

IN THE HIGH COURT OF JHARKHAND, RANCHI

Cr.M.P. No. 488 of 2022

Manish Kumar Sharma

..... Petitioner

-- Versus --

1. The State of Jharkhand

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..... Opposite Parties

CORAM: HON'BLE MR. JUSTICE SANJAY KUMAR DWIVEDI

For the Petitioner :- Ms. Prachi Pradipti, Advocate

For the State :- Mr. Shailendra Kumar Tiwari, Advocate

For the O.P.No.2 :- Mr. Sumit Prakash, Advocate

4/06.12.2022 Heard Ms. Prachi Pradipti, the learned counsel appearing for the petitioner, Mr. Sumit Prakash, the learned counsel appearing on behalf of the O.P.No.2 and Mr. Shailendra Kumar Tiwari, the learned counsel appearing on behalf of the respondent State.

This petition has been filed for quashing of the order dated 24.09.2021 including the entire criminal proceeding arising out of Deoghar Mahila P.S. Case No.6 of 2021, corresponding to G.R. No.1839 of 2021, registered for the offence under section 406, 420, 376(2)(n) of the IPC and pending before the learned Chief Judicial Magistrate, Deoghar.

As per the Fardbeyan of the O.P.No.2, the case has been registered alleging therein that the petitioner is posted at STP Ranchi and during posting at Shrawan Mela, petitioner came in contact with the informant at her father's shop and got to know that the informant was a married woman and a divorce litigation was pending with her earlier husband. It is also alleged that the informant had financial terms with the petitioner and she had deposited amount in the account of petitioner

via Google Pay, the petitioner also enticed to marry informant after her divorce. It is further alleged that thereafter on 03.12.2019 the petitioner put vermilion on her head at Nandan Pahar temple and married with informant and thereafter established physical relation with her several times by making false pretext to marry after her divorce, but on 11.02.2021, the petitioner completely denied to marry the informant.

Ms. Prachi Pradipti, the learned counsel appearing on behalf of the petitioner submits that mother of the petitioner namely, Suman Devi has filed the private complaint case against the O.P.No.2 being Complaint Case No.240 of 2021 under section 147, 341, 323, 380, 406, 420, 452, 504, 34 of the IPC dated 18.02.2021 in which cognizance has been taken. She further submits that the informant under section 164 Cr.P.C has stated that she is already married and engaged in litigation for divorce with her husband. She submits that she was already married and there is no question of alluring her for marriage as she was already married and established relationship and both the petitioner and the O.P.No.2 were adult. She submits that only on that ground the case has been registered and even section 376(2)(n) of the IPC is not attracted. She further submits that the order taking cognizance dated 24.09.2021 is also not a speaking order and in that view of the matter, the entire criminal proceeding may kindly be quashed.

On the other hand, Mr. Sumit Prakash, the learned counsel appearing on behalf of the O.P.no.2 submits that the petitioner has established relationship with O.P.No.2 on the false pretext of marriage and in that view of the matter, the learned court has rightly taken cognizance. He submits that there are judgments of Hon'ble Supreme Court that if on the pretext of marriage the relationship is established, the case under section 376 of IPC can be maintained.

Mr. Tiwari, the learned counsel appearing on behalf of the

respondent State submits that the ingredients of section 420 IPC is also there and in that view of the matter, the learned court has rightly taken cognizance.

In view of the submissions of the learned counsel appearing on behalf of the parties, the Court has gone through the materials on record and finds that admittedly the mother of this petitioner has filed the complaint case against the O.P.No.2 and thereafter the present case has been filed. Annexure-4 is the statement of the informant under section 164 Cr.P.C. in which in paragraph no.4 she has clearly stated that she was married with one Pradip Mandal and the case of divorce is going on which suggest that a married woman has established relationship with her consent with this petitioner. The question remains that when two adult have established relationship particularly considering that the informant is a married woman, whether section 376(2)(n) IPC can be attracted or not ? In the case in hand, the victim who is a married woman voluntarily had sex with the petitioner, knowing that she cannot enter into marriage with the petitioner in view of the fact that she was a married woman. Even assuming that promise by the petitioner for marriage, she was knowing that she is a married woman and marriage will not take place, and inspite of that she has established relationship with the petitioner that promise is illegal and that cannot be a basis for prosecution under section 376(2)(n) of the IPC. In the case in hand, there is no question that this petitioner has allured as she was already married and she was not divorced and inspite of that she has established the relationship with this petitioner. Section 406 IPC is for punishment for breach of trust. In order to bring criminal breach, to prove entrustment is an essential ingredient under section 405 IPC. Section 420 IPC is only made out if from the very beginning the intention of cheat is there which is lacking in the facts and circumstances of the present case. Thus, prima

facie it appears that the ingredients of those sections are not made out. The Court has gone through the order taking cognizance dated 24.09.2021 and finds that the learned court filled the words 'cognizance' and 'personal' in the blank space which suggest that there is non-application of judicial mind, and in that view of the matter, the order taking cognizance dated 24.09.2021 arising out of Deoghar Mahila P.S.Case No.6 of 2021, corresponding to G.R. No.1839 of 2021, pending before the learned Chief Judicial Magistrate, Deoghar, is set aside, and the matter is remitted back to the learned concerned court to pass afresh order in accordance with law.

Cr.M.P.No.488 of 2022 is disposed of in the above terms.

Pending petition, if any, also stands disposed of.

(Sanjay Kumar Dwivedi, J.)

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