

HIGH COURT OF MADHYA PRADESH

M.Cr.C. No.12272/2017
(Sandeep and others vs. Neelam and another)

Jabalpur, dated 12.09.2018

Shri Ajeet Kumar Rawat, learned counsel for the petitioners.

Shri K.D. Singh, learned counsel for the respondent no.1.

Shri S.D. Khan, learned Government Advocate for the respondent no.2-State.

2. This petition under Section 482 of Cr.P.C. has been filed by the petitioners for invoking the extraordinary jurisdiction of this Court and to quash the order dated 10.07.2017, passed by learned J.M.F.C., Niwari, Tikamgarh whereby the direction was issued under Section 156(3) of Cr.P.C. for lodging FIR and subsequent registered Crime No.356/2017 at Police Station Prithvipur for offence under Section 498-A and 376 of I.P.C. read with Sections 3 and 4 of the Dowry Prohibition Act against the petitioners.

3. Bereft of the unnecessary details, the facts requisite for disposal of this petition are that, petitioner no.1

HIGH COURT OF MADHYA PRADESH

Sandeep is son of petitioner nos.2 and 3. Respondent no.1/prosecutrix filed an application under Section 156(3) of the Cr.P.C. before learned J.M.F.C., Niwari, Tikamgarh, stating that her engagement for marriage was performed with petitioner no.1 Sandeep on 28.05.2016. Petitioner no.1 and respondent no.1-prosecutrix were attending the same coaching centre and were appearing for the M.P. State Police Examination in the year 2016. During this period their engagement ceremony was performed and relationship as husband and wife was established. After the results of the Police Examination declared, the petitioner no.1 got selected, however, respondent no.1 did not.

4. Subsequently, the petitioner no.1 and his family members demanded Rs.10 lakhs and a four wheeler vehicle as dowry for performing the marriage. The prosecutrix lodged report at the Police Station, Prithvipur, but no action was initiated. Subsequently, she submitted the written complaint to higher authorities, but no positive result came out. Hence, she filed application under Section 156(3) of Cr.P.C. before learned J.M.F.C. Learned J.M.F.C. prima facie found offence under Section 4 of the Dowry Prohibition Act

HIGH COURT OF MADHYA PRADESH

a cognizable offence, therefore, directed the Police Station Prithvipur to lodge the report and to take appropriate steps and after investigation file final report, closure report or kharijee report as the case may be. On this report Police Prithvipur lodged the FIR at Crime No.356/2016 for offence stated above and proceeded with the investigation.

5. On behalf of the petitioners, the same has been challenged on the grounds that the petitioners are falsely implicated. Petitioners are innocent persons. The direction of "Ramyash Tiwari vs. State of M.P. 2013 (2) MPHT 521", has not been followed. No statement of the complainant has been recorded nor police report was called and learned J.M.F.C. ordered straightaway to lodge FIR, which is bad in the eyes of law.

6. It is also contended that initially the complaint was under Section 498-A of I.P.C. read with Sections 3 and 4 of the Dowry Prohibition Act, but during the course of investigation offence under Section 376 of I.P.C. has been added. It is also contended that police on the complaint of the prosecutrix found no offence made out. The photograph of the complainant along with petitioner no.1 was produced

HIGH COURT OF MADHYA PRADESH

before the Police. The evidence is based on completely manipulated photographs. In this regard, the report of the expert received indicate that the photograph is forged one. The same was prepared by superimposing photographs which is manipulated one. Therefore, the report of FSL, Sagar dated 12.03.2018 in this regard is important. It is also claimed that the prosecutrix to wreck vengeance against the petitioners to nurture her motive.

7. On behalf of the respondent no.1, the complete averment is denied and it is claimed that she lodged the report before Police Station Prithvipur but her case was not dealt properly. Hence, she sworn in an affidavit on 10.08.2018 that she had given the details of the recording CD to the Investigation Officer along with affidavit of Rahul Yadav, who allegedly saw the Investigation Officer receiving bribe from the father-in-law of petitioner no.1's sister to manipulate the facts of the case. It is also contended that the prosecutrix had earlier given letters to the Superintendent of Police and the Collector so called the photographs of engagement was deliberately manipulated and original photographs was misplaced, thereby influenced

HIGH COURT OF MADHYA PRADESH

the investigation. It is also contended that during her complaint on 22.05.2017, the prosecutrix has clearly indicated that after their engagement the petitioner no.1 passed the police examination and the prosecutrix could not. He took her to a temple put vermilion on her forehead and said that they have become husband and wife and thereafter, consumption of the marriage was done. But, subsequently after establishing the relationship as husband and wife, the petitioner no.1 did not marry her and demanded Rs.10 lakhs and a vehicle as dowry. The prosecutrix has lodged the report.

8. As regarding the FSL report, learned counsel for the respondent no.1 submitted that the prosecutrix has given the genuine photographs to the police, but the photographs have been manipulated and subsequently manipulated photographs was sent to the FSL. Therefore, the result of the FSL report dated 12.03.2018 was obvious. The investigation was influenced by hook or crook.

9. On behalf of the respondent no.2-State, it is contended that the statements of complainant-prosecutrix and the witnesses indicate the commission of offence. It is

HIGH COURT OF MADHYA PRADESH

also contended that written complaint was made to the Superintendent of Police, Tikamgarh on 22.05.2017. MLC report dated 23.08.2017, statement of the complainant under Section 161 of Cr.P.C., statement of the complainant recorded on 23.08.2017 under Section 164 of Cr.P.C. and the transcript of the conversation between the prosecutrix and petitioner no.1 indicate the commission of offences.

10. Perused the record and police diary.

11. The transcription of the conversation indicates that there has been certain intimate relationship between the petitioner no.1 and respondent no.1. Respondent no.1 lodged report immediately after the denial of the marriage, i.e. on 22.05.2017. The CD seized with regard to the conversation is also an important piece of evidence. Though, about the photographs nothing can be said at this stage, which needs to be proved in the evidence before the Courts.

12. As regarding the objection about non-recording of statement of the complainant under Section 200 of Cr.P.C., it would be appropriate to mention that the complainant has submitted an affidavit along with the

HIGH COURT OF MADHYA PRADESH

application under Section 156(3) of Cr.P.C. on 24.06.2017 and along with the complaint dated 22.05.2017 before to the Superintendent of Police, Teekamgarh. In the case of ***Smt. Mona Panwar vs. The Hon'ble High Court of Judicature at Allahabad [2011 (3) MPHT 241 (SC)]***, wherein the Apex Court has held that :-

“If on a reading of a complaint the Magistrate finds that the allegations therein disclose a cognizable offence and forwarding of the complaint to the police for investigation under Section 156(3) of the Cr.P.C. will not be conducive to justice. The Magistrate will be justified in adopting the course suggested in Section 200 of the Code. But the Apex Court has also held that an order made under subsection (3) of Section 156 of the Code is in the nature of a peremptory reminder or intimation to the police to exercise its plenary power of investigation under Section 156(1) of Cr.P.C. Such an investigation embraces the entire continuous process which begins with the collection of evidence under Section 156 and ends with the final report either under Section 169 or submission of charge sheet under Section 173 of the Cr.P.C.”

13. As regarding the offence registered by the police, it would be appropriate to mention that “consent” for sexual intercourse was obtained by petitioner no.1 inducing the believe to the prosecutrix that the petitioner no.1 would

HIGH COURT OF MADHYA PRADESH

marry her, it seems to be "fraud" that was practised on her or that she was deceived by false assurance. The "consent" so obtained by deceitful means is not a "free consent" and the offence comes within the ambit and ingredients of definition of "rape". In this regard reference can be made to ***Pradeep Kumar Verma vs. State of Bihar, [2007 Cr.L.J. 4333(SC)] and State of U.P. Vs. Naushad [(2013) 16 SCC 651]***.

14. As regarding the arguments advanced by counsel for the petitioners that the guideline of Rameshyash Tiwari (supra) case has not been followed, it would be appropriate to mention that affidavit has been accompanied by application under Section 154(3) of the Cr.P.C. The Magistrate before sending to the police satisfied himself that prima facie offence is made out on the facts mentioned in the complaint disclose commission of cognizable offence and the order impugned passed for registering FIR and to investigate the same and on completion of the investigation, police has been directed to file final report or closure report or kharijee as the case may be. The Magistrate's order has been passed with cogent reasons and

HIGH COURT OF MADHYA PRADESH

decides not to take cognizance but to call for the police to act upon under Section 156(3) of Cr.P.C.

15. As regarding the manipulation of photographs etc., it is matter of evidence this Court cannot analyzed the case of the complainant in the light of all probabilities in order to determine the allegations leveled are true or not. It's truthfulness or veracity can only be examined by the Court concerned after the entire material is produced.

16. According to the petitioners, learned J.M.F.C. did not record the statements under Sections 200 and 202 of Cr.P.C. Counsel for the respondent no.2 placed reliance in the case of ***Madhao and another vs. State of Maharashtra [(2013) 5 SCC 615]***, wherein the Apex Court has held that :-

“In adopting said course, the Magistrate concerned is not required to examine complainant on oath (as required under Section 200 of Cr.P.C.), where police investigation is ordered under Section 156(3) prior to taking cognizance of the offence.”

17. Counsel for the petitioners also placed reliance in the case of Smt. ***Rakhi Patel vs. State of Chhattisgarh and others [2013(3) MPHT 66 CG]***, wherein the Apex Court has held that :-

HIGH COURT OF MADHYA PRADESH

“Learned J.M.F.C. directed for police investigation, after the same report was received and the case was fixed for recording the evidence, when evidence was not recorded the J.M.F.C. directed for registration of FIR under Section 156(3) of Cr.P.C. and the application of the complainant, which was held not competent to pass such an order when Magistrate has already taken cognizance.”

18. As the facts of the present case are different, this case is not attracted in the present case.

19. To conclude, it would be appropriate to reproduce the observation made by the Apex Court in the case of Naushad (supra) which reads that :-

“23. A woman’s body is not a man’s plaything and he cannot take advantage of it in order to satisfy his lust and desires by fooling a woman into consenting to sexual intercourse simply because he wants to indulge in it. The accused in this case has committed the vile act of rape and deserves to be suitably punished for it.”

20. With the above note, this petition is **dismissed**.

(Sushil Kumar Palo)
Judge