

K. Chander Shakar Rao Vs The State

Court: Calcutta High Court (Port Blair Bench)

Date of Decision: Dec. 16, 2014

Acts Referred: Criminal Procedure Code, 1973 (CrPC) â€” Section 164
Penal Code, 1860 (IPC) â€” Section 376(1), 90

Hon'ble Judges: Joymalya Bagchi, J

Bench: Single Bench

Advocate: Krishna Rao, Advocate for the Appellant; S.K. Mandal and S.C. Mishra, Advocate for the Respondent

Judgement

Joymalya Bagchi, J.

Proceeding in G.R. Case No. 1559 of 2014 arising out of Bambooflat, Police Station FIR case No. 162 of 2014

dated 23.10.2014 under section 376(1) of the IPC has been assailed.

2. Mr. Krishna Rao appearing for the petitioner submits that the uncontroverted allegations in the FIR did not show that the consent of the

Opposite Party No. 2 to sexual intercourse was procured out of fear or deception. He further submits that the parties were major and willingly

cohabited together. He submits that subsequent to the registration of the case, the parties have married and are presently residing as husband and

wife. In support of his contention, he refers to the marriage registration certificate annexed as P-2 to the petition and the orders passed by the Trial

Court to that effect.

3. Pursuant to earlier order dated 8th December, 2014, Mr. Mandal, learned senior counsel appearing for the State submits report enclosing

further statement of the victim recorded under section 164 of Cr.P.C.

4. In the said statement Opposite No. 2, the victim, has stated that she had a love affair with the petitioner and presently they have married and

living happily as husband and wife. She does not wish to proceed with the impugned case.

5. Having considered the materials on record including the subsequent developments as aforesaid, I am of the opinion that continuance of the

impugned proceeding would be an abuse of the process of Court. The uncontroverted allegations in the FIR shows that there was a love affair

between the parties and accordingly the parties cohabited together. Criminal case was registered as subsequent to cohabitation the petitioner did

not marry the opposite party, as promised. There is nothing on record to show that from the inception the petitioner had no intention to marry the

opposite party no. 2 and had dishonestly held out such promise to induce her to sexual intercourse. Mere promise to marry without anything more

will not amount to "misconception of fact" vitiating consent to sexual intercourse. [See Kaini Rajan Vs. State of Kerala,]. Similarly, in Deepak

Gulati Vs. State of Haryana, , the Apex Court held that there is a distinction between mere breach of promise and failure to fulfil a false promise. It

held as follows:

There is a distinction between the mere breach of promise, and not fulfilling a false promise. There must be adequate evidence to show that at the

relevant time i.e. at the initial stage itself, the accused had no intention whatsoever , of keeping his promise to marry the victim. There may be a

case where the prosecutrix agrees to have sexual intercourse on account of her love and passion for the accused, and not solely on account of

misrepresentation made to her by the accused, or where an accused on account of circumstances which he could not have foreseen, or which were

beyond his control, was unable to marry her, despite having every intention to do so. Such cases must be treated differently. The ""failure to keep a

promise made with respect to a future uncertain date, due to reasons that are not very clear from the evidence available, does not always amount

to misconception of fact. In order to come within the meaning of the term misconception of fact, the fact must have an immediate relevance.

Section 90 IPC cannot be called into aid in such a situation, to pardon the act of a girl in entirety, and fasten criminal liability on the other, unless

the court is assured of the fact that from the very beginning, the accused had never really intended to marry her"". (paras 21 &24)

6. That apart, from subsequent conduct of the parties it appears that they have married each other and are living together happily as husband and

wife clearly dispelling any iota of doubt as to the bonafides of the petitioner in his conduct with the opposite party no. 2.

7. In view of such admitted attending circumstances as emanating from unimpeachable materials on record, I am of the opinion that continuation of

the impugned proceeding being G.R. Case No. 1559 of 2014 arising out of Bambooflat Police Station FIR case No. 162 of 2014 dated

23.10.2014 under section 376(1) of the IPC would be an abuse of process of court and the same is liable to be quashed in the interest of justice.

8. The application is accordingly allowed and the impugned proceeding is quashed.

9. Enquiry report submitted on behalf of the State be kept with the record.