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CRR-1937-2024

IN THE HIGH COURT OF MADHYA PRADESH
AT INDORE

BEFORE

HON'BLE SHRI JUSTICE BINOD KUMAR DWIVEDI

ON THE 7th OF APRIL, 2025CRIMINAL REVISION No. 1937 of 2024*Versus**THE STATE OF MADHYA PRADESH AND ANOTHER*

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Appearance:

Petitioner - wife by Shri Abhay Saraswat - Advocate.

*Respondent No.1 - State of Madhya Pradesh by Shri Rahul Solanki -
Government Advocate appearing on behalf of Advocate General.*

Respondent No.2 - husband by Shri Ritu Raj Bhatnagar - Advocate.
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ORDER

Heard on the question of admission.

This revision petition under Section 397 read with Section 401 of Code of Criminal Procedure, 1973 (herein after referred to as the Code) = Section 438 read with Section 442 of Bhartiya Nagrik Suraksha Sanhiya, 2023 (herein after referred to as BNSS) has been preferred by the petitioner – wife against impugned order dated 03.02.2024 in Sessions Trial No.639 of 2023 passed by learned 9th Additional Sessions Judge, Indore, District Indore (MP), whereby an application filed under Section 227 and 228 of the Code on behalf of respondent No.2 - husband has been allowed; and he has been discharged from charge under Section 377 of Indian Penal Code, 1860.

2. As per prosecution case, petitioner (Jaina Katlana d/o Bansilal



Katlana) was married to respondent No.2 (Nikunj S/o Dinesh Shah) on 31.01.2016 as per Hindu rites and customs; and the marital life continued for a period of eight years. In the mean time, after some time of the marriage, the petitioner – wife was subjected cruelty and demand of dowry and was also subjected to unnatural sexual intercourse; and ultimately, First Information Report (FIR) was lodged by the petitioner – wife on 03.07.2023 which was registered as Crime No.135 of 2023 at Police Station Mahila Thana, Indore, District Indore (MP) for commission of offence punishable under Sections 498-A, 377, 323, 294 and 506 read with Section 34 of IPC and also under Section 3 read with Section 4 of Dowry Prohibition Act.

3. Learned counsel for the petitioner submits that despite overwhelming evidence, respondent No.2 – husband has been discharged from offence under Section 377 of IPC, which is bad in law. For this, he has relied upon a judgment delivered by the Apex Court in case of P. Vijayan v. State of Kerala & another reported in AIR 2010 SC 663. On the aforesaid miscellaneous contentions, learned counsel for the petitioner prays for setting aside the impugned order by allowing this petition.

4. Learned counsel appearing for respondent No.2 – husband has vehemently opposed the prayer and supported the impugned order on the ground that an offence under Section 377 of IPC has been declared as unconstitutional by the Apex Court, as per amended definition of ‘rape’ under Section 375 of IPC during subsistence of marriage sexual intercourse with wife does not constitute an offence under Section 377 of IPC.

5. To bolster his submissions, learned counsel for respondent No.2 –



husband has relied upon a judgment delivered by a coordinate bench of this Court at Gwalior Bench in case of Smt. Meghna Agrawal v. Anurag Bagadiya and another, Miscellaneous Criminal Case No.4173 of 2022, order dated 19.04.2022; relevant paragraph No.11 is extracted, as under: -

“11. If the facts of the present case are considered, then it is clear that there are specific allegations of demand of dowry and physical and mental harassment on account of non-fulfillment of said demand. It is specifically alleged that on 5/8/2020 she was subjected to unnatural sex. This Court cannot lose sight of the fact that a wife is slow in rushing to the police station for making complaint of each and every act of harassment or maltreatment. The first intention of the wife is to save her married life and to give sufficient time to her in-laws as well as her husband, so that the situation may improve. The patience shown by the wife should not be treated as a weakness or an attempt to create a false story. Thus, if the applicant kept quiet for one year and did not disclose to her parents about the unnatural sex committed by the applicant, then it cannot be said that her conduct of keeping mum was nothing but an attempt to explain the delay. Even otherwise, there is specific allegation in the FIR that this act of committing unnatural sex by her husband was disclosed by the applicant to her parents-in-laws, therefore, by no stretch of imagination it can be said that the applicant kept quiet about the unnatural sex committed by the respondent no.1. Further in the light of judgment passed by Supreme Court in the case of Rupali Devi vs. State of U.P. reported in (2019) 5 SCC 384, compelling a married woman to live in her parental home on account of non-fulfillment of demand of dowry is also a cruelty.”

6. Heard learned counsel for the parties and perused the record.

7. It is not in dispute the allegations have been levelled against respondent No.2 – husband that he has committed unnatural sexual



intercourse with the wife, but looking to the amended definition of ‘rape’ under Section 375 of IPC; and the judgment delivered by the Apex Court in case of Navtej Singh Johar and order dated 21.09.2023 passed by a coordinate bench of this Court in case of Umang Singhar v. State of Madhya Pradesh, Miscellaneous Criminal Case No.59600 of 2022 reported in 2023 SCC OnLine MP 3221; and in case of Manish Sahu S/o Shri Onkar Prasad Sahu v. The State of Madhya Pradesh, Miscellaneous Criminal Case No.8388 of 2023, order dated 01.05.2024 reported in 2024 Supreme (Online) (MP) 32939, deliberating on the aspect of unnatural sex between husband and wife, referring to amended definition of ‘rape’ under Section 375 of IPC and relying upon the judgment delivered by the Apex Court in case of Navjet Singh Johar v. Union of India Ministry of Law reported in AIR 2018 SC 4321 = 2018 (10) SCC 1 and also on the judgment delivered by this Court in case of Umang Singhar (supra) has held that till date “marital rape” has not been recognized under IPC. It is apposite to reproduce the relevant paragraphs No.16 to 21 of the judgment delivered by a coordinate bench of this Court in case of Manish Sahu S/o Shri Onkar Prasad Sahu v. The State of Madhya Pradesh, reported in 2024 Supreme (Online) (MP) 32939, which are, as under: -

“16. Thus, it is clear that a consensual sexual conduct between adults of the same sex cannot be termed as an offence under Section 377 of IPC. Thus in nutshell, it can be said that if an unnatural sex takes place between two persons of either same gender or different gender with the consent of both the parties, then it would not be an offence under Section 377 of IPC.

17. Thus the consent of both the parties is



necessary for taking the act out of the purview of Section 377 of IPC. However, this Court after considering the amended definition of "rape" as defined under Section 375 of IPC has already come to a conclusion that if a wife is residing with her husband during the subsistence of a valid marriage, then any sexual intercourse or sexual act by a man with his own wife not below the age of fifteen years will not be rape. Therefore, in view of the amended definition of "rape" under Section 375 of IPC by which the insertion of penis in the anus of a woman has also been included in the definition of "rape" and any sexual intercourse or sexual act by the husband with her wife not below the age of fifteen years is not a rape, then under these circumstances, absence of consent of wife for unnatural act loses its importance. Marital rape has not been recognized so far.

18. Under these circumstances, this Court is of considered opinion that the allegations made in the FIR would not make out an offence under Section 377 of IPC. My view is fortified by a judgment passed by Co-ordinate Bench of this Court in the case of Umang Singhar Vs. State of Madhya Pradesh, Through Station House Officer and Another reported in 2023 SCC OnLine MP 3221.

19. Another submission made by counsel for the applicant that since respondent No.2 did not make the allegation of unnatural sex on the first occasion clearly falsifies the allegations made in the second FIR and they are afterthought in nature is concerned, this Court is of considered opinion that after having come to a conclusion that the act of unnatural sex by a husband with his legally wedded wife residing with him is not an offence under Section 377 of IPC, no further deliberations are required as to whether FIR was lodged on the basis of frivolous allegations or not.

20. For the reasons mentioned above, this Court is of considered opinion that even if the entire allegations made by respondent No.2 against the applicant are considered on their



face value, still no offence under Section 377 of IPC would be made out.

21. Accordingly, FIR in Crime No.377/2022 registered at Police Station Kotwali Jabalpur and criminal prosecution of the applicant, is hereby quashed.”

8. In view of the foregoing discussion, the present revision petition fails, as it has no merits, and therefore, **dismissed**.

(BINOD KUMAR DWIVEDI)
JUDGE

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