

HIGH COURT OF MADHYA PRADESH  
PRINCIPAL SEAT AT JABALPUR

Single Bench :     **Hon'ble Shri Rajeev Kumar Dubey, J.**

**Misc. Criminal Case No.9877/2019**

Govind Purviya

vs.

State of Madhya Pradesh & Anr.

-----  
Shri Manish Datt, Senior Advocate with Shri Pawan Gujar, counsel for the applicant.

Shri Rajesh Tiwari, Govt. Advocate for the respondent No.1/State.

Shri A.K. Pali, counsel for the respondent No.2/prosecutrix  
-----

**ORDER**

Reserved on : 05/12/2019

Delivered on : 16/12/2019

This petition has been filed under Section 482 of the Code of Criminal Procedure for quashing the proceedings of Criminal Case No.67/2019 arising out from the charge sheet filed by the police after investigation of Crime No.409/2018 registered at Police Station Pipariya, District Hoshangabad (M.P.) for the offence punishable under Sections 376 (2)(n) & 376 (2)(f), 109, 506 & 34 of the IPC.

As per the prosecution case, on 31.10.2018 prosecutrix wife of co-accused Virendra Purviya lodged a report at Police Station Pipariya District Hoshangabad averring that she married co-accused Virendra on 05/03/2018. After marriage, she stayed at her matrimonial house. Her husband went to Pune on 01/05/2018. Thereafter on 03.05.2018 when she was sleeping in her room in her matrimonial house, at around 01:00 PM someone knocked at the

door of his room. When she opened the door, it was her brother-in-law (Jeth) applicant Govind Purviya, who came inside her room and bolted the door of the room from inside and thereafter on the point of a knife he committed rape with her. The next day in the morning, she told her mother-in-law Siyabai, sister-in-law Saraswati, father-in-law Vishal Purviya, about the incident, her mother-in-law Siyabai said that they would remonstrate him and asked her not to tell anyone about the incident. Her mother-in-law Siyabai also took her mobile. Two-three days after the incident, she told her husband about the incident, then her husband said that it was okay and that it would have happened since applicant Govind's wife had died, and also asked her to allow him to do whatever he wanted whenever he came to her room. It is further averred that on 08.05.2018 at about 12 PM in the night, again co-accused Govind Purviya came to her room and forcibly made physical relation with her. On the next day, she again narrated the incident to her mother-in-law Siyabai. She then asked her to let him do so otherwise she would be killed like her sister-in-law (jethani). It is further averred that she did not tell anything to anybody out of fear. On 19.05.2018, she returned to her parental home situated at Village Bhatti which comes under the Police Station Sohagpur. On 30.10.2018, when her parents asked her the reason for not going back to her matrimonial home, then she narrated the whole incident to her parents and other relatives. On that, police registered Crime No.409/2018 for the offence punishable under Section 376 (2)(n), 376 (2)(f), 506 of the IPC against applicant Govind Purviya and investigated the matter. During the investigation, police recorded the statements of the prosecutrix, her brothers Dharmendra, Jitendra, mother Geeta Bai, father Kamlesh and maternal uncle Arvind and also implicated the co-accused Virendra in the crime. After investigation police filed charge sheet against applicant Govind Purviya and co-accused Virendra Purviya before the JMFC, Pipariya, who committed the case to the Court of Sessions. On that S.T.No.35/2019 was registered which is pending before Second Additional Sessions Judge, Pipariya, District Hoshangabad. Being aggrieved, the applicant filed this petition.

Learned counsel of the applicant Govind submitted that it is alleged that when prosecutrix was at her matrimonial house, applicant committed rape with her on 03.05.2018 and 08/05/2018. Thereafter on 19/05/2018 she left the matrimonial house and went to her parents' house. But she did not disclose the incident to anybody up to 29/10/2018. For the first time on 30.10.2018 she narrated the incident to her parents and lodged the report of the incident at Police Station Sohagpur. There is no plausible explanation regarding the delay in lodging FIR, which clearly shows that the prosecutrix lodged the false report against the applicant. He further submitted that prior to the lodging of FIR by the prosecutrix, on 23/06/2018 brother of the applicant filed the petition i.e., R.C.S. HM No.33/2018 before I Additional District Judge Pipariya for restitution of conjugal rights under Section 9 of Hindu Marriage Act and applicant also lodged several written complaints to Police officers to the effects that the relatives of the prosecutrix threatened him to implicate in a false case. After service of notice of the case, prosecutrix lodged the report to counter that case which also shows that prosecutrix due to dispute with her husband/co-accused Virendra lodged a false report against the applicant.

Per contra learned counsel of the State as well as learned counsel for the respondent no.2/prosecutrix opposed the prayer and submitted that the reason regarding delay in lodging FIR is clearly mentioned in the FIR so only on the basis that applicant committed rape with the prosecutrix on 03.05.2018 and 08/05/2018 while she lodged the report on 30.10.2018 it cannot be said that prosecutrix lodged the false report against the applicant. He further submitted that prior to the lodging of FIR by the prosecutrix, on 23/06/2018 brother of the applicant filed the petition i.e., R.C.S. HM No.33/2018 before I Additional District Judge Pipariya for restitution of conjugal rights under Section 9 of Hindu Marriage Act and applicant also lodged several written complaints to Police officers to the effects that the relatives of the prosecutrix threatened him to implicate in a false case. Due to which prosecutrix lodged false report against the applicant is also the defence of the applicant, which cannot be considered at this stage because it will also require evidence to decide. From the FIR and the charge-sheet the

offence under Section 376 of the IPC is clearly made out against the applicant so the proceedings of the Criminal Case No.67/2019 arising out from the charge sheet filed by the police after investigation of Crime No.409/2018 registered at Police Station Pipariya, District Hoshangabad (M.P.) for the offence punishable under Sections 376 (2)(n) & 376 (2)(f), 109, 506 & 34 of the IPC cannot be quashed.

This court has gone through the record and arguments put forth by the learned counsel of both the parties. It is alleged that when prosecutrix was at her matrimonial house, applicant Govind committed rape with her on 03.05.2018 and 08/05/2018 while she lodged the report on 30.10.2018. But in the FIR it is mentioned that due to fear she did not disclose the incident to anybody. On 30.10.2018, when her parents asked her the reason for not going back to her matrimonial home, then she narrated the whole incident to her parents. Whether the reason mentioned in the FIR regarding the delay in lodging the FIR is correct or not, it cannot be ascertained at this stage, because it will require evidence to decide. Even otherwise delay in lodging FIR is one of the factors to ascertain the veracity of the statement of the prosecutrix, not a sole reason. So only on that basis proceedings of the Criminal Case No.67/2019 cannot be quashed at this stage.

Likewise prior to the lodging of FIR by the prosecutrix, brother of the applicant had filed the petition i.e., R.C.S. HM No.33/2018 before I Additional District Judge Pipariya for restitution of conjugal rights under Section 9 of Hindu Marriage Act against the prosecutrix and applicant also lodged several written complaints to Police officers to the effects that the relatives of the prosecutrix threatened him to implicate in a false case due to which prosecutrix lodged false FIR is also the defence of the applicant which cannot be considered at this stage and only on that basis at this stage it can't be said the FIR lodged by the respondent no.2/Prosecutrix is false. From the FIR and the charge-sheet the offence under Section 376 of the IPC is clearly made out against the applicant so proceedings of S.T.No.35/2019 arising out from the charge sheet filed by the police after investigation of Crime No.409/2018 registered at Police Station Pipariya, District Hoshangabad (M.P.) for the offence punishable under Sections 376 (2)(n) &

376 (2)(f), 109, 506 & 34 of the IPC cannot be quashed. Hence this petition is dismissed with the liberty that the applicant is free to raise his objections before the trial Court at the appropriate stage.

**(Rajeev Kumar Dubey)**  
**Judge**

(ra)