

Rajan Khajuria vs State And Anr. on 28 October, 2017

Author: Sanjay Kumar Gupta

Bench: Sanjay Kumar Gupta

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HIGH COURT OF JAMMU AND KASHMIR AT JAMMU

561-A Cr.P.C. No. 438/2017, MP No. 01/2017

c/w

B.A. No. 138/2017 MP No. 01/2017

Date of decision:-28.10.2017

Rajan Khajuria

Vs.

State and Anr.

Coram:

Hon'ble Mr. Justice Sanjay Kumar Gupta, Judge

Appearing counsel:

For Petitioner(s) : Mr. Rajnesh Oswal, Advocate.

For respondent (s) : Mr. S.S. Nanda, Sr. AAG.

Mr. D.S. Saini, Advocate.

i/	Whether to be reported in Press/Media	:	Yes/No
ii/	Whether to be reported in Digest/Journal	:	Yes/No

1. Vide this common order, I propose to dispose of these two petitions filed by the petitioner, one being 561-A Cr.P.C. No.438/2017 seeking quashment of FIR bearing No. 51/2017 dated 08.04.2017 u/s 366/34 RPC registered at P/S Bakshinagar and another being B.A. No.138/2017 for grant of anticipatory bail in the same FIR.

2. In petition filed u/s 561-A No. 438/2017, it has been stated that Reena Kumari W/o Rajan Syal was the classmate of the petitioner and she was very good friend of the petitioner. Her marriage was solemnized with Rajan Syal in the year 2013. She was not having good relationship with her husband with her in-laws and she wanted to leave her matrimonial home. Therefore, she asked the petitioner to accompany her to Ramnagar, where her friend, namely, Radha Rani was residing. She also wanted to do some job over there. The said prosecutrix was the School friend of the petitioner, as such, she left her house on 31 st March, 2017. She went to Delhi alongwith the petitioner by Air and by leaving her matrimonial home. She expressed regrets for leaving her matrimonial home, but at the same time, she expressed her disenchantment with the respondent No. 2 and her in-laws in a Letter (Annexure-A) written by her while leaving her matrimonial home. The petitioner accompanied the wife of respondent No. 2 and both went to Delhi by Air on 31st March, 2017.

3. Thereafter, the petitioner left the wife of the respondent No. 2 at the Flat No. 3, Bhiwani Ganj, Bhagat Singh Chowk, Ramnagar, District Naintal of her friend, namely, Radha Rani. After leaving here there, he went to Kashipur, where he joined his job with Club Group of Hotels. The wife of the respondent No. 2 started residing at above mentioned place and she even joined the job of Beautician for her sustenance. Thereafter, the petitioner never met the respondent No. 2 though he continued to know about the welfare of the wife of the respondent No. 2 from the said Radha Rani and now, the petitioner has come to know that the respondent No. 2 has lodged FIR bearing No. 51/2017 (Annexure-C) against the petitioner and one-Sumit Sharma that both of them had abducted the wife of the respondent No. 2, namely, Reena Kumari.

4. The petitioner being aggrieved of the aforesaid FIR allegedly lodged by the respondent No.2, has challenged the same and prayed for quashing the same on the following grounds:-

(A) The said prosecutrix was not happy with her husband, i.e., respondent No. 2 as well as her in-laws and the bare perusal of the Letter (Annexure-A) reveals that she had voluntarily left her home and she was neither forcibly nor by any deceitful means taken away by the petitioner. As such, the petitioner has been falsely implicated in the case by the husband of the said Reena Kumari. The wife of respondent No. 2 was residing at Ramnagar, District Naintal and was doing a job of Beautician and had she been compelled or forced by the petitioner to leave Jammu, she had numerous opportunities to complain about her abduction when she was all alone during frisking at Airport by the Police Authorities regarding her abduction, but she has voluntarily left her matrimonial house due to marital discard. As such, no offence under Section 366 RPC is made out.

(B) After couple of months, suddenly there was change of heart of the wife of respondent No. 2 and the conversation among Radha Rani, prosecutrix and respondent No. 2 took place. From the conversation among the aforesaid three persons, it is evident that there is discord between the respondent No. 2 and his wife. It is also evident that there was no abduction of the wife of respondent No. 2 and she had voluntarily left her matrimonial home and Radha Rani can be heard saying that she would bring the wife of respondent No. 2 to his home and the respondent No. 2 can be heard inquiring from that lady Radha Rani that what problem her wife was having, that such step was taken and during the conversation, the wife of the respondent No. 2 has also talked to her husband, i.e., respondent No. 2 and from their conversation, it is also evident that she was never abducted and she had voluntarily left her matrimonial home. The conversation of respondent No. 2, Radha Rani and the wife of respondent No. 2 was recorded by Radha Rani and in this regard, CD having conversation and the transcription of the same are annexed herewith as Annexures-D and E respectively.

(C) The wife of the respondent No. 2, namely, prosecutrix also talked to her cousin sister and her aunt and in the conversation, the wife of the respondent No. 2 can be heard saying with reference to the petitioner that the boy, with whom she had come

had left her in the house of Didi (Radha Rani) and thereafter, he left. The wife of the respondent No. 2 can also be heard saying that she has already spoiled her life and why would she spoil the life of the person, i.e., the petitioner. She can also be heard saying that the person (in reference to the petitioner) that he talked to Didi (Radha Rani) even in the said conversation, the wife of the respondent No. 2 has nowhere demonstrated, disclosed or even given a hint that she was abducted by the petitioner. The CD containing the conversation of the wife of the respondent No. 2 with her cousin sister and her aunt has already been placed on record as Annexure-D and its transcription is annexed as Annexure-F. The Investigating Officer is further under legal obligation to consider the version of the accused as well. In view of the Rule 597, it is the duty of the Investigating Officer to permit the accused to produce the defence evidence and consider such evidence if produced, but the Investigating Officer instead of allowing the petitioner to produce his case before him is more interest in arresting the petitioner.

5. Objections have been filed on behalf of respondent No. 1, stating therein that the petitioner has not disclosed the true and material facts in the instant petition rather concealed the true and material facts from this Hon'ble Court. No legal, fundamental or statutory rights of the petitioner are violated or infringed. As such, the petition filed by the petitioner is liable to be dismissed on this count. It has also been submitted in the objections filed on behalf of respondent No. 1 that the investigation of the said case is in progress, the statement of the prosecutrix, namely prosecutrix stands recorded before the Judicial Magistrate 1st Class, Jammu under Section 164-A Cr. P.C and her medical examination has also been conducted from the concerned doctors of Government Hospital Sarwal, Jammu. From the investigation, it is established that the petitioner/accused has kidnapped the prosecutrix and raped her. Therefore, the petitioner/accused has committed the heinous offences and under said circumstances, the petition filed by him for quashment of FIR No. 51/2017 is outrightly liable to be dismissed. That the petitioner/accused has deliberately, intentionally with pre-planning and in a deceitful manner kidnapped the prosecutrix and committed the rape upon her and during the investigation, it is found that the accused has committed the heinous offences under Sections 376 and 366 RPC and accordingly, he is required to be punished under law.

6. Objections have also been filed on behalf of respondent No. 2 stating therein that respondent No. 2 lodged the Report on 31 st March, 2017 with the Police Station, Bakshi Nagar, Jammu that his wife was missing from her matrimonial house. Though the respondent No. 2 tried his best to search out his missing wife, yet all his efforts turned futile. As such, he lodged the Missing Report of his wife with the Police. On 08th April, 2017, the FIR No. 51/2017 under Sections 366/34 RPC was registered by the Police of Police Station, Bakshi Nagar, Jammu. After some days, the respondent No. 2 came to know that the petitioner, who was known to said prosecutrix being her classmate has kidnapped her while she was all alone in her matrimonial house and after kidnapping, the petitioner took her to Delhi and from Delhi to Ram Nagar, Utrakhnad State, where he kept said Reena Kumari in a hotel for five days and during this period, he committed rape with said Reena Kumari against her wishes and also made the video while raping with the intention to blackmail said Reena Kumari, so that she may not involve the petitioner in the kidnapping and rape case. The petitioner

wrongfully confined said Reena Kumari and she was put under pressure and fear that the petitioner shall spoil the life of the said Reena Kumari by showing her naked videos to her in-laws and other relations. So under said threat, the petitioner repeatedly raped said Reena Kumari and from the hotel, the petitioner took said Reena Kumari to a rented house, where the petitioner threatened her that she will have to behave like his wife otherwise the petitioner shall kill her. The aforesaid Reena Kumari acted according to the instructions of the petitioner under said threat and fear of the petitioner and the petitioner wrongfully confined the said Reena Kumari and did not allow her to go outside. The petitioner harassed and tortured the said Reena Kumari and also sold out her gold Mangalsutra and a gold ring. When prosecutrix got opportunity, she managed to make telephone call to respondent No. 2, her mother and sister. After getting the information, the respondent No. 2 alongwith police went to Ramnagar, Uttarakhand. He traced and recovered the said Reena Kumari on 2nd June, 2017 and brought her back to Jammu. The petitioner could not be arrested, as he managed to escape.

7. It is further submitted that from the perusal of the statement of prosecutrix, the offence under Sections 376/366 RPC is fully established against the petitioner. Therefore, the FIR No.51/2017 cannot be quashed. The investigation in the aforesaid FIR is a statutory function of the Investigating Agency. Therefore, unless the investigation is completed and charge-sheet is submitted in the Court of law, the powers under Section 561-A Cr.P.C cannot be exercised. As such, on this ground also, the petition filed by the petitioner is liable to be dismissed.

8. In Bail Application No.138/2017 filed under Section 497-A Cr.P.C., it is stated therein that the other accused, namely, Sumit Sharma has already been granted anticipatory bail by the learned Sessions Judge, Jammu. It has also been submitted by the counsel for the applicant/petitioner in the bail application that the petitioner is at very threshold of his career and the Police of Police Station, Bakshi Nagar, Jammu is bent upon to arrest the petitioner in connection with the above mentioned false and frivolous FIR. As such, if the petitioner is arrested by the police of Police Station, Bakshi Nagar, Jammu, the whole of the career of the petitioner would be spoilt. The petitioner has not committed any offence, which is exclusively punishable with death penalty or life imprisonment. The petitioner undertakes to abide by all the conditions imposed by this Hon'ble Court in the event of bail.

9. In response to the Bail Application, the State has filed the objections, stating therein that the petitioner kidnapped the prosecutrix-Smt. Reena Kumari and then, took her to Ram Nagar, Uttarakhand, where the petitioner repeatedly forcibly raped the prosecutrix against her wishes. Therefore, the instant application for seeking anticipatory bail is not maintainable in terms of the Amended Criminal Law as well as insertion of Section 497-C Cr. P.C, which reads as under:-

"497-C:- Special provision regarding bail in certain offences against women etc. (1) Notwithstanding anything contained in this Code, no person accused of an offence punishable under Sections 304-B, 326-A, 376, 376-A, 376-C, 376-D or 376-E of RPC shall if in custody, be released on bail or on his own bond unless the Public Prosecutor has been given an opportunity of being heard on the application for such release.

Provided that such accused person shall not be released on bail or on his own bond, if the Court, on a perusal of the case diary or the report made under Section 173 of the Code, is of the opinion that there are reasonable grounds for believing that the accusation against such person is prima facie true.

(i) The restrictions on granting of bail specified in Sub-Section (1) shall be in addition to the restrictions under the Code or any other law for the time being in force on granting of bail.

(ii) Nothing in Section 497-A of the Code shall apply in relation to any case involving the arrest of any person accused of having committed an offence specified in Sub-Section (1)."

In view of the above referred amendment in criminal law, the application for anticipatory bail is mis-conceived and the same is liable to be dismissed.

10. It is further submitted that during the investigation, the police registered the FIR No. 51/2017 under Sections 366/34 RPC against the petitioner. The police recovered the said prosecutrix from illegal custody of the petitioner from Ramnagar, Uttarakhand on 02nd June, 2017 and brought her back to Jammu, but the petitioner managed to escape. The police got recorded the statement of the said prosecutrix under Section 164-A Cr. P.C before the Judicial Magistrate 1st Class, Jammu. The police also got medically examined said prosecutrix from the concerned doctor. The aforesaid prosecutrix in her statement before the Magistrate stated that she was kidnapped by the petitioner and he took her to Ramnagar, Uttarakhand and kept her in a hotel, where she was forcibly raped by the petitioner and she was not allowed to come back and was wrongfully confined over there. After recording the statement of the said Reena Kumari and during the investigation, the police found that the petitioner has kidnapped and raped said Reena Kumari, as such, the police added the Section 376 RPC in the aforesaid FIR No. 51/2017. It is further stated that the said Reena Kumari did not talk to her aunt or cousin sister, as alleged by the petitioner.

11. I have considered the rival contentions of parties. The law with regard to inherent power of High court has now been well settled. In recent case in AIR 2017 SUPREME COURT 37 in case titled State of Telangana v Habib Abdulla Jeelani and ors., it is held as under :-

"11. Once an FIR is registered, the accused persons can always approach the High Court under Section 482 CrPC or under Article 226 of the Constitution for quashing of the FIR. In Bhajan Lal (supra) the two- Judge Bench after referring to Hazari Lal Gupta v. Rameshwar Prasad[7], Jehan Singh v. Delhi Administration[8], Amar Nath v. State of Haryana[9], Kurukshetra University v. State of Haryana[10], State of Bihar v. J.A.C. Saldanha[11], State of West Bengal v. Swapan Kumar Guha[12], Smt. Nagawwa v. Veeranna Shivalingappa Konjalgi[13], Madhavrao Jiwajirao Scindia v. Sambhajirao Chandrojirao Angre[14], State of Bihar v. Murad Ali Khan[15] and some other authorities that had dealt with the contours of exercise of inherent powers of the High Court, thought it appropriate to mention certain category of cases by way of

illustration wherein the extraordinary power under Article 226 of the Constitution or inherent power under Section 482 CrPC could be exercised either to prevent abuse of the process of any court or otherwise to secure the ends of justice. The Court also observed that it may not be possible to lay down any precise, clearly defined and sufficiently channelized and inflexible guidelines or rigid formulae and to give an exhaustive list of myriad cases wherein such power should be exercised. The illustrations given by the Court need to be recapitulated:-

"(1) Where the allegations made in the first information report or the complaint, even if they are taken at their face value and accepted in their entirety do not prima facie constitute any offence or make out a case against the accused.

(2) Where the allegations in the first information report and other materials, if any, accompanying the FIR do not disclose a cognizable offence, justifying an investigation by police officers under Section 156(1) of the Code except under an order of a Magistrate within the purview of Section 155(2) of the Code.

(3) Where the uncontroverted allegations made in the FIR or complaint and the evidence collected in support of the same do not disclose the commission of any offence and make out a case against the accused.

(4) Where, the allegations in the FIR do not constitute a cognizable offence but constitute only a non-cognizable offence, no investigation is permitted by a police officer without an order of a Magistrate as contemplated under Section 155(2) of the Code.

(5) Where the allegations made in the FIR or complaint are so absurd and inherently improbable on the basis of which no prudent person can ever reach a just conclusion that there is sufficient ground for proceeding against the accused.

(6) Where there is an express legal bar engrafted in any of the provisions of the Code or the concerned Act (under which a criminal proceeding is instituted) to the institution and continuance of the proceedings and/or where there is a specific provision in the Code or the concerned Act, providing efficacious redress for the grievance of the aggrieved party.

(7) Where a criminal proceeding is manifestly attended with mala fide and/or where the proceeding is maliciously instituted with an ulterior motive for wreaking vengeance on the accused and with a view to spite him due to private and personal grudge."

12. Further, FIR can only be quashed in order to prevent abuse of process of law or to otherwise secure the ends of justice. The expression ends of justice and to prevent abuse of process of any court are intended to work out either when an innocent person is unjustifiably subjected to an

undeserving prosecution or if an ex-facie all merited prosecution is throttled at the threshold without allowing the material in support of it. This court while exercising the power under section 561-A Cr.P.C., does not function as court of trial, appeal or revision. Inherent jurisdiction has to be exercised disparity, careful and with great caution. These powers cannot be used to stifle the legitimate prosecution. This is discretionary power vested in High Court to do substantial justice. High Court cannot examine the evidence as to whether the facts narrated in petition filed under section 561-A Cr.p.c , the police investigation is barred, especially when these facts have neither been brought before police nor police has opportunity to know these facts.

13. In present case, petitioner has admitted that he took the prosecutrix, who is married lady with Rajan on 31st March, 2017; he and prosecutrix firstly went to Delhi; it has also been admitted by the petitioner that he left her at Flat No.3, Bhiwani Ganj, Bhagat Singh Chowk, Ramnagar, District Naintal of her friend, namely, Radha Rani.

14. The husband of victim on finding her wife missing, lodged FIR bearing No. 51/2017 u/s 376/366 /RPC at P/S Bakshinagar; during investigation the victim was recovered and during her statement recorded under section 164-A Cr.P.C she has narrated that petitioner kidnapped her on 31-3.2017 deceitfully and took her at Delhi and then Ramnagar in uttrakhand in Hotel; she was kept for days in Hotel; petitioner committed rape on her on threat of life; accused also made naked videos of her; and he threatened her that he will show all these naked pictures to her in-laws. Bare perusal of the statement of victim on oath before JMIC and other evidence collected during investigation, it discloses a cognizable offence, justifying an investigation by police officers under Section 156(1) of the Code. The allegations leveled against petitioner are serious in nature and requires through investigation. The investigation in the case is not barred under any other Act or law.

15. The letter, C/D and copy of conversations attached with the petition cannot be taken note of by this Court while exercising jurisdiction under Section 561-A Cr.P.C., because this court is neither an investigation agency nor a trial court. However, petitioner can produce these evidence before investigation agency. Because as per Rule 597 of Jammu and Kashmir Police Rules 1960, it is general duty of I/O to give opportunity to accused to produce defense evidence. This rule reads as under:-

"597. Investigating Officer-General duties of.- An investigating officer is not to regard himself as a mere clerk for the recording of statements. It is his duty to find out the truth of the matter under investigation, and not solely to obtain convictions. In order to ascertain the truth he must use the powers of observation, his knowledge of criminals and their methods and nay other means that may be available to him in addition to the recording of statements. At an early stage of an investigation he should consult the village crime note book and other records to learn of any matters recorded there which may have a bearing on the case. He must not prematurely commit himself to any view of the facts for or against any person and although he need not go out of his way to secure evidence for the defence in a case in which he has satisfactory grounds of believing that an accused person is guilty, he must always give accused persons an opportunity of producing defence evidence before him and must

consider such evidence carefully if produced."

16. So no case for quashment of FIR is made out at this stage. Petition is accordingly dismissed.

17. Now coming to anticipatory bail petition, counsel for petitioner has argued that case is false and has reiterated all the grounds taken in bail petition. Counsel for petitioner has relied on three unreported judgments of this court viz. BA No.41/2017 case titled Rattan Singh v. State of J&K decided on 23.8.2017; BA No.64/2017 case titled Jagdish Raj v. State of J&K decided on 8.5.2017; and BA No.12/2017 case titled Maj.

Anoop Kumar v. State of J&K decided on 23.2.2017.

Whereas counsel for State has stated the concept of anticipatory bail has been excluded by virtue of amended provision of Cr.P.C.

18. I have considered the matter and law on the subject. I/O Ashwani Kumar Inspector SHO P/S Bakshinagar was present in Court along with C/D file on the date of hearing; he has categorically stated that petitioner while on interim bail has never attended the investigation. Further, as per amended section 497-C Cr.P.C., the provision of section 497-A Cr.P.C. has been excluded for its application to offence u/s 376 RPC. I have gone through the citation produced by counsel for petitioner. In first case, this court has not taken note of clause ii of 497-C; in second case, there was no assertion of rape in statement of prosecutrix under section 164-A Cr.P.C. In third case, the provision of section 497-A Cr.P.C has not been discussed.

19. In view of above, this petition is also dismissed.

20. Accordingly both the petitions are without any merits, hence are dismissed.

Jammu
28.10.2017
*Ram Krishan

(Sanjay Kumar Gupta)
Judge