

Shiv Kumar Kushwaha & Anr vs State on 11 May, 2022

Author: Jasmeet Singh

Bench: Jasmeet Singh

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IN THE HIGH COURT OF DELHI AT NEW DELHI
CRL.M.C. 3153/2019 & CRL.M.A. 12971/2019
SHIV KUMAR KUSHWAHA & ANR

Through: Mr. Lav Kumar Aggarwal, Ms.
Garg, Advocates
versus

STATE

Through: Mr. Sanjiv Sabharwal, Ld. A
SI Rekha Chauhan, PS New Ashok Nagar
Ms. Aishwarya Rao, Advocate for Pros

CORAM:

HON'BLE MR. JUSTICE JASMEET SINGH
ORDER

% 11.05.2022 This is a petition filed seeking quashing of the FIR No. 272/2019 dated 06.05.2019 registered at PS New Ashok Nagar under Section 376/506 IPC.

The case of the petitioner is that the petitioner and the complainant were in a consensual relationship and it is only when the relationship between the parties soured that the prosecutrix registered the FIR No. 272/2019 dated 06.05.2019 registered at PS New Ashok Nagar under Section 376/506 IPC.

The fact whether the relationship between the petitioner and the prosecutrix was consensual or the petitioner had raped the prosecutrix, is a disputed question which cannot be adjudicated in these proceedings but can only be ascertained after trial.

Even in matters where the prosecutrix has settled the matter with the petitioner and given a No objection Certificate (NoC), the Hon'ble Supreme Court has observed:-

In *Shimbhu v. State of Haryana*, (2014) 13 SCC 318, the Supreme Court has observed as under:

"20. Further, a compromise entered into between the parties cannot be construed as a leading factor based on which lesser punishment can be awarded. Rape is a non-compoundable offence and it is an offence against the society and is not a matter to be left for the parties to compromise and settle. Since the court cannot always be assured that the consent given by the victim in compromising the case is a genuine consent, there is every chance that she might have been pressurized by the convicts or the trauma undergone by her all the years might have compelled her to opt for a

compromise. In fact, accepting this proposition will put an additional burden on the victim. The accused may use all his influence to pressurize her for a compromise. So, in the interest of justice and to avoid unnecessary pressure/harassment to the victim, it would not be safe in considering the compromise arrived at between the parties in rape cases to be a ground for the court to exercise the discretionary power under the proviso of Section 376(2) IPC."

(emphasis supplied) In *State of M.P. v. Madanlal*, (2015) 7 SCC 681, the Supreme Court has observed as under:

"18. The aforesaid view was expressed while dealing with the imposition of sentence. We would like to clearly state that in a case of rape or attempt to rape, the conception of compromise under no circumstances can really be thought of. These are crimes against the body of a woman which is her own temple. These are the offences which suffocate the breath of life and sully the reputation. And reputation, needless to emphasise, is the richest jewel one can conceive of in life. No one would allow it to be extinguished. When a human frame is defiled, the "purest treasure", is lost. Dignity of a woman is a part of her nonperishable and immortal self and no one should ever think of painting it in clay. There cannot be a compromise or settlement as it would be against her honour which matters the most. It is sacrosanct. Sometimes solace is given that the perpetrator of the crime has acceded to enter into wedlock with her which is nothing but putting pressure in an adroit manner; and we say with emphasis that the courts are to remain absolutely away from this subterfuge to adopt a soft approach to the case, for any kind of liberal approach has to be put in the compartment of spectacular error. Or to put it differently, it would be in the realm of a sanctuary of error."

(emphasis supplied) In *Narinder Singh & Ors. v. State of Punjab & Anr.*, (2014) 6 SCC 466, the Supreme Court has observed as under:

"29.1. Power conferred under Section 482 of the Code is to be distinguished from the power which lies in the Court to compound the offences under Section 320 of the Code. No doubt, under Section 482 of the Code, the High Court has inherent power to quash the criminal proceedings even in those cases which are not compoundable, where the parties have settled the matter between themselves. However, this power is to be exercised sparingly and with caution.

29.2. When the parties have reached the settlement and on that basis petition for quashing the criminal proceedings is filed, the guiding factor in such cases would be to secure

(i) ends of justice, or

(ii) to prevent abuse of the process of any court.

While exercising the power the High Court is to form an opinion on either of the aforesaid two objectives.

29.3. Such a power is not to be exercised in those prosecutions which involve heinous and serious offences of mental depravity or offences like murder, rape, dacoity, etc. Such offences are not private in nature and have a serious impact on society. Similarly, for the offences alleged to have been committed under special statute like the Prevention of Corruption Act or the offences committed by public servants while working in that capacity are not to be quashed merely on the basis of compromise between the victim and the offender."

(emphasis supplied) For the above reasons, there is no merit in the writ petition and the same is dismissed.

Another factor which needs to be noted is that in FIRs under Section 376 IPC, the identity of the victim/ prosecutrix needs to be protected.

The Apex Court has time and again emphasized that the name of the complainant/ victim need not be stated and every effort should be made to obscure their identity.

In *Nipun Saxena v. Union of India* (2019) 2 SCC 703, it was clearly elucidated:

"In view of the aforesaid discussion, we issue the following directions:□

1. No person can print or publish in print, electronic, social media, etc. the name of the victim or even in a remote manner disclose any facts which can lead to the victim being identified and which should make her identity known to the public at large.
2. In cases where the victim is dead or of unsound mind the name of the victim or her identity should not be disclosed even under the authorization of the next of the kin, unless circumstances justifying the disclosure of her identity exist, which shall be decided by the competent authority, which at present is the Sessions Judge.
3. FIRs relating to offenses under Sections 376, 376A, 376AB, 376B, 376C, 376D, 376DA, 376DB or 376E of IPC and offenses under POCSO shall not be put in the public domain.
4. In case a victim files an appeal under Section 372 CrPC, it is not necessary for the victim to disclose his/her identity and the appeal shall be dealt with in the manner laid down by law.
5. The police officials should keep all the documents in which the name of the victim is disclosed, as far as possible, in a sealed cover and replace these documents by identical documents in which the name of the victim is removed in all records which may be scrutinized in the public domain.

6. All the authorities to which the name of the victim is disclosed by the investigating agency or the court are also duty bound to keep the name and identity of the victim secret and not disclose it in any manner except in the report which should only be sent in a sealed cover to the investigating agency or the court.

7. An application by the next of kin to authorize disclosure of identity of a dead victim or of a victim of unsound mind under Section 228A(2)(c) of IPC should be made only to the Sessions Judge concerned until the Government acts under Section 228A(2)(c) and lays down a criteria as per our directions for identifying such social welfare institutions or organizations.

8. In case of minor victims under POCSO, disclosure of their identity can only be permitted by the Special Court, if such disclosure is in the interest of the child.

9. All the States/Union Territories are requested to set up at least one one stop center in every district within one year from today."

In the present case, the petitioner has filed photographs of himself with the complainant.

The said practice needs to be deprecated, as where the identity of the prosecutrix is to be protected, the petitioner has gone ahead and, in fact, annexed photographs of the complainant.

For the said reason, while dismissing the present petition, the petitioner is directed to pay costs of Rs. 20,000/- to DHCLSC which should be used for providing aid to rape victims.

The costs will be paid within 2 weeks from today. In case, the cost is not paid, the file be put up before the Court.

JASMEET SINGH, J MAY 11, 2022 / (MS) Click here to check corrigendum, if any