

*** IN THE HIGH COURT OF DELHI AT NEW DELHI**

Date of Reserve: July 12, 2010

Date of Order: 9th August, 2010

+ CrI.M.C.No. 299/2009

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09.08.2010

Alok Kumar

... Petitioner

Through: Mr. Ajay Burman, Mr. Anwesh Madhukar,
and Mr. Rajesh Samanotra, Advocate

Versus

State & Anr.

... Respondents

Through: Mr. Sunil Sharma, APP for the State
Mr. Sandeep Sethi, Sr. Advocate with
Mr. Jayant K. Sud & Mr. Atul Sahi, Advocates

JUSTICE SHIV NARAYAN DHINGRA

1. Whether reporters of local papers may be allowed to see the judgment? Yes.
2. To be referred to the reporter or not? Yes.
3. Whether judgment should be reported in Digest? Yes.

JUDGMENT

The present petition has been filed for quashing of FIR No. 426/2007 PS IGI Airport registered against the petitioner under Section 354/506 IPC.

2. The complainant (respondent no.2 herein) got this FIR registered stating therein that she was in 'live-in relationship' with the petitioner for more than 05 years and was involved with him physically, emotionally and mentally. The petitioner had promised to marry her as soon as possible. Few days back (from date of registration of FIR) she learnt that petitioner was getting married to someone else, so she came to IGI airport to remind him of his promises and refresh memories (as he was leaving India).

The petitioner told her to solve the matter and took her to visitors' lounge where she started arguing with her. In the meantime he went to washroom and gave his passport to the complainant to keep in safe custody. While coming from toilet he was bit angry and pushed her at visitors' lounge of IGI airport outside the toilet, started abusing her and saying that he would kill her. She (complainant) was trying to make him calm but he suddenly became violent and started hitting her. He pulled her with her breast and punched her at her head, face and neck. Many people came to her rescue but he punched her on her breast. He got a cab and went out of scene but while running he forgot his passport with her. The time of occurrence of incident is shown as 1.00 pm on 18th October, 2007 and the time of registration of FIR is shown as 4.00 pm.

3. The complainant had also lodged another FIR against the petitioner under Section 376 IPC wherein she made following allegations:

6. In the month of September, 2004 he invited me to visit him in London. During that stay in London in his house 16, Narine Grove, Dulwich Village, London SP 24, 9PU we became intimate with each other and also had physical relations, but only after he promised and assured that he will marry me after his divorce has taken place with his first wife, from whom he had a son.

7. In this way we kept on meeting in Delhi in London and had physical relations and every time he kept on promising and assured me that we will get married as soon as his divorce will be through.

x x x x x

15. I got suspicious and went to IGI International Airport at around 11.00-11.30 am on 18th October and found Mr. Alok Kumar holding hands of a lady, whose name I came to know later as Ms. Amrita Das R/o Sector 41, Noida and Mr. Alok Kumar was having his arm around her waist.

16. On my confronting him, he sent away that lady and reacted violently with me and also misbehaved and physically assaulted me, all the facts of the incident have been reported by me in my complaint in Police Station IGI Airport on the very same day, on the basis of my complaint a case under Section 354/506 IPC was registered against Mr. Alok Kumar (a copy of the FIR is enclosed herewith for ready reference).

4. The petitioner's contention is that on 18th October, 2007 he had come to IGI Airport as he was a solicitor in London and was returning back to London. He had not denied about live-in relationship with the complainant but had stated that his parents did not agree to this marriage because of certain reasons. He was to catch flight of Virgin Atlantic Airlines to London and he reached airport around 12.05 pm with his fiancée and was about to enter departure building when complainant called him from behind and asked him to talk for about five minutes. He agreed to talk and while talking she snatched his passport from his shirt pocket and told that she would not return the passport unless he accompanied her and solemnized marriage with her in a temple forthwith. He told her that he had to report at check-in counter latest by 12.35 pm. The complainant after taking her passport went to ladies toilet and did not come out till 12.45 pm, he missed his flight. After coming out from toilet she told him that she had torn away his passport and flushed it. Complainant also started screaming and shouting at him that she would not allow him to marry another woman. Many people were looking at them. She left the place in a scooter and told him to come to her sister's house. He went to her sister's house kept waiting there but she did not come there. Thereafter he learnt about lodging of this FIR.

5. It is submitted by the petitioner that the allegations made by the complainant about molesting her were preposterous and the FIR was lodged

with mala fide intention to prevent the petitioner from going to London where petitioner was practicing. The complainant subsequently lodged another FIR under Section 376 IPC against the petitioner with the same motive.

6. From the allegations made by the complainant, it is apparent that when the complainant started 'live-in relationship' with the petitioner, the petitioner had not even divorced his previous wife though it seems was living separate from her. The complainant was having a child while the petitioner was also having a child. 'Live-in relationship' is a walk-in and walk-out relationship. There are no strings attached to this relationship, neither this relationship creates any legal bond between the parties. It is a contract of living together which is renewed every day by the parties and can be terminated by either of the parties without consent of the other party and one party can walk out at will at any time. Those, who do not want to enter into this kind of relationship of walk-in and walk-out, they enter into a relationship of marriage, where the bond between the parties has legal implications and obligations and cannot be broken by either party at will. Thus, people who chose to have 'live-in relationship' cannot complain of infidelity or immorality as live-in relationships are also known to have been between married man and unmarried woman or between a married woman and an unmarried man.

7. It is admitted case of the complainant that she herself came to IGI International Airport when she learnt that the petitioner was going back to London and was about to marry someone else and it is complainant's own case that she could not tolerate this and wanted to remind the petitioner of good old days and promises. She subsequently lodged an FIR under Section 376 IPC against the petitioner. These facts make it abundantly clear that sole

design of the complaint was to prevent the petitioner from leaving India because petitioner had decided to walk out of the live-in relationship between the parties. This is clear from the sequence of events stated by the complainant in her complaint. She in her complaint under Section 354/506 IPC had not stated as to at what time she reached the airport but in her subsequent FIR she had given time of her reaching at the airport at 11.30 a.m. Obviously, she had reached airport well in advance knowing the timing of the flight. It seems the quarrel had taken place when the petitioner was to enter the departure building as there is no visitors' lounge at IGI Airport (International) and the visitors have to stay outside the departure building where taxis and cars drop the passengers who have to catch flight. There are several gates at the departure building and each gate is manned by security persons, no one can enter the departure building without an air-ticket and a passport or without a security pass. The police post is at one corner of the departure building itself and police station is downstairs near arrival building. The alleged incident reported by complainant had taken place around 12.30 p.m., the FIR was lodged at 4.00 pm when the police post is at the corner of the departure building. The four and half hours difference in lodging of FIR shows that the FIR was lodged after a considerable long time with a design to deposit passport of the petitioner with the police so late that the passport of the petitioner was not returned to the petitioner. This is clear from the subsequent events as the petitioner was not returned his passport by police and his LoC was opened by the police. This case reflects that the police was acting under some influence. Even thereafter when petitioner asked for return of passport to the police, the police refused to return it on the ground that it was part of the case property.

8. It is settled law that the Court should refrain from quashing FIR on the ground that allegations made in FIR were false. However, when FIR is lodged with mala fide motives to wreck vengeance, the Courts have interfered as an exceptional matter and quashed the FIRs. In *M/s Eicher Tractors Limited & Ors. v. Harihar Singh & Anr.* 2009(1) JCC 260, *State of Karnataka v. M. Devendrappa* 2002 (1) JCC 214, *State of Haryana v. Bhajan Lal* 1992 SCC (Cri.) 426 and *Madhavrao J. Scindhia v. Sambhajirao C. Angre* 1988 SCC (Cri.) 234, Supreme Court held that where allegations made in an FIR or complaint were so absurd and inherently improbable on the basis of which no prudent person could ever reach a just conclusion, this was sufficient ground for quashing the FIR. The Apex Court also held that where criminal proceeding is manifestly attended with mala fide and where proceeding is maliciously instituted with an ulterior motive for wrecking vengeance on the accused and with a view to spite him due to private and person grudge, the FIR can be quashed.

9. In the present case, motive of the complainant is writ large in her two complaints. She had entered into live-in relationship knowing fully well that the petitioner was not even divorced at that time. She being an educated lady, already once married, was not a naïve as not to know the reality of live-in relationship. It cannot be thought that she was not aware that live-in relationship was not a marriage but it was a relationship of convenience where two parties decide to enjoy company of each other at will and may leave each other at will. However, despite entering into 'live-in relationship' with the petitioner, she could not tolerate that petitioner should marry someone else and when the petitioner was about to leave India with his

fiancée and was at the airport, she went to the airport with the sole motive, which is clear from the sequence of events, to prevent petitioner from flying out from India and to teach him a lesson. She had been lived with the petitioner in London. She knew that the petitioner was working in London. She enacted the events in such a manner that the petitioner could not get hold of his passport for considerable long time and could not leave India for that period. She made allegations of rape against the petitioner.

10. This Court while granting anticipatory bail to the petitioner in the rape case lodged by the complainant observed as under:

7. The facts of the case as narrated in two FIRs show that there was admittedly a live-in relationship between the Petitioner and the complainant for more than five years. The petitioner found that he could not go ahead with the marriage although at one point of time the parties had proposed to marry each other. The circumstances narrated preclude an automatic inference on absence of that consent of that complainant. Such conclusion would have to be preceded by a careful examination of events that transpired during the five years when the live-in relationship subsisted and during which according to the complainant she underwent an abortion as well. Prima facie it appears to this Court, on the basis of existing averments in the FIR that it would be unsafe to infer an absence of consent of the complainant; which is an essential ingredient of the offence of rape. The Court is also unable to discern parity of the facts in Yedla Srinivasa Rao v. State of Andhra Pradesh and the instant case. There the prosecutrix was between 15 years and 17 years living in a village and right from the beginning she refused to participate in the act but the accused kept on persisting and persuading her. The fact that the police took four months to register the second FIR is also a pointer to the difficulty in early inferring the offence of rape in these circumstances.”

11. I consider that the FIR No. 426/2007 PS IGI Airport was got registered against the petitioner out of malice in order to wreck vengeance on the petitioner because petitioner refused to continue live-in relationship with

the complainant, after due deliberations. The incident is of 12.30 pm (around) FIR's registration time is 4.00 pm, MLC of complainant was done at 7.15 pm showing no external injuries on her body. The allegations that accused petitioner, despite his fiancée being there handed over his passport to her for safe custody are preposterous. It is not her case that he was wearing clothes with no pockets. There is no reason a man would hand over his passport to a woman who had come to airport only to quarrel with him.

12. Keeping in view the above circumstances, I consider that it is a fit case where FIR should be quashed to prevent the misuse of criminal justice system for personal vengeance of a partner of 'live-in relationship'. The petition is allowed. FIR No No. 426/2007 PS IGI Airport is hereby quashed.

August 09, 2010
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SHIV NARAYAN DHINGRA, J.