

**HIGH COURT OF JAMMU, KASHMIR AND LADAKH  
AT JAMMU**

CRM(M) No. 338/2021

Reserved on : 30.11.2023

Pronounced on: 28.12.2023

Mintu Kumar, Age 27 years,  
S/o. Sh. Dev Raj,  
R/o. Village Katli,  
Tehsil and District, Samba  
At present Inf. Bn. TA(H&H)  
Sikh Li, Janglote C/o. 56 APO.

.....Appellant(s)/Petitioner(s)

Through: Mr. Anil Khajuria, Adv.

vs

1. Union Territory of Jammu and Kashmir th. its Commissioner/Secretary, Home Department, Civil Secretariat, Jammu/Srinagar
2. Officer in-charge/SHO Police Station, Samba
3. Miss X

Through: Mr. Vishal Bharti, Dy. AG for Nos. 1 and 2  
Mr. Jagpaul Singh, Adv. for No. 3

**Coram: HON'BLE MR. JUSTICE RAJNESH OSWAL, JUDGE**

**JUDGEMENT**

1. The petitioner has filed the present petition for quashing the FIR No. 0125 of 2021 dated 21.04.2021 registered with Police Station, Samba for the commission of offence under Section 376 IPC against the petitioner at the instance of the respondent No. 3.
2. It is stated that the FIR impugned does not disclose the commission of offence under section 376 IPC by the petitioner as the necessary ingredients of the offence are missing in the FIR. It is further averred that the allegations

contained in the FIR unequivocally indicate the love-affair between the petitioner and the respondent No. 3 which commenced in the year 2015 and continued for a period of over six years as the respondent No. 3 has herself admitted that in the month of February, 2016, the petitioner induced the respondent No. 3 to enter into physical relation on the assurance that he would marry her but the respondent No. 3 refused. The further allegations levelled against the petitioner are that the respondent No. 3 accompanied the petitioner to Katra in the year 2017 and when they stayed in a hotel, the petitioner insisted the respondent No. 3 for physical relation by taking oath of Vaishno Devi that the petitioner would marry her and it was on the said assurance of marriage that the respondent No. 3 entered into physical relation for the first time. After that, she used to enter into physical relationship with the petitioner as and when the petitioner insisted after he used to come on leave. The respondent No. 3 has also alleged that now when she insisted the petitioner for solemnization of marriage, he initially delayed it on one pretext or the other and few days back, he refused to marry her and rather was planning to marry a well off and a smart girl. It is further stated that respondent No. 3 filed an application under section 156(3) Cr.P.C. before the Chief Judicial Magistrate and in compliance to the order dated 17.03.2021, a report was submitted by the Police Station, Samba stating that the matter was enquired through PSI, who submitted that during the course of inquiry, both the complainant and non-complainant had settled the dispute amicably and the respondent No. 3 also submitted that she did not want to pursue the said complaint. It is further urged by the petitioner that pursuant to the settlement, the marriage agreement was also drafted but to shock and dismay of the petitioner, the respondent No.

3, her counsel and family members demanded Rs. 10 lacs in order to withdraw the complaint.

3. Reply has been filed by respondent Nos. 1 and 2 stating therein that on 21.04.2021, the learned Munsiff (JMJC), Samba in an application under section 156(3) Cr.P.C. filed by the complainant/respondent No. 3, titled, 'Miss X vs Mintu Kumar' vide order dated 17.03.2021 issued direction for registration of FIR against the petitioner herein. On receipt of the application accompanied with order dated 17.03.2021, FIR bearing No. 0125/2021 for commission of offence under section 376 IPC was registered at Police Station, Samba. During the course of investigation, the statement of the prosecutrix was recorded under section 164 Cr.P.C. and during the course of investigation, record of a hotel of District Kathua was checked and on the identification of the prosecutrix, an entry in the name of the petitioner was found in the record of one hotel at Kathua. From the statement of the prosecutrix, commission of offence under section 376 IPC was established against the petitioner.
4. Prosecutrix/respondent No. 3 has also filed the response, stating therein that the marriage agreement annexed with the petition is a forged document prepared by the petitioner only to use the same before the court and the petitioner has committed a very heinous offence. The petitioner not only committed offence under section 376 IPC, but has also played fraud with the respondent No. 3. It is further averred that vide order dated 17.03.2021, she reached Police Station, Samba. The petitioner indulged in manipulation with the Police and took the signature of the respondent No. 3 on an agreement that he would marry her and said statement was made by the petitioner in writing

but after getting the signature of the respondent No. 3 on the paper, he refused to keep his promise. The respondent No. 3 has denied that she consented for physical relations, rather her consent was obtained by using force and fraud by the petitioner. The petitioner has annexed the statement of the petitioner in Hindi.

5. Learned counsel for the petitioner has submitted that as per the own admission of the respondent No. 3, she had been in relationship with the petitioner since 2017 and she had further stated that she used to have physical relations with the petitioner as and when the petitioner insisted after the petitioner used to come on leave. Learned counsel for the petitioner has vehemently argued that the allegations levelled in the FIR clearly demonstrate that the physical relations were made by respondent No. 3 with her consent, as also the respondent No. 3 has stated in her application that earlier the petitioner was delaying the marriage and later on refused to solemnise the same. He laid much stress that respondent No. 3 has nowhere stated that the petitioner made a false promise with the respondent No. 3 for marriage and he never had any intention to marry the respondent No. 3. Further learned counsel for the petitioner has relied upon the judgment of the Apex Court in **Sonu @ Subash Kumar vs State of Utter Pradesh and another, AIR 2021 SC 1405** and **Maheshwar Tigga vs. the State of Jharkhand (2020) 10 SCC 108**.
6. *Per contra*, Mr. Vishal Bharti, learned Dy.AG appearing for respondent Nos. 1 and 2 has vehemently argued that the petitioner has spoiled the life of a young girl by promising to marry and subsequently refused from marrying with respondent No. 3.

7. Mr. Jagpaul Singh, learned counsel representing complainant/respondent No. 3 has vehemently argued that the petitioner made a false promise with respondent No. 3 and had no intention from very beginning to marry the prosecutrix. He placed reliance of the judgment of the Supreme Court in **Anurag Soni vs the State of Chattisgarh, AIR 2019 SC 1857.**
8. Heard and perused the record.
9. A perusal of the record reveals that the respondent No. 3 submitted an application before the learned Chief Judicial Magistrate, Samba and the same was assigned to JMIC, Samba. The record further depicts that the application was filed by the respondent No. 3 under section 156(3) Cr.P.C. for registration of FIR against the petitioner stating therein that she developed friendly relation with the petitioner in the year 2015, when they met first at Sewing Centre Samba. The respondent No. 3 used to meet with the petitioner occasionally, but they used to talk and chat regularly. All the family members of the complainant as well as the petitioner and the sewing teacher knew their relationship. It was also pleaded that the respondent No. 3 used to venture out with the petitioner as and when he used to come home, since he was serving in Territorial Army. In the month of February, 2016, the petitioner asked respondent No. 3 to have physical relationship on assurance that he would marry the complainant at any cost, but the respondent No. 3 refused. In the year, 2017, the petitioner took the respondent No. 3 to Katra where they stayed in a hotel and the petitioner insisted respondent No. 3 for having physical relationship. The petitioner swore in the name of Vaishno Devi that he would marry her and thus on his assurance, the respondent no. 3 entered into physical relationship for the first time. The respondent No. 3 had also

stated that she used to have physical relation with the petitioner as and when he insisted after he used to come on leave. Now when the respondent No. 3 insisted the petitioner for solemnizing marriage, he initially delayed on one pretext or the other and subsequently refused to marry her. On receipt of this information, FIR bearing No. 0125/2021 for commission of offence under section 376 IPC was registered and the statement of the prosecutrix has also been recorded under section 164 Cr.P.C, wherein she has stated that from the year 2014 till 2016, the respondent No. 3 and the petitioner were friends and the petitioner asked her to have relations with him, then she stated that if he wanted to have relationship with her, then he would have to marry her. The petitioner stated that he would marry her and would take her to his home also. From the year, 2017, the petitioner forced her to have relations with him. Then she told the petitioner she belonged to other caste and his family members would not agree for out of caste marriage. Then the petitioner stated that he would persuade his family members for solemnizing arranged marriage. They used to roam together frequently. She used to travel to Katra and Kathua and would remain together in the night. Ever since, respondent No. 3 had indulged in physical relationship with the petitioner, the petitioner used to pressurize respondent No. 3 for maintaining physical relation. The respondent No. 3 used to tell the petitioner that she would maintain physical relation only if the petitioner would marry her and the petitioner used to assure the respondent No. 3 and also further swear that he would marry her. The respondent No. 3 used to believe the petitioner and indulge in physical relation with him. The respondent No. 3 further stated that she was impregnated by the petitioner in the month of November/December, 2019 and the petitioner sent some

medicine through his friend and also transferred some amount in her account for aborting the pregnancy. Petitioner had further told her that after the marriage of his elder brother, he would marry her. She last time maintained the physical relation with the petitioner in the month of August, 2020. After the solemnization of marriage of his brother, the petitioner refused to marry her because she was from other caste. She further deposed that the petitioner kept the respondent No. 3 as wife and after using left her.

10. In order to prosecute a person for commission of offence under section 376 IPC, in case of false promise to marry, the necessary ingredients are required to be fulfilled. There must be allegation in the FIR that the promise to marry given to the prosecutrix was false at the very inception and the false promise was made only to sexually exploit the prosecutrix. Besides, the promise to marry has to be in proximity of time to occurrence and the same cannot be stretched over long period of time. In the FIR, it is stated by the respondent No. 3 that she entered into physical relationship with the petitioner in the year, 2017 when they had gone to Vaishno Devi and the petitioner swore in the name of Vaishno Devi to marry the respondent No. 3 and then both of them entered into physical relationship. In the statement of respondent No. 3 recorded under section 164 Cr.P.C, the incident of 2017 allegedly happened in Katra has not been mentioned by the respondent No. 3. Though this Court cannot take into consideration the contradictions between the contents of the application pursuant to which FIR has been registered vis a vis the statement made by the prosecutrix under section 164 Cr.P.C. but the conjoint reading of the complaint as well as the statement recorded under section 164 Cr.P.C makes it abundantly clear that the respondent No. 3 had entered into physical

relationship with the petitioner with her consent. She has herself admitted that she used to travel to Katra and Kathua with the petitioner and would remain outside in the night as well. In her statement, there is absolutely no whisper that any false promise was made by the petitioner for solemnizing marriage with the respondent No. 3 solely for the purpose of entering into physical relationship with the respondent No. 3. Even if the case projected by the respondent No. 3 in the application filed under section 156(3) Cr.P.C., is accepted on its face value, still it is established that respondent No. 3 remained in physical relationship ever since 2017 and whenever the petitioner used to come on leave, she would enter into physical relationship with him till August, 2020 when the respondent No. 3 last time had physical relationship with the petitioner. The sexual relationship over a period of three years in itself is sufficient enough to demonstrate that the petitioner and the respondent No. 3 were having consensual sexual relationship and to prosecute the petitioner in respect of such allegations would be nothing but an abuse of process of law. The judgment relied upon by the learned counsel for the respondent No. 3 is not applicable to the facts and circumstance of the instant case.

11. In the case of **Sonu@ Subhash Kumar (supra)**, the Apex Court has held as under:

**8.** The contents of the FIR as well as the statement under Section 164 of CrPC leave no manner of doubt that, on the basis of the allegations as they stand, three important features emerge:

- (i) The relationship between the appellant and the second respondent was of a consensual nature;
- (ii) **The parties were in the relationship for about a period of one and a half years;** and
- (iii) Subsequently, the appellant had expressed a disinclination to marry the second respondent which led to the registration of the FIR.

9. In *Pramod Suryabhan Pawar* (supra), while dealing with a similar situation, the principles of law which must govern a situation like the present were enunciated in the following observations:

“Where the promise to marry is false and the intention of the maker at the time of making the promise itself was not to abide by it but to deceive the woman to convince her to engage in sexual relations, there is a “misconception of fact” that vitiates the woman's “consent”. On the other hand, a breach of a promise cannot be said to be a false promise. To establish a false promise, the maker of the promise should have had no intention of upholding his word at the time of giving it...”

10. Further, the Court has observed:

“To summarise the legal position that emerges from the above cases, the “consent” of a woman with respect to Section 375 must involve an active and reasoned deliberation towards the proposed act. To establish whether the “consent” was vitiated by a “misconception of fact” arising out of a promise to marry, two propositions must be established. The promise of marriage must have been a false promise, given in bad faith and with no intention of being adhered to at the time it was given. The false promise itself must be of immediate relevance, or bear a direct nexus to the woman's decision to engage in the sexual act.”

“11. Bearing in mind the tests which have been enunciated in the above decision, we are of the view that even assuming that all the allegations in the FIR are correct for the purposes of considering the application for quashing under Section 482 of CrPC, no offence has been established. **There is no allegation to the effect that the promise to marry given to the second respondent was false at the inception. On the contrary, it would appear from the contents of the FIR that there was a subsequent refusal on the part of the appellant to marry the second respondent which gave rise to the registration of the FIR.** On these facts, we are of the view that the High Court was in error in declining to entertain the petition under Section 482 of CrPC on the basis that it was only the evidence at trial which would lead to a determination as to whether an offence was established.”

12. In **Maheshwar Tigga v. State of Jharkhand, (2020) 10 SCC 108**, the

Hon’ble Apex Court has observed and held as under:

14. Under Section 90 IPC, a consent given under a misconception of fact is no consent in the eye of the law. But the misconception of fact has to be in proximity of time to the occurrence and cannot be spread over a period of four years. It hardly needs any elaboration that the consent by the appellant was a conscious and informed choice made by her after due deliberation, it being spread over a long period of time coupled with a conscious positive action not to protest. The prosecutrix in her letters to the appellant also mentions that there would often be quarrels at her home with her family members with regard to the relationship, and beatings given to her.

15. In *Uday [Uday v. State of Karnataka, (2003) 4 SCC 46]*, the appellant and the prosecutrix resided in the same neighbourhood. As

they belonged to different castes, a matrimonial relationship could not fructify even while physical relations continued between them on the understanding and assurance of marriage. This Court observed as follows :

“21. It therefore appears that the consensus of judicial opinion is in favour of the view that the consent given by the prosecutrix to sexual intercourse with a person with whom she is deeply in love on a promise that he would marry her on a later date, cannot be said to be given under a misconception of fact. A false promise is not a fact within the meaning of the Code. We are inclined to agree with this view, but we must add that there is no straitjacket formula for determining whether consent given by the prosecutrix to sexual intercourse is voluntary, or whether it is given under a misconception of fact. In the ultimate analysis, the tests laid down by the courts provide at best guidance to the judicial mind while considering a question of consent, but the court must, in each case, consider the evidence before it and the surrounding circumstances, before reaching a conclusion, because each case has its own peculiar facts which may have a bearing on the question whether the consent was voluntary, or was given under a misconception of fact. It must also weigh the evidence keeping in view the fact that the burden is on the prosecution to prove each and every ingredient of the offence, absence of consent being one of them.”

13. In view of what has been discussed above, the continuance of the investigation pursuant to the impugned FIR shall be nothing but an abuse of process of law, particularly when no *prima facie* offence under section 376 IPC is made out against the petitioner from the mere perusal of the allegations levelled in the said FIR, as such, the FIR impugned registered with Police Station, Samba is quashed.
14. Disposed of.
15. Case diary be returned to Mr. Vishal Bharti, Dy. AG.

**(RAJNESH OSWAL)**  
**JUDGE**

Jammu  
28.12.2023  
Rakesh

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|----------------------------------|--------|
| Whether the order is speaking:   | Yes/No |
| Whether the order is reportable: | Yes/No |