the parties.

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16. Considering all these aspects, in our opinion, learned Counsel for Petitioner made out a case for allowing the Petition. Accordingly, the Writ Petition is allowed in terms

of prayer clause „B . Rule made absolute in above terms."

13. In Manteshwar Hanumantrao Kattimani vs. State of Maharashtra and Anr. 2016 SCC OnLine Bom 10581 the Court held as under:

"Both the parties are present in the Court. We have interviewed her and Respondent No. 1 - Original Complainant has stated that she has no objection if the complaint is quashed. We are satisfied that though the offence which was initially registered as an offence punishable under section 376, it appears that the said offence was registered by the police when Respondent No. 2 was in a confused state of mind. In view of the reply filed by Respondent No. 2 in this application, it is obvious that the averments made in the complaint would not constitute an offence punishable under section 376 of the IPC."

14. Further in Capt. Simranjit Singh Sambhi vs. State (NCT of Delhi) and Anr. CRL.M.C.2960/2021 the Court held as follows:

"21. Taking into account the material contradictions and keeping in mind substantial improvements made by the complainant at every stage, this Court of the opinion that it is fit for this Court to exercise its power under Section 482 CrPC to quash the present FIR. Resultantly, FIR No. 143/2021 filed at PS Paschim Vihar for offences under Section 376(2)n, 354, 354-A IPC and all proceedings emanating therefrom is hereby quashed."

15. Thus, in view of the submissions so made by the prosecutrix, present, it can be said the lodging of the FIR by her was only because of some misunderstanding between the two and now since such misunderstanding has come to an end, the FIR can be quashed.

16. Thus in view of the above, there is no impediment in quashing the present FIR considering the nature of allegations; the withdrawal of allegations by the prosecutrix at every stage after registration of FIR and even before this Court. Rather the continuation proceedings in these circumstances would be a sheer waste of time and an abuse of process.

17. In view of the above, the petition is allowed. Consequently, the FIR No.24/2018 under Sections 376/313/354 IPC registered at PS Moti Nagar, Delhi and the proceedings emanating therefrom stands disposed of. Pending application(s), if any, also stands disposed of.

YOGESH KHANNA, J.

AUGUST 05, 2022 DU