

## High Court Of himachal pradesh

CRIMINAL MISC. PETITION (MAIN) U/S 482 CRPC No.34 of 2020

Judgment Date:

10-09-2021

**Rohan Mehta**

**..Petitioner**

**State Of Himachal Pradesh & Others**

**..Respondent**

Bench:

**{ HON'BLE MR. JUSTICE ANOOP CHITKARA }**

Citation:

LQ

FIR No.	Dated	Police Station	Sections
39/2019	8.3.2019	Dhalli, District Shimla	376 & 417 IPC

1. Seeking quashing the above captioned FIR and other proceedings, the accused has come up before this Court by way of the instant petition under Section 482 Cr.P.C.

2. Based on the information given by the victim to the Police Station, Women Cell, Yamunanagar, FIR No. 000, was registered. After that the said FIR was transferred to the above mentioned police station, where the FIR captioned above was registered. In the initial FIR recorded in Yamunanagar, which is the basis of the current FIR the victim levelled the following allegations:

3. In a nut shell the victim stated that she was permanent resident of Yamunanagar. The accused was a shopkeeper. During the course of purchasing goods they developed friendship. After some days the accused proposed victim that he would like to marry her. On this the victim stated that she works abroad and would not like to return to India. She also stated that given her past she was happier stay abroad. Upon this, Rohan Mehta told her that he has nothing to do with past, as the past has already passed off. However, Rohan Mehta, petitioner assured her that he has earned lot of money, which is sufficient to take care of their needs and also conveyed to her that he has already spoken to his family. Without going into further details, which are not relevant, it appears that the accused sent the Air tickets from Dubai to India. The victim returned and decided to get engaged. Consequently on 17.5.2019, they were engaged in a hotel at Yamunanagar. On the next day, the entire family decided to visit Chail in Solan District of Himachal Pradesh to celebrate the engagement. Since it was her engagement, as such she had to go there and in Chail they booked a separate room for Rohan and the victim. On the intervening night on 18th May, 2018, when they were alone in the room, then Rohan told her that the marriage between them is going to solemnize. As such there is no harm in establishing physical relationship. After that Rohan established sexual relations with her. Subsequently, after 2-3 days they returned, but in between things went sour and the engagement came to an end.

4. Mr. Vinay Kuthiala, learned Senior Advocate appearing for the petitioner has drawn attention of this Court to various photographs etc. and other documents, which are referred to in the petition. However, the law is clear that while quashing the FIR this Court cannot go into other documents and cannot appreciate the evidence. If, on the face of the FIR, no case is made out only then FIR can be quashed.

5. Mr. Nand Lal Thakur, learned Additional Advocate General submits that this Court cannot travel beyond the FIR. According to learned Additional Advocate General the allegations made in the FIR make out a prima facie case.

6. Ms. Sanya Kaushal, learned legal aid counsel, appearing for the respondent-victim argued that beyond the reading of FIR is touching the merits of the case and beyond that certainly this Court cannot travel under Section 482 Cr.P.C. There is force in the arguments of Ms. Sanya Kaushal, learned counsel appearing for the victim. Thus, this Court will confine only to the allegations made in the FIR and would not travel beyond that.

#### ANALYSIS AND REASONINGS:

7. The relevant portion of the FIR is that after the engagement the family has gone to celebrate the same in a Hotel at Chail, District Solan, Himachal Pradesh, which is a tourist place. The victim also accompanied and the family had booked a separate room for the victim and the petitioner. Thus it is not an open secret that they were supposed to share one room. The victim alleged in the FIR that when they were alone in the room then Rohan told her that they are now going to marry and as such there is no harm in establishing physical relations. The victim states that after that they established coitus.

8. Even if all the allegations levelled by the victim are accepted as true and correct on its face value still it does not make out any offence. The accused never assured her that in case she establishes sexual relations with him, then he would marry her. There was no misconception of facts, as per Section 90 IPC. The victim explicitly alleged that after the proposal of the accused that they are going to marry and thus there is no harm to establish physical relationship, she agreed to his request and established sexual relations. Had the accused told her that he would promise to marry her in case she establishes sexual relations, then subject to other facts and circumstances, it would have possibly made out a prima facie case. However, in the present case the essential ingredient is missing that the accused had promised her that in case she establishes sexual relations then he would marry her.

9. In *Dhruvaram Murlidhar Sonar v. State of Maharashtra*, (2019) 18 SCC 191, the Hon'ble Supreme Court holds;

*[3] The appellant is the accused No.1 in the aforesaid FIR, registered at the instance of the complainant/respondent No.4. At the relevant point of time, the appellant was serving as a medical officer, Primary Health Centre at Toranmal, Dhadgaon Taluq, Nandurbar District, whereas the complainant was working as an Assistant Nurse at the same establishment. The allegations made by the complainant in the FIR in brief are that her husband died on 05.11.1997, leaving behind her and her two children. During this time, the appellant informed her that there have been differences between him and his wife, and therefore, he is planning to divorce his wife. Further, the appellant informed the complainant that since they belong to different communities, a month is needed for the registration of their marriage. Therefore, she started living with the appellant at his Government quarters. The FIR further states that she had fallen in love with the appellant and that she needed a companion as she is a widow. Therefore, they started living together, as if they were husband and wife. They resided some time at her house and some time at the house of the appellant. The appellant acted as if he has married her and has maintained a physical relationship with her. However, he has failed to marry her as promised. When things stood thus, his brother, i.e accused No. 2, claims to have married her. Thereafter, in the year 2000, complainant received the information from the co-accused about the marriage of the appellant with some other woman. Therefore, she filed the aforesaid complaint and FIR dated 06.12.2000 came to be registered against the appellant and the co-accused.*

[21] In the instant case, it is an admitted position that the appellant was serving as a Medical Officer in the Primary Health Centre and the complainant was working as an Assistant Nurse in the same health centre and that she is a widow. It was alleged by her that the appellant informed her that he is a married man and that he has differences with his wife. Admittedly, they belong to different communities. It is also alleged that the

accused/appellant needed a month's time to get their marriage registered. The complainant further states that she had fallen in love with the appellant and that she needed a companion as she was a widow. She has specifically stated that "as I was also a widow and I was also in need of a companion, I agreed to his proposal and since then we were having love affair and accordingly we started residing together. We used to reside sometimes at my home whereas some time at his home." Thus, they were living together, sometimes at her house and sometimes at the residence of the appellant. They were in a relationship with each other for quite some time and enjoyed each other's company. It is also clear that they had been living as such for quite some time together. When she came to know that the appellant had married some other woman, she lodged the complaint. It is not her case that the complainant has forcibly raped her. She had taken a conscious decision after active application of mind to the things that had happened. It is not a case of a passive submission in the face of any psychological pressure exerted and there was a tacit consent and the tacit consent given by her was not the result of a misconception created in her mind. We are of the view that, even if the allegations made in the complaint are taken at their face value and accepted in their entirety, they do not make out a case against the appellant. We are also of the view that since complainant has failed to prima facie show the commission of rape, the complaint registered under Section 376(2)(b) cannot be sustained.

[22] Further, the FIR nowhere spells out any wrong committed by the appellant under Section 420 of the IPC or under Section 3(1)(x) of the SC/ST Act. Therefore, the High Court was not justified in rejecting the petition filed by the appellant under Section 482 of the Cr.P.C.

[23] In the result, the appeal succeeds and is accordingly allowed. The impugned order of the High Court dated 02.07.2018 in Criminal Application No.3590 of 2012, is hereby set aside. The First Information Report dated 6.12.2000 filed by the complainant in the Police Station at Mhasawad, District Nandurbar, on the basis of which Crime No.59 of 2000 is registered against the appellant, is hereby quashed. The chargesheet dated 14.06.2001 filed by Mhasawad Police Station against the appellant for the offences under Sections 376 (2)(b), 420 read with Section 34 of the IPC and Section 3(1)(x) of the SC/ST Act is also quashed.

#### CONCLUSION:

10. The ratio of the judgment of Hon'ble Supreme Court in Dhruvaram Murlidhar Sonar's case supra, applies in all four in the facts and circumstances of the present case. Thus, without going further, it is a fit case where the continuation of proceedings would be an abuse of process of law.

11. This Court has inherent powers under Section 482 of the Code of Criminal Procedure to interfere in this kind of matter, and such powers can always be exercised, depending upon the facts and circumstances.

12. In Himachal Pradesh Cricket Association v State of Himachal Pradesh, 2018 (4) Crimes 324, Hon'ble Supreme Court holds,

*[47]. As far as Writ Petition (Criminal) No. 135 of 2017 is concerned, the appellants came to this Court challenging the order of cognizance only because of the reason that matter was already pending as the appellants had filed the Special Leave Petitions against the order of the High Court rejecting their petition for quashing of the FIR/Chargesheet. Having regard to these peculiar facts, writ petition has also been entertained. In any case, once we hold that FIR needs to be quashed, order of cognizance would automatically stands vitiated.*

13. Given above, this is a fit case where the inherent jurisdiction of the High Court under Section 482 of the Code of Criminal Procedure is invoked to quash the FIR and the consequent proceedings. The FIR mentioned above is quashed, and all the consequential proceedings are also quashed and set aside. The bail bonds are accordingly discharged. All pending application(s), if any, stand closed.

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