

Smt. Rekha Shivhare vs The State Of Madhya Pradesh on 2 March, 2023

Author: Atul Sreedharan

Bench: Atul Sreedharan

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IN THE HIGH COURT OF MADHYA PRADESH
AT GWALIOR
BEFORE
HON'BLE SHRI JUSTICE ATUL SREEDHARAN
ON THE 2 nd OF MARCH, 2023
CRIMINAL APPEAL No. 3115 of 2023

BETWEEN: -

SMT. REKHA SHIVHARE S/O LATE SHRI BHAGWANLAL
SHIVHARE, AGED 50 YEARS, OCCUPATION :
HOUSEWORK, VILLAGE KALANI BHARTHARI
TEKANPUR BHARTHARI, DISTRICT GWALIOR, AT
PRESENT GOSPURA NO-4 DISTRICT GWALIOR
(MADHYA PRADESH)

.....APPELLANT

(BY SHRI AKHILESH KUMAR GUPTA - ADVOCATE)

AND

1. THE STATE OF MADHYA PRADESH THROUGH
POLICE STATION GWALIOR DISTRICT GWALIOR
(MADHYA PRADESH)
2. PIDITA THROUGH POLICE STATION GWALIOR
DISTRICT GWALIOR (MADHYA PRADESH)

.....RESPONDENTS

(BY SHRI APS TOMAR - PANEL LAWYER FOR THE RESPONDENT
NO.1/STATE)

(BY SHRI VIBHOR KUMAR SAHU - ADVOCATE FOR THE COMPLAINANT)

Th is appeal coming on for hearing this day, t h e court passed the
following:

ORDER

This criminal appeal under Section 14 (A) (2) of the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989 (for short, "the SC/ST Act") has been filed for grant of bail to appellant Smt. Rekha Shivhare in connection with Crime No.81/2023 for the offences punishable under Sections 376, 346, 363, 506, 120 B of IPC and Section 3 (2) (v), and Section 3 (2) (v-a), 3 (1) (w) (ii) of SCST Act, registered at Police Station Gwalior, District Gwalior.

The office note on the maintainability is erroneous. Under the circumstances, the same is being ignored. The appellant is apprehending her arrest in the aforesaid case. There are two parts in the prosecution's narrative : one is forcible rape and confinement of the prosecutrix and second is with regard to removing the child of the prosecutrix from her lawful custody. The prosecutrix and the child both have given their 164 statements. In the 164 the prosecutrix submits that she was called by the co-accused Raju Sharma to a particular place where the applicant was also there. The applicant alongwith the other co-accused persons are stated to have caught hold of the prosecutrix and closed her mouth and locked her up in a room. Another co-accused is stated to have separated the child from the prosecutrix and taken her away. Thereafter Raju Sharma is said to have come back and locked her up in room and committed rape with the prosecutrix and kept her there for three days. Incident is of 03.02.2023 and F.I.R. is registered on 09.02.2023 Learned counsel for the appellant submits that the prosecutrix in her version is unbelievable, in this regard, he has drawn the attention of this Court to Page No.12 of the application which is a copy of Crime No.365 of 2021 of Police Station Gwalior dated 14.06.2021 for the offence under Sections 376 (2)

(n) IPC registered by the same prosecutrix as herein against another person who was the accused in that case. In that case, the allegation against the appellant was that the accused person was in a live-in-relation with the prosecutrix for almost 6 years during which time she became pregnant on several occasions and the accused therein had given her medicine for abortion. Thereafter, during the course of the trial, the prosecutrix turns hostile and resiles from her previous statement u/s.161 Cr.P.C. against the accused in that case on account of which, the accused of that case is acquitted by the learned trial Court by order dated 08.12.2022 passed in Case No.514 of 2021 by the Court of the learned 6th Additional Sessions Judge, Gwalior. Learned counsel for the applicant submits that within less than 60 days thereafter, the same prosecutrix registered the case under Section 376 of IPC against the present applicant and other co-accused persons.

Learned counsel for the respondent/State and the Objector have objected to the anticipatory bail being granted to the appellant on the ground that the appellant had assisted in removing the child from the lawful custody of the prosecutrix. In 164 the statement, the child does not allege any overt role to the applicant herein in her kidnapping or removal from the custody of her mother. She is later on retrieved from the possession of other co-accused persons and not the applicant herein.

Looking at the facts and circumstances and giving due weightage of the fact that in another similar cases under Section 376 of IPC against the same prosecutrix has turned hostile against accused in that case due to which he was acquitted as recently as 08.12.2022 and within the next 60 days thereafter the present case has been registered also inter alia under Section 376 IPC against the appellant herein and another co-accused persons by the same prosecutrix.

Under the circumstances, the bar of Section 18 of SCST would not come into way, the appeal is allowed. It is directed that if the appellant herein is arrested by the Arresting Officer, she shall be enlarged on bail upon her furnishing a personal bond in the sum of Rs.50,000/- (Rupees Fifty Thousand Only) with one solvent surety in the like amount to the satisfaction of the Arresting Officer.

Certified copy as per rules.

(ATUL SREEDHARAN) JUDGE AK/-

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