

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

CRM(M) No. 731/2021

Reserved on: 01.12.2023

Pronounced on: 22.12.2023

Radhey Bachan

S/O Ram Bachan, R/O Ward No. 2,
Nowshera, District Rajouri A/P
Puran Nagar, Janipur, Jammu

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

Through: Mr. Navneet Dubey, Advocate.

Vs

1. The UT of J&K

Th. Additional SP Nowshera, District
Rajouri.

..... Respondent(s)

2. SDPO Nowshera,

J&K Police Nowshera, District Rajouri.

3. SHO

Police Station, Nowshera, District
Rajouri.

4. Miss X

R/o Tehsil Nowshera, District Rajouri,
A/P Durga Nagar, Jammu

Through: Mr. Dewakar Sharma, Dy. AG.

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

JUDGMENT

1. The present petition has been filed by the petitioner under Section 482 Cr. P.C. for quashing the FIR No. 162/2021 dated 11.08.2021 registered for commission of offences under Section 376/420 I.P.C by the respondent No. 3 at the instance of respondent No. 4.
2. It is stated that the petitioner fell in love with the respondent No. 4 five to six years back and during that period, the petitioner and the respondent No. 4 also developed sexual relations with mutual consent. It is alleged that the respondent No. 4 on 06.07.2021 submitted one written application with the Additional Superintendent of Police, Nowshera

wherein she admitted her love affair with the petitioner. It is further stated that the matter however was compromised and a marriage agreement was executed on 09.07.2021 between the petitioner and the respondent No. 4. As such the above mentioned application/complaint was disposed of as not pressed in view of the marriage agreement between the petitioner and the respondent No. 4. It is further averred that the respondent No. 4 subsequently changed her mind and again submitted an application before the learned Sub-Judge, JMIC, Nowshera on 07.08.2021 which was endorsed to respondent No. 3 for registration of FIR. Pursuant to that, the FIR impugned was registered. Subsequently, the petitioner and the respondent No. 4 solemnized marriage and started living as husband and wife respectively. The petitioner along with petition has filed an affidavit of the respondent No. 4 stating therein that she was not sexually assaulted by the petitioner. Besides raising the ground of compromise for quashing the FIR, it is also urged by the petitioner that the mere perusal of the FIR impugned would reveal that no offence under Section 376/420 IPC is made out against the petitioner and the respondent No.4 lodged FIR after five years of the alleged incident of rape and even thereafter she continued to have intimate relationship with the petitioner.

3. Status report stands filed by the respondent Nos. 1 to 3 stating therein that on 11.08.2021 a written application dated 07.08.2021 comprising of two leaves endorsed by Sub-Judge, JMIC, Nowshera was received at Police Station and on receipt of the said application, the FIR No. 162/2021 was registered against the petitioner for commission of

offences under Section 376/420 IPC. It is stated that the offences under Sections 376/420 IPC and 3/4 POCSO Act were proved against the petitioner as the respondent No. 4 was found to be minor on 01.03.2016, when the first incident of sexual assault was alleged by the respondent No.4.

4. The respondent No. 4 has also filed the response, stating therein that she had solemnized the marriage with the petitioner on 09.07.2021 and under the influence of her father, she made an application to the court of learned Sub-Judge, JMIC, Nowshera for registration of FIR against the petitioner and accordingly the FIR impugned was registered against the petitioner. It is further stated that she has been residing happily with the petitioner as his wife and wants to continue and lead a happy matrimonial life with him by setting at rest the past bitterness generated on account of registration of FIR impugned. Respondent No. 4 has also prayed for quashing the FIR registered against the petitioner.
5. Mr. Navneet Dubey, learned counsel for the petitioner vehemently argued that the FIR was registered against the petitioner because of misunderstanding between the petitioner and the respondent No. 4 and the respondent No. 4 has admitted that she was not sexually assaulted by the petitioner. He further submits that the petitioner and the respondent No. 4 are leading a happy married life and as such, if the FIR impugned is not quashed, it would destroy the matrimonial relationship between the petitioner and the respondent No. 4.
6. *Per contra*, Mr. Dewakar Sharma, learned Dy. AG appearing on behalf of the respondents submitted that the petitioner is guilty of committing

heinous offence of sexually assaulting the respondent No. 4, as such, FIR cannot be quashed.

7. Heard and perused the record.
8. The allegations levelled against the petitioner are that in the year 2016 he told the respondent No. 4 that he wanted to marry her and called her to sister's house, where she was sexually assaulted by him. The petitioner has placed on record the application submitted on 06.07.2021 by the respondent No. 4 addressed to the Additional Superintendent of Police, Nowshera for registration of FIR, in which the respondent No. 4 has admitted that she was having a love affair with the petitioner for the last four years and they had physical relations also. It was further stated in the application that on 25.06.2021, the petitioner came to the residence of respondent No. 4 and took her to his relative's house by stating that there was no one in the house and indulged in physical relations with her. When the respondent No. 4 objected to the same, the petitioner made her to smell something and maintained sexual relations with her. He also told that it was for the last time and he would not marry her. This application was made by the respondent No. 4 and in this application no allegation in respect of commission of offence of rape by the petitioner in the year 2016 was levelled by the respondent No. 4. The FIR has been registered for commission of offence under Section 376/420 IPC and the grievance projected by the respondent No. 4 is that the petitioner has refused to marry her as per the oral agreement in the year 2016. It is evident that the whole foundation of the FIR is based upon the promise of marriage and the grievance of the respondent No. 4 was in fact on account of the

refusal of the petitioner to solemnize marriage with her. The statements of the petitioner and the respondent No. 4 were also recorded before the Registrar Judicial of this Court and the respondent No. 4 in her statement has stated that she has solemnized marriage with the petitioner and is living happily with the petitioner under one roof. She has further stated that she has no objection in the event FIR lodged by her against the petitioner is quashed.

9. Normally, this Court would have never shown indulgence, more particularly when there are allegations of commission of offence of rape and that too of a minor girl, but so far as the instance case is concerned, this Court is satisfied that the whole story was concocted by the respondent No. 4 just to get her marriage solemnized with the petitioner. Though the respondent No. 4 filed another application before the Sub-Judge, JMFC, Nowshera on 11.08.2021, but in her application on the basis of which the FIR was registered, it is not mentioned that on 09.07.2021 the petitioner and the respondent No. 4 had entered into marriage agreement. The application submitted by the respondent No. 4 on basis of which, the FIR was registered, was in fact an afterthought more particularly when no such allegation of commission of offence of rape on 01.03.2016 was levelled in the earlier application dated 06.07.2021.
10. This is not a case where the offence of rape has been committed and the petitioner entered into a marriage agreement with the respondent after the lodging of the FIR or filing of chargesheet, but this is a case where the FIR itself is based upon the promise of marriage, as such, this Court has

shown indulgence, more particularly taking into consideration the fact that the petitioner and respondent No. 4 are leading a happy married life and in the event the FIR impugned is not quashed, it may result into destroying the happy married life of the petitioner and the respondent No. 4. In fact the pre nuptial dispute was blended with the allegations of sexual assault by the respondent No.4 for forcing the petitioner to fall in line and formally solemnize marriage with her. It is evident that FIR was lodged with ulterior motive. In **Sonu v. State of U.P., 2021 SCC OnLine SC 181**, the Hon'ble Supreme Court of India has observed:

“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.”

11. More so the parties have entered into compromise and the respondent lodged FIR by concealing that she had entered in to marriage agreement with the petitioner, which was subsequently admitted by the respondent No.4, as such this court deems it proper to quash the FIR impugned in this petition.
12. **In Parbatbhai Aahir v. State of Gujarat, (2017) 9 SCC 641**, the Hon’ble Supreme Court of India has laid down the following broad principles for quashing criminal proceedings on the basis of settlement between the parties:

“16. The broad principles which emerge from the precedents on the subject, may be summarised in the following propositions:

16.1. Section 482 preserves the inherent powers of the High Court to prevent an abuse of the process of any court or to secure the ends of justice. The provision does not confer new powers. It only recognises and preserves powers which inhere in the High Court.

16.2. The invocation of the jurisdiction of the High Court to quash a first information report or a criminal proceeding on the ground that a settlement has been arrived at between the offender and the victim is not the same as the invocation of jurisdiction for the purpose of compounding an offence. While compounding an offence, the power of the court is governed by the provisions of Section 320 of the Code of Criminal Procedure, 1973. The power to quash under Section 482 is attracted even if the offence is non-compoundable.

16.3. In forming an opinion whether a criminal proceeding or complaint should be quashed in exercise of its jurisdiction under Section 482, the High Court must evaluate whether the ends of justice would justify the exercise of the inherent power.

16.4. While the inherent power of the High Court has a wide ambit and plenitude it has to be exercised (i) to secure the ends of justice, or (ii) to prevent an abuse of the process of any court.

16.5. The decision as to whether a complaint or first information report should be quashed on the ground that the offender and victim have settled the dispute, revolves ultimately on the facts and

circumstances of each case and no exhaustive elaboration of principles can be formulated.

16.6. In the exercise of the power under Section 482 and while dealing with a plea that the dispute has been settled, the High Court must have due regard to the nature and gravity of the offence. Heinous and serious offences involving mental depravity or offences such as murder, rape and dacoity cannot appropriately be quashed though the victim or the family of the victim have settled the dispute. Such offences are, truly speaking, not private in nature but have a serious impact upon society. The decision to continue with the trial in such cases is founded on the overriding element of public interest in punishing persons for serious offences.

16.7. As distinguished from serious offences, there may be criminal cases which have an overwhelming or predominant element of a civil dispute. They stand on a distinct footing insofar as the exercise of the inherent power to quash is concerned.

16.8. Criminal cases involving offences which arise from commercial, financial, mercantile, partnership or similar transactions with an essentially civil flavour may in appropriate situations fall for quashing where parties have settled the dispute.

16.9. In such a case, the High Court may quash the criminal proceeding if in view of the compromise between the disputants, the possibility of a conviction is remote and the continuation of a criminal proceeding would cause oppression and prejudice; and

16.10. There is yet an exception to the principle set out in propositions 16.8. and 16.9. above. Economic offences involving the financial and economic well-being of the State have implications which lie beyond the domain of a mere dispute between private disputants. The High Court would be justified in declining to quash where the offender is involved in an activity akin to a financial or economic fraud or misdemeanour. The consequences of the act complained of upon the financial or economic system will weigh in the balance.”

13. In **Ramawatar v. State of M.P., (2022) 13 SCC 635**, the Hon’ble Supreme Court of India has observed as under:

“9. Having heard the learned counsel for the parties at some length, we are of the opinion that two questions fall for our consideration in the present appeal. *First*, whether the jurisdiction of this Court under Article 142 of the Constitution can be invoked for quashing of criminal proceedings arising out of a “non-compoundable” offence? If yes, then whether the power to quash proceedings can be extended to offences arising out of special statutes such as the SC/ST Act?

10. So far as the first question is concerned, it would be ad rem to outrightly refer to the recent decision of this Court in *Ramgopal v. State of M.P.*, wherein, a two-Judge Bench of this Court consisting of two of us (N.V. Ramana, CJI & Surya Kant, J.) was confronted with an identical question. **Answering in the affirmative, it has been clarified that the jurisdiction of a court under Section 320CrPC cannot be construed as a proscription against the invocation of inherent powers vested in this Court under Article 142 of the Constitution nor on the powers of the High Courts under Section 482CrPC. It was further held that the touchstone for exercising the extraordinary powers under Article 142 or Section 482CrPC, would be to do complete justice.** Therefore, this Court or the High Court, as the case may be, after having given due regard to the nature of the offence and the fact that the victim/complainant has willingly entered into a settlement/compromise, can quash proceedings in exercise of their respective constitutional/inherent powers.”

14. In view of this, this Court is of the considered view that the FIR impugned deserves to be quashed, as continuance of such proceedings would not only will be prejudicial to the matrimonial relationship between the petitioner and the respondent No.4 but also would lead to futile litigation having no prospects of success at all. Accordingly, the FIR No. 162/2021 dated 11.08.2021 registered for commission of offences under Section 376/420 I.P.C by the respondent No. 3 at the instance of respondent No. 4 is quashed.

15. **Disposed of.**

**(RAJNESH OSWAL)
JUDGE**

Jammu
22.12.2023
Sahil Padha

Whether the order is speaking:	Yes/No.
Whether the order is reportable:	Yes/No.