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IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN AT
JODHPUR.

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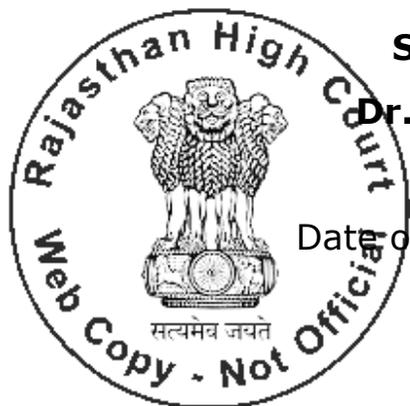
JUDGMENT

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S.B. Criminal Revision Petition No.856/2012

Dr. Farook Ahmed. vs. State of Rajasthan & Anr.

Date of Judgment :: 5th April, 2013.



HON'BLE MR. JUSTICE SANDEEP MEHTA

Mr.Shailendra Kala, for the petitioner.

Ms.Chandralekha, PP for the respondent State.

Mr.MP Solanki, for the respondent no.2.

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BY THE COURT :

Reportable Heard learned counsel for the parties.

The instant revision petition has been preferred by the petitioner being aggrieved of the order dated 6.9.2012 passed by the learned Sessions Judge, Jodhpur Metropolitan, Jodhpur in Sessions Case No.114/2012 whereby charges under Sections 376 and 420 I.P.C. have been framed against the petitioner.

Succinctly stated the facts of the case are that the complainant Smt.C filed a complaint in the Court of learned Additional Chief Judicial Magistrate No.4, Jodhpur on 13.2.2011 alleging inter alia that she contracted a nata

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marriage with the petitioner as per Hindu rituals and customs at the Village Jhambeshwar Nagar Dhelana on 5.3.1992. She alleged that the nata marriage was performed in the presence of some 12-13 persons in the Panchayat Bhawan of Village Dhelana. She further alleged that from the wedlock, a son named Vipin was born to the complainant and was a student of 10th standard. She further alleged that the accused cheated her and thereby induced her into marrying him by giving her a fraudulent assurance that he had converted to Hindu religion. She further alleged that she was a divorcee and as per Hindu customs and usages, only a nata marriage was possible and, therefore, she entered into the nata marriage with the accused. She further alleged that the act of the accused resulted into destruction of the moral fabric of the complainant. The religious sentiments of the complainant were hurt. The act was totally aimed at establishing an illicit relationship with her.

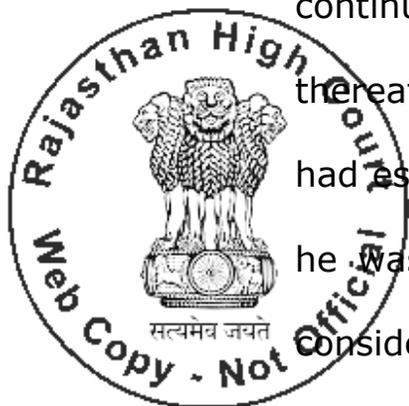
Later on, the accused allegedly informed her that he continued to profess the Muslim religion. As per the complainant, the act of the accused in establishing sexual relations by giving her a fraudulent inducement regarding conversion to Hindu religion, was an act punishable under Sections 376 and 419 I.P.C. The complainant further alleged that for the purpose of establishing the paternity of



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her children, she requested for a DNA test but the accused did not accede to the same. She further alleged that the accused established the immoral physical relations with her continuously from 5.3.1992 upto the year 2001 and thereafter, turned her out of the house telling her that he had established the relations just for satisfying his lust, that he was not a Hindu by religion and also that he did not consider the complainant to be his wife. She also alleged that on 21.10.2011, she went to the P.S. Desuri for receiving the maintenance amount for her son and there the accused came with 2-3 persons and threatened the complainant that he would not accept the demand of the complainant to undergo the DNA examination. The accused also threatened the complainant to remove his name from Vipin's school record. She further alleged that in order to cheat her, the accused, despite having a subsisting Nata marriage with the complainant, contracted yet another marriage with one Taslim Bano d/o Gulam Qadir, r/o Pulwama, District Srinagar. She further alleged that on 8.11.2011, when she was going on her scooty, the accused with his companions came in a car and accosted the complainant and threatened her that she should withdraw the cases which were going on in different courts.

The aforesaid complaint was forwarded to the P.S. Basni, Jodhpur where an FIR No.23/2012 was registered for



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the offences under Sections 376, 419, 420, 494 and 495 I.P.C. The police after investigation filed a charge-sheet against the petitioner for the offences under Sections 376 and 420 I.P.C. After committal, the petitioner contested the question of charges before the learned Sessions Judge, Jodhpur Metropolitan but the learned Sessions Judge vide order dated 6.9.2012 directed framing of the charges against the petitioner for the offences under Sections 376 and 420 I.P.C. The petitioner has now approached this Court seeking quashing of the order framing charges by way of the instant revision petition.



Learned counsel for the petitioner contended that the charges have erroneously been framed against the petitioner. He contends that the charges have been framed only on the ground that the petitioner was a Muslim by religion and that by deceiving the complainant that he had accepted the Hindu religion, he entered into a Nata marriage with the complainant and made her believe that he was her husband and thereby had intercourse with her. He urged that the learned Sessions Judge erroneously concluded that by this act, the accused fraudulently induced the complainant into establishing physical relations with him and thereby, the act of accused fell within the offence of rape under Section 376 I.P.C. as well as of cheating under Section 420 I.P.C. He contended that no inducement

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whatsoever was given by the petitioner to the complainant. On the strength of the copies of the pleadings and the orders passed in relation to the prior litigations between the parties (copies whereof have been placed on record), he contended that the complaint which has been filed belatedly against the petitioner in this case has been filed on 13.12.2011. Prior to this, the complainant filed an application under Section 125 Cr.P.C. as a natural guardian of her son Vipin claiming maintenance from the petitioner and in the said application, it was not stated that the petitioner induced the complainant into establishing sexual relations by fraudulent means i.e. to say by deceiving her through a false information that he had adopted Hindu religion. Learned counsel for the petitioner submitted that in the said application, the petitioner has filed a reply wherein he has taken a pertinent stand that he was a Muslim by religion and specifically denied having married or having established a nata relation with the complainant. Learned counsel for the petitioner has referred to the statement of the complainant recorded in the said proceedings wherein the complainant has admitted in cross examination that she was married to one Bhimdas and that a written divorce was taken from Bhimdas. Learned counsel for the petitioner submitted that as the complainant was already having a subsisting marriage with Bhimdas, there was no legal



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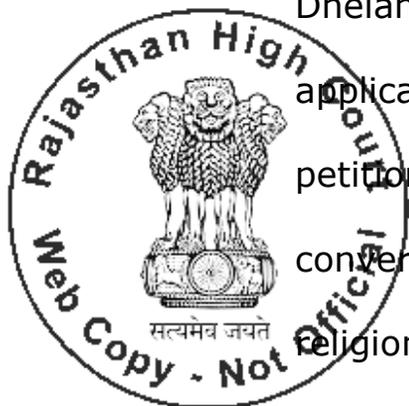
sanction for her to have married with the petitioner under the Hindu Law. He contended that under the law applicable to Hindus, if a person despite having a subsisting marriage, contracts a second marriage with another person, such an act would be an offence under Section 494 I.P.C. Learned counsel for the petitioner has further referred to the order dated 30.7.2004 passed by learned Judicial Magistrate, First Class, Jodhpur in Criminal Original Case No.98/2002 which was registered on the basis of an F.I.R. filed by the complainant against the petitioner for offence under Section 498A I.P.C. The petitioner has been discharged by the competent Court on 30.7.2004 with the finding that there existed no relationship of husband and wife between the petitioner and the complainant. Learned counsel for the petitioner has also referred to the suit filed by Chandrakanta and Vipin in the Family Court, Jodhpur under Sections 18 & 20 of the Hindu Adoption and Maintenance Act wherein the petitioner has been arrayed as respondent and his caste has been shown as Muslim. Learned counsel for the petitioner submitted that in the said application, the complainant has pleaded that she and the petitioner were working together at the Jodhpur Hospital & Medical Research Center and there, they developed a friendship which grew into an affair and thereafter both of them decided to marry each other. The complainant in the



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aforesaid application has pleaded that as she and the petitioner were having an affinity with each other, they entered into a nata marriage in the presence of panchas of Dhelana village after adopting Hindu religion. In this application, the complainant has not mentioned that the petitioner gave her a fraudulent inducement that he had converted from Muslim religion and had adopted the Hindu religion and thereby induced the complainant to marry him by deceiving her. Learned counsel for the petitioner further submitted that the FIR which has been filed in this case was highly belated and is nothing but a tool aimed at taking vengeance and thus, he urged that the charges which have been framed against the petitioner are absolutely groundless and deserve to be quashed. He further submitted that even if the allegations of the complainant are accepted in their entirety, then too, the case is not covered under any of the six clauses of Section 375 I.P.C and thus, the petitioner deserves to be discharged from the offences.

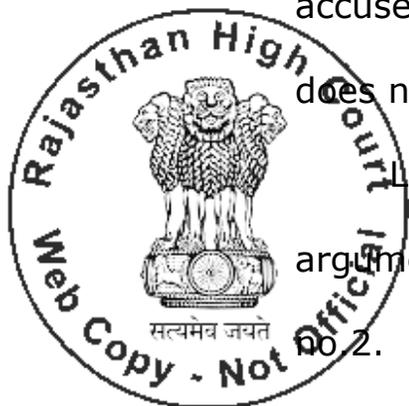
Per contra, learned counsel for the respondent no.2 complainant has vehemently opposed the submissions advanced on behalf of the petitioner and contended that the petitioner cheated the complainant by giving her a false assurance about the change of his religion and that is why the complainant was induced into contracting a nata



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marriage with the petitioner. He submitted that the consent for physical relations was given by the complainant only because of the deception practised upon to her by the accused. Thus, he submitted that the order framing charges does not call for any interference by this Court.

Learned Public Prosecutor has also adopted the arguments raised by the learned counsel for the respondent No. 2.



Heard and considered the arguments advanced at the bar, perused the order impugned and the record.

The Hon'ble Apex Court in the case of ***Rukmini Narvekar V. Vijaya Satardekar & Ors.*** reported in ***AIR 2009 SC 1013*** considered the aspect as to whether the documents of the accused can be considered by the High Court for quashing the proceeding at the initial stage. The Hon'ble Apex Court observed as below:-

"9. In my view, therefore, there is no scope for the accused to produce any evidence in support of the submissions made on his behalf at the stage of framing of charge and only such material as are indicated in Section 227 Cr.P.C. can be taken into consideration by the learned Magistrate at that stage. However, in a proceeding taken therefrom under Section 482 Cr.P.C. the Court is free to consider material that may be produced on behalf of the accused to arrive at a decision whether the charge as

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framed could be maintained.”

In view of the above decision of Hon'ble the Apex Court, there is no impediment on the powers of the High Court to consider the documents filed by the accused for the purpose of quashing the proceeding initiated against him. A document, which is unimpeachable in nature, can be considered by the High Court if it demonstrates that the case set up against the accused is totally false, absurd or has been filed for oblique motives.



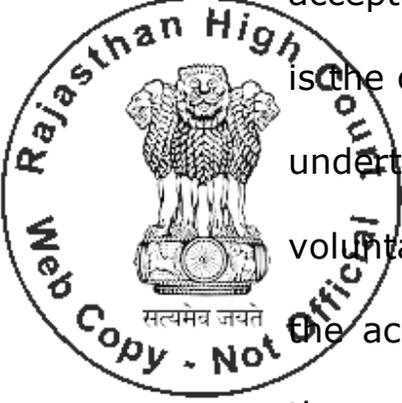
From a perusal of the record, it is apparent that there are various documents particularly, the proceedings which took place in between the parties in different courts available on the record. Such proceedings are in the nature of unimpeachable documents as they are the part of the judicial proceedings filed interse between the prosecutrix and the accused. In the proceeding filed by the complainant for restitution of conjugal rights in the year 2004 in the Court of Family Judge, Jodhpur, the complainant has mentioned the caste and religion of the petitioner as being Muslim. In the said application as well as the application filed under Hindu Adoption and Maintenance Act, the complainant did not plead that the accused gave her any false or fraudulent information of having converted to the Hindu religion. The complainant also filed an FIR No.99/2002 against the petitioner under Section 498A

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I.P.C. wherein, she simply mentioned that she and the petitioner used to work in Jodhpur Hospital and Medical Research Center and there, they developed closeness and accepted each other because of difficult family situations. It is the obvious that in all these proceedings which have been undertaken by the complainant, the establishment of voluntary physical relations between the complainant and the accused has not been disputed. The only allegation in the present prosecution which has been launched against the petitioner is that the petitioner gave the complainant a fraudulent inducement of conversion from Islam to Hinduism at the time of entering into the nata marriage and thereby cheated the complainant and fraudulently established physical and sexual relations with her.

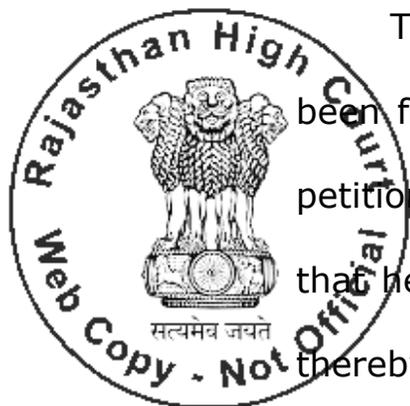
The charge which was framed against the petitioner is reproduced here under :-

1. यह है कि आपने परिवादिया श्रीमती चन्द्रकान्ता को दिनांक 05-03-92 से पूर्व किसी समय यह कहकर कि आपने हिन्दू धर्म स्वीकार कर लिया है, परिवादिया को बेईमानी से उत्प्रेरित कर परिवादिया से दिनांक 05-03-92 को गाँव जम्भेश्वर नगर, ढेलाणा तहसील लोहावट जिला जोधपुर में परिवादिया को धोखे में रखकर उसके साथ विवाह कर लिया । आपका उक्त कृत्य धारा 420 भारतीय दण्ड संहिता के तहत दण्डनीय अपराध है, जो मेरे प्रसंज्ञान में है।
2. यह है कि आपने उपरोक्तानुसार धोखे से परिवादिया के साथ विवाह कर उसका पति न होते हुए भी उसे विश्वास दिलाकर कि आप उसके पति हैं, दिनांक 05-03-92 से वर्ष



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2001 तक अलग-अलग स्थानों पर कई बार उसके साथ संभोग कारित कर बलात्कार किया। आपका उक्त कृत्य धारा 376(1) भारतीय दण्ड संहिता के अन्तर्गत दण्डनीय अपराध है, जो मेरे प्रसंज्ञान में है।"

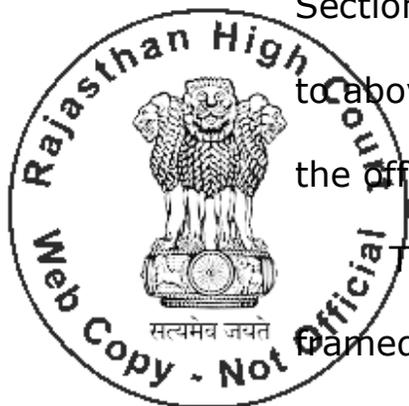


The charge of cheating under Section 420 I.P.C. has been framed against the petitioner on the ground that the petitioner gave a fraudulent information to the complainant that he had changed his religion from Muslim to Hindu and thereby fraudulently induced the complainant to marry him.

Suffice it to say that the complainant herself has mentioned in the complaint that she simply entered into nata marriage with the accused petitioner. There is no allegation of the complainant that she and accused contracted a valid Hindu marriage by following necessary customs and ceremonies. The Nata is said to have been conducted in accordance with Hindu customs and ceremonies but there is no sanctity of such a nata under the Hindu law. In the earlier legal proceedings filed by the complainant against the petitioner, she has simply pleaded that she and the accused were working in the same hospital where they developed closeness and accepted each other in front of panchas. There is no averment of the complainant in the earlier proceedings which were filed way back between the years 2002 to 2004 that any nata marriage was entered into between herself and the petitioner. The pleadings reveal a

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relationship more in the nature of a live-in relationship rather than anything else. For this reason alone, the petitioner has been discharged from the offence under Section 498A I.P.C. by the order dated 30.7.2004 referred to above. Thus, the charge framed against the petitioner for the offence under Section 420 I.P.C. is baseless.



The charge of rape under Section 376 I.P.C. has been framed on the ground that the accused induced the complainant to marry him by practising deception and thereafter giving her a false assurance that he was her husband, induced her to establish physical relations on the basis of false and fraudulent inducement. As has been discussed above, the complainant in her earlier applications has not alleged that any marriage ceremony was solemnised between herself and the accused. The complainant is a grown up lady and was working as a Nurse in the hospital at the time when she entered into the relationship with the petitioner. She had admittedly given up her relations with her husband Bhimdas. She was very well aware of the consequences of the act and the relationship which she was entering into. In none of the applications which she has filed in different forums much before the case at hand, has she alleged that the petitioner defrauded her by giving her a false information of conversion from Islam to Hinduism.

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Even if the allegations of the prosecutrix are accepted to be true on their face value, then also, this Court has to consider as to whether the allegations fulfill the requirement of the definition of rape. Rape is defined under Section 375 I.P.C. For the sake of easy reference, Section 375 I.P.C. is reproduced here under :-



375. **Rape.**-- A man is said to commit "rape" who, except in the case hereinafter excepted, has sexual intercourse with a woman under circumstances falling under any of the six following descriptions:-

First.- Against her will.

Secondly.- Without her consent.

Thirdly.- With her consent, when her consent has been obtained by putting her or any person in whom she is interested in fear of death or of hurt.

Fourthly.- With her consent, when the man knows that he is not her husband, and that her consent is given because she believes that he is another man to whom she is or believes herself to be lawfully married.

Fifthly.- With her consent, when, at the time of giving such consent, by reason of unsoundness of mind or intoxication or the administration by him personally or through another of any stupefying or unwholesome substance, she is unable to understand the nature and consequences of that to which she gives consent.

Sixthly.- With or without her consent, when she

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is under sixteen years of age.

Explanation.- Penetration is sufficient to constitute the sexual intercourse necessary to the offence of rape.

Exception.- Sexual intercourse by a man with his own wife, the wife not being under fifteen years of age, is not rape."

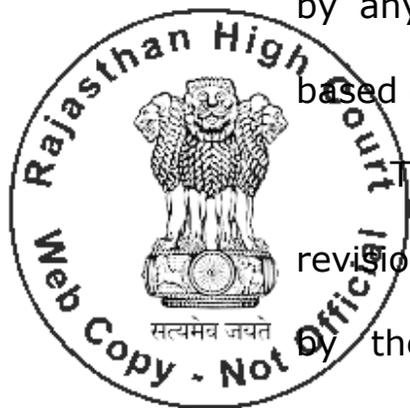


If the allegations levelled by the prosecutrix are considered in reference to the above definition, the only remote possibility of the act of the accused falling within the definition of rape could be in reference to the Clause Fourthly of Section 375 I.P.C. The said clause would be applicable if the person who commits intercourse with the lady poses himself to be her husband knowingly that he is not the husband of the lady. The facts of the present case are not such. The prosecutrix has admitted that she entered into a nata marriage with the petitioner and the petitioner thereafter is alleged to have established sexual relations with her. It is not the case that the petitioner posed as somebody else and then established sexual relations with the prosecutrix. Thus, the admitted allegations of the prosecutrix do not constitute the offence of rape as defined under Section 375 I.P.C.

Since this Court has already held that the accused did not practice any deception with the prosecutrix, the charge of Section 420 I.P.C. also cannot be sustained. Resultantly,

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this Court is of the opinion that the charges which have been framed against the petitioner for the offences under Sections 376 and 420 I.P.C. cannot be said to be justified by any stretch of imagination because the same are not based on any sound or valid reasons.



The upshot of the above discussion is that the instant revision petition succeeds. The order dated 6.9.2012 passed by the learned Sessions Judge, Jodhpur Metropolitan, Jodhpur framing charges against the petitioner for the offences under Sections 420 and 376 I.P.C. as well as all the proceedings sought to be undertaken thereafter are hereby quashed.

Stay petition also stands disposed of.

Record be sent back forthwith.

(SANDEEP MEHTA), J.

S.Phophaliya