

1 THE HIGH COURT OF MADHYA PRADESH
M.Cr.C. No.38456/2021
Rajkishore Shrivastava vs. State of MP and another

Through Video Conferencing
Gwalior, Dated:02/08/2021

Shri Anil Kumar Mishra, Advocate for applicant.

Shri C.P. Singh, Panel Lawyer for respondent/State.

This application under Section 482 of Cr.P.C. has been filed for quashing the FIR in Crime No.8/2021 registered at Police Station AJK, District Bhind for offence under Sections 376(2)(n), 323, 294, 506 of IPC and under Sections 3(2)(v), 3(2)(va), 3(1)(r), 3(1)(s), 3(1)(w) of Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act as well as the charge sheet and its all consequential proceedings.

It is submitted by the counsel for the applicant that the prosecutrix has lodged an FIR on the allegations that in the month of June, 2020 she had started working in the hospital of the applicant on the post of Receptionist. Thereafter, the applicant went to Gwalior and Delhi and came back in the month of July, 2020. It is alleged that on the pretext of giving job, the applicant had violated her sexually on multiple occasions and also started pressurizing that the prosecutrix must indulge in sex with other persons. When the prosecutrix did not agree for indulging in sex with other persons, then her services were terminated. It is alleged that on the pretext of reinstatement, the applicant had sexually violated her on number of occasions till December, 2020, however, she was not given the job.

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2 THE HIGH COURT OF MADHYA PRADESH
M.Cr.C. No.38456/2021
Rajkishore Shrivastava vs. State of MP and another

When the prosecutrix threatened the applicant that she would inform his conduct to his wife, then the applicant gave an application against her in his defence. The prosecutrix was also beaten by the applicant and by humiliating her by her caste, a threat was extended.

It is submitted that four supplementary statements of the prosecutrix were also recorded. Further, from the statement of the prosecutrix, it is clear that she was a consenting party. Even after the termination of her service, if she continued to remain in sexual relationship with the applicant, then it cannot be said that her consent was obtained by misconception of fact.

Heard learned counsel for the applicant.

Section 90 of IPC reads as under:

“90. Consent known to be given under fear or misconception: A consent is not such a consent as it intended by any section of this Code, if the consent is given by a person under fear of injury, or under a misconception of fact, and if the person doing the act knows, or has reason to believe, that the consent was given in consequence of such fear or misconception; or
Consent of insane person- If the consent is given by a person who, from unsoundness of mind, or intoxication, is unable to understand the nature and consequence of that to which he gives his consent; or
Consent of child- unless the contrary appears from the context, if the consent is given by a person who is under twelve years of age.”

Thus, it is clear that if the consent is given in consequence of

3 THE HIGH COURT OF MADHYA PRADESH
M.Cr.C. No.38456/2021
Rajkishore Shrivastava vs. State of MP and another

any misconception or fear, then it cannot be said to be a free consent.

In the present case, undisputedly the applicant is the Director of a hospital. It is the case of the prosecutrix that she was given appointment on the post of Receptionist and thereafter the applicant had violated her sexually on multiple occasions. If the prosecutrix did not make any complaint with regard to her sexual violation, then it cannot be said that the prosecutrix had indulged in sexual act voluntarily because she was an employee of the applicant and the applicant was in a position to dominate her wishes. Further, when the services were terminated, it is alleged that the applicant again allured her of giving her job and under the hope and belief that the prosecutrix would again get a job in the hospital, if she continued to have sexual relationship with the applicant, then it cannot be said that her consent was a free consent and there was no misconception of fact.

It is well established principle of law that the investigation or the charge sheet can be quashed only if uncontroverted allegations do not make out an offence. In the present case, by giving her an assurance that she would be reemployed by the applicant in his hospital, if he succeeded in getting the consent of the prosecutrix to involve in sexual act, then such consent cannot be said to be a free consent and it was certainly obtained by making false promise of

4 THE HIGH COURT OF MADHYA PRADESH
M.Cr.C. No.38456/2021
Rajkishore Shrivastava vs. State of MP and another

reemployment and thus, in the light of Section 90 of IPC, it can be said that the said consent was obtained under misconception of fact.

Under these circumstances, no case is made out for quashment of FIR in Crime No.8/2021 registered at Police Station AJK, District Bhind or the charge sheet arising out of the aforesaid FIR.

Before parting with this order, this Court would like to mention that certain observation have been made in order to consider the submissions of the counsel for the applicant.

The Trial Court is reminded that observations in this order have been made in the light of limited scope under Section 482 of Cr.P.C. The Trial Court must decide the Trial strictly in accordance with evidence which would come on record without getting prejudiced or influenced by any of the observations made in this order.

Accordingly, the application fails and is hereby **dismissed**.

(G.S. Ahluwalia)
Judge

Arun*

