

Court No. - 91

Case :- APPLICATION U/S 482 No. - 8020 of 2022

Applicant :- Aruni Mittal And 3 Others

Opposite Party :- State of U.P. and Another

Counsel for Applicant :- Saurabh Chaturvedi,Ayush Kaushik,Sr.
Advocate

Counsel for Opposite Party :- G.A.,Dileep Kumar
Pandey,Gaurav Pundir

Hon'ble Gajendra Kumar,J.

1. Heard Sri Ayush Kaushik learned counsel for the Applicants, learned AGA and Sri Nitin Sharma along with Sri Dileep Kumar Pandey learned counsel for the opposite party no.2 and perused the records.

2. The present criminal misc. application u/s 482 has been filed for the quashment of the chargesheet dated 3.9.2021 and cognizance/summoning order dated 17.11.2021 passed by the learned Addl. Chief Judicial Magistrate, Court No. 5, Meerut as well as entire criminal proceedings of crl. Case no. 20577 of 2021 (state vs. Aruni Mittal and others) by which the applicants have been summoned in Case Crime No. 141 of 2021 under Section 376, 506 and 120-B, I.P.C, P.S. Civil Lines, District Meerut.

3. The prosecution story in brief is as follows:-

There is an allegation against the applicants that applicant no.1 has raped the prosecutrix for years altogether and, thereafter, he kept trying to contract marriages again with some other girl with the conspiracy of his other family

members. F.I.R has been registered initially on 14.03.2021 at 21.:10 hrs. at PS Majhola, District Moradabad U/S 376, 506, 120-B bearing case crime no. 204/2021 which subsequently got transferred to P.S. Civil Lines Meerut on 3.6.2021 and was registered as Case crime no. 141 of 2021 U/S 376, 506, 120-B IPC. The alleged date of occurrence as per the F.I.R version is stated to be between 1.1.2003 to 29.12.2020, and the said information being initially received at the P.S is marked as on 03.03.2021. It is being alleged in the FIR that first informant and the applicant No.1 both met in the year 2003-04 at Oxford Institute, Gandhi Nagar, Meerut as both used to take tuition there. Both were major of above 30 years each. She fell in love and till 2010 she was completely trapped in his love but the family members of applicant no.1 were against this relationship as they strongly opposed the same. In the year 2011, one day, applicant no.1 accepted her as his wife before the presiding deity of Balaji Mandir at Sadar, Meerut. She also took vow of marriage before the deity and accepted him (applicant no.1) as her husband and the applicant no.1 took the advantage of this situation to satisfy his lust and established physical relationship in the name of being married. She started to mount pressure upon him to solemnize valid marriage but he could not manage to get the marriage solemnized validly. Nevertheless, he (applicant no.1) kept establishing physical relationship with her till 28.12.2019. Later on, he maintained distance from her and after some time, there took a hot-talk between them on mobile phone. The applicant no.1 was misled by the family members and particularly, his sister Rashmi Mittal, created atmosphere against the first informant as she used to state that the first informant is a politician lady, if she gets married in the

family, there will be held meetings with many boys and kept trying to tarnish and destroy her public image. After that the applicant no.1 has left her company and tried to marry other girl as all the family knew their relationship, they in conspiracy, tried to get him married with other girl. It has been intended by the applicant no.1 marrying another girl on 15.03.2021 in District-Moradabad with the conspiracy of the other applicants. Charge-sheet has been submitted by the investigating officer after completing the investigation, against the applicants on 3.9.2021, on which the Learned A.C.J.M, Court no. 5 has taken cognizance and issued summoning order against the applicants on 17.11.2021.

4. In her statements under Section 161 and 164 Cr.P.C., she has almost reiterated the allegations made in the FIR and stated that since 2011 to 2019 she was continuously raped and taken to different hotels and raped there. He committed rape continuously for nine years under the misconception of marriage and refused to marry to the first informant. In her statements she introduced the theory of video recording.

5. Pleadings have been exchanged between the parties.

5. Learned counsel for the applicants submitted that the offences levelled are not made out against the applicants as the whole prosecution version stated in the impugned F.I.R are totally false, fabricated and baseless as there never existed any alleged marriage/relationship of the applicant no.1 with the first informant, only acquaintance turned friendship relationship, was there, being classmates earlier in an educational institution. It is further submitted that the ruckus has been created purposely by the informant on 15.03.2021, when the '*Sagai*' ceremony/family function of the applicant

no.1 was going on in a Hotel Drive Inn-24 in Moradabad with an ulterior motive and on the basis of it, falsely implicated the whole family to overcome the pressure of financial transactions and liabilities which had taken place in the past and create undue pressure by lodging the impugned F.I.R on the basis of said Marriage, which was never solemnized. It is further submitted that in the said incident which happened on 15.03.2021, the informant along with many people, not only caused ruckus in order to interrupt the ongoing ceremony, also involved in fighting, due to which, various injuries had also been caused to many people, regarding which an F.I.R has been registered by the applicant no.3 being case crime no. 200 of 2021 U/S 323, 504, 506 I.P.C in P.S Majhola, District Moradabad. In the said incident, various injuries have also been sustained by the applicant no.3 (mother of applicant no.1).

5. It is further submitted by the learned counsel for the applicants that genesis of the alleged incident is the financial transactions which took place between the first informant/opposite party no.2 and applicant no.1 in the past which has been stated, has taken place through the electronic transfer modes & cash mode on various dates and due to inability to return back, a long delayed F.I.R has been lodged after a lapse of around two years, falsely implicating the applicants for the purpose of harassment & extortion of money, instead of paying back the borrowed sum of money. It is further submitted that victim has also admitted that they have solemnized their marriage at Balaji Mandir, Meerut as is evident from the averments made in the FIR itself.

6. Learned Counsel for the applicants further submitted that there has been stepwise and material contradiction in the F.I.R

version and the statement recorded under Section 161 and 164 Cr.P.C. of the informant/victim. So far as charge of commission of rape is levelled upon the applicant no.1 is concerned, it is clear that she willingly entered into physical relationship with the applicant no.1. The version of the alleged F.I.R was improved to the extent, by the allegations made in 161 Cr.P.C., mentioning therein that videography has also been made by the applicant no.1 and further much of it in 164 Cr.P.C., the theory of videography was introduced, whereas no evidences are brought in support of allegations made, which creates doubt in the story of the prosecution, as such, it is evident that there being no such marriage, ever solemnized and the only purpose of implication is to avoid the financial liabilities and to get political benefits, such false charges are being levelled and merely on the basis of earlier friendship/ relationship, no offence is made out against the applicants under the aforesaid sections as has been alleged in the FIR, thereafter, charge-sheet has been submitted by the Investigation Officer in a very routine and perfunctory manner, on which, without applying the judicial mind, learned court below has taken cognizance mechanically and summoned the applicants.

7. On the other hand, learned AGA as well as learned counsel for the opposite party no.2 have very vehemently opposed the aforesaid contentions and stated that applicant no.1 has seduced and deceived opposite party no.2 by way of marriage before the deity in Balaji Mandir with first informant and has tried to enter into second marriage with some other girl, as such, applicant no.1 cannot deny the marriage solemnized with the first informant and step away from the liability of husband and cannot enter into any second marriage after

being in relationship with informant/victim for such a long period of time right from the year 2010 when the said marriage was solemnized till the year 2019, committed rape for altogether for 9 years. It is further submitted that it is a case of false promise of marriage. The applicant no.1 fraudulently enter into a marriage with the first informant and obtained interim protection fraudulently by stating that there has been a marriage between the parties. The applicants have not come before the court with clean hands. In another case, they obtained order for mediation and conciliation on the basis of false statement regarding live-in-relationship.

8. Learned counsel for the opposite party no.2 relying upon the Supplementary Counter Affidavit filed today in court also fairly states that earlier one complaint case has been filed by the applicant no.1 U/S 323, 452, 420, 504, 506 I.P.C before the court of Lrd. ACJM, Court no. 5, Meerut which has been challenged by the Opposite party no. 2 before this Hon'ble Court in Crl. Misc. 482 no. 31414 of 2022 (Meenal Gautam Vs State of U.P. & Another) and to which vide order dated 05.12.2022 further proceeding of the case has been stayed and the matter is referred to the mediation and reconciliation centre. It is further submitted by the counsel for the opposite party no.2 that an application U/S 156(3) Cr.P.C. was filed by the applicant no.1 dated 18.03. 2021 in the court of learned ACJM Court no. 5, Meerut only with a view to harass the informant and to create undue pressure. The said 156(3) application was rejected vide order dated 08.10.2021, which has never been challenged and the same has obtained the finality. It has been also pointed out by the counsel for O.P. no. 2 that there existed no financial transactions between the parties and it is nowhere produced on the records, hence,

the averments and arguments made by the counsel for the applicants does not sustains in the eyes of law.

10. Learned counsel for the applicants submits that there has been never any such marriage ever solemnized between the applicant no.1 and first informant/opposite party no.2, and allegations made are totally false, fabricated and politically motivated with an intent to harm the social recognition and social image of the applicant and in order to extort money, although no material is on records or evidences are ever adduced in support of the allegations made in the FIR, and version of prosecution made as either by the victim/informant or any other independent witnesses, not any proof of the alleged marriage is established. It is further submitted that with regard to the case referred to the mediation centre and the stay obtained by the opposite party no.2, it has been specifically stated that the said proceedings never initiated and it has nothing to do with the present case.

11. So far as the arguments made by the counsel for the opposite party no.2 regarding final order passed in the 156(3) application filed by the Applicant no.1 is concerned, the said order has not obtained finality, but a revision has been filed against the said order and the said revision has been allowed by the learned Additional Session Judge, Court no.2 , Meerut in Criminal Revision No.1 of 2022 vide order dated 31.08.22 and the said case is still pending in the court concerned.

12. In reply to the arguments made regarding there being no evidence or version on records regarding the funds transactions made, it has been categorically stated that a details regarding the said transactions have been mentioned in various paras as well as Annexures filed in the applications.

15. The Court has occasion to go through the judgment of Hon'ble Apex Court in case of **Pramod Suryabhan Pawar Vs. The State of Maharashtra; (2019) 9 SCC 608**. Relevant paragraphs of the aforesaid order reads as follows:-

“1.1. The powers of the court under Section 482 are wide and the court is vested with a significant amount of discretion to decide whether or not to exercise them. The court should be guarded in the use of its extraordinary jurisdiction to quash an FIR or criminal proceeding as it denies the prosecution the opportunity to establish its case through investigation and evidence. In deciding whether to exercise its jurisdiction under Section 482, the Court does not adjudicate upon the veracity of the facts alleged or enter into an appreciation of competing evidence presented. The limited question is whether on the face of the FIR, the allegations constitute a cognizable offence. [Paras 7, 8] [432-G-H; 433-A; 434-C-D].

2. The instant proceedings concerned an FIR registered against the appellant under Sections 376, 417, 504, and 506(2) of the IPC and Sections 3(1) (u), (w) and 3(2) (vii) of SC/ST Act. Section 376 of the IPC prescribes the punishment for the offence of rape which is set out in Section 375. Section 375 prescribes seven descriptions of how the offence of rape may be committed. Where a woman does not “consent” to the sexual acts described in the main body of Section 375, the offence of rape has occurred. While Section 90 does not define the term “consent”, a “consent” based on a “misconception of fact” is not consent in the eyes of the law. The consent with respect to Section 375 of the IPC involves an active understanding of the circumstances, actions and consequences of the proposed act. An individual who makes a reasoned choice to act after evaluating various alternative actions (or inaction) as well as the various possible consequences flowing from such action or inaction, consents to such action. This understanding of consent has also been set out in Explanation 2 of Section 375. In the instant case, the “misconception of fact” alleged by the complainant is the appellant’s promise to marry

her. There is a distinction between a false promise given on the understanding by the maker that it will be broken, and the breach of a promise which is made in good faith but subsequently not fulfilled. 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. The “consent” of a woman under Section 375 is vitiated on the ground of a “misconception of fact” where such misconception was the basis for her choosing to engage in the said act. [Paras 9, 10, 12-14, 16] [434-F-G; 435-E, G; 436-D; 437-A-B; 438-E, F].

3.1 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. The allegations in the FIR indicate that in November 2009, the complainant initially refused to engage in sexual relations with the accused, but on the promise of marriage, he established sexual relations. However, the FIR includes a reference to several other allegations such as, the complainant and the appellant knew each other since 1998 and were intimate since 2004; the complainant and the appellant met regularly, travelled great distances to meet each other, resided in each other’s houses on multiple occasions, engaged in sexual intercourse regularly over a course of five years and on multiple occasions visited the hospital jointly to check whether the complainant was pregnant; and the appellant expressed his reservations about marrying the complainant on 31 January 2014. This led to arguments between them. Despite this, the appellant and the complainant continued to engage in sexual intercourse until March 2015. [Paras 18, 19] [441-A-E].

3.2 The allegations in the FIR did not on their face indicate that the promise by the appellant was false, or that the complainant engaged in sexual relations on the basis of this promise.

There is no allegation in the FIR that when the appellant promised to marry the complainant, it was done in bad faith or with the intention to deceive her. The appellant's failure in 2016 to fulfil his promise made in 2008 cannot be construed to mean the promise itself was false. The allegations in the FIR indicate that the complainant was aware that there existed obstacles to marrying the appellant since 2008, and that she and the appellant continued to engage in sexual relations long after their getting married had become a disputed matter. Even thereafter, the complainant travelled to visit and reside with the appellant at his postings and allowed him to spend his weekends at her residence. The allegations in the FIR belie the case that she was deceived by the appellant's promise of marriage. Therefore, even if the facts set out in the complainant's statements are accepted in totality, no offence under Section 375 of the IPC has occurred. [Para 20] [441-F-H; 442-A].”

18. 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.

16. The court has also occasion to go through the judgment of the Hon'ble Apex Court in the case of **Maheshwar Tigga Vs. The State of Jharkhand; (2020) 9 SCR 482**. Relevant paragraphs of the aforesaid order is reproduced hereinunder:

“4.1. It is not possible to hold in the nature of evidence on record that the appellant obtained the consent of the prosecutrix at the inception by putting her under any fear. Under Section 90 IPC a consent given under fear of injury is not a consent in the

eyes of law. Under Section 90 IPC, a consent given under a misconception of fact is no consent in the eyes of 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. In the facts of the present case, the solitary statement of the prosecutrix that at the time of the first alleged offence her consent was obtained under fear of injury, is not acceptable. [Paras 13, 14][490-G-H; 491-A-D].

4.2 The facts and circumstances of the present case show that the appellant did not make any false promise or intentional misrepresentation of marriage leading to establishment of physical relationship between the parties. The prosecutrix was herself aware of the obstacles in their relationship because of different religious beliefs. An engagement ceremony was also held in the solemn belief that the societal obstacles would be overcome, but unfortunately differences also arose whether the marriage was to be solemnised in the Church or in a Temple and ultimately failed. It is not possible to hold on the evidence available that the appellant, right from the inception did not intend to marry the prosecutrix ever and had fraudulently misrepresented only in order to establish physical relation with her. The prosecutrix in her letters acknowledged that the appellant's family was always very nice to her. [Para 18][492-F-H].

4.3 Therefore, the consent of the prosecutrix was but a conscious and deliberated choice, as distinct from an involuntary action or denial and which opportunity was available to her, because of her deep-seated love for the appellant leading her to willingly permit him liberties with her body, which according to normal human behaviour are permitted only to a person with whom one is deeply in love.

17. The court has also occasion to go through the judgment of

the Hon'ble Apex Court in the case of **Naim Ahmad Vs. State (NCT of Delhi); (2023) 1 SCR 106**. Relevant paragraphs of the aforesaid order is reproduced hereinunder:

13. A reference of some of the decisions of this Court dealing with the different dimensions and angles of the word 'consent' in the context of Section 90 and Section 375 would be beneficial for deciding this appeal.

14. In Uday vs. State of Karnataka, the prosecutrix aged about 19 years had given her consent for having a sexual intercourse with the accused with whom she was deeply in love, and it was alleged by the prosecution that the prosecutrix continued to meet the accused as the accused had given her a promise to marry her on a later date. The prosecutrix became pregnant and the complaint was lodged on failure of the accused to marry her. This Court while holding that under the circumstances, the consent could not be said to have been given under a misconception of fact under section 90 of IPC, held in para 21 and 23 as under :-

“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 4 (2003) 4 SCC 46 12 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.

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23. *Keeping in view the approach that the court must adopt in such cases, we shall now proceed to consider the evidence on record. In the instant case, the prosecutrix was a grown-up girl studying in a college. She was deeply in love with the appellant. She was, however, aware of the fact that since they belonged to different castes, marriage was not possible. In any event the proposal for their marriage was bound to be seriously opposed by their family members. She admits having told so to the appellant when he proposed to her the first time. She had sufficient intelligence to understand the significance and moral quality of the act she was consenting to. That is why she kept it a secret as long as she could. Despite this, she did not resist the overtures of the appellant, and in fact succumbed to them. She thus freely exercised a choice between resistance and assent. She must have known the consequences of the act, particularly when she was conscious of the fact that their marriage may not take place at all on account of caste considerations. All these circumstances lead us to the conclusion that she freely, voluntarily and consciously consented to having sexual intercourse with the appellant, and her consent was not in consequence of any misconception of fact.”*

15. *In Deelip Singh alias Dilip Kumar Vs. State of Bihar (supra), this Court after discussing various earlier decisions of this Court and other High Courts, further explained the observations made in Uday case (supra) and*

observed as under:-

“28. The first two sentences in the above passage need some explanation. While we reiterate that a promise to marry without anything more will not give rise to “misconception of fact” within the meaning of Section 90, it needs to be clarified that a representation deliberately made by the accused with a view to elicit the assent of the victim without having the intention or inclination to marry her, will vitiate the consent. If on the facts it is established that at the very inception of the making of promise, the accused did not really entertain the intention of marrying her and the promise to marry held out by him was a mere hoax, the consent ostensibly given by the victim will be of no avail to the accused to exculpate him from the ambit of Section 375 clause secondly. This is what in fact was stressed by the Division Bench of the Calcutta High Court in the case of Jayanti Rani Panda [1984 Cri LJ 1535 : (1983) 2 CHN 290 (Cal)] which was approvingly referred to in Uday case [(2003) 4 SCC 46 : 2003 SCC (Cri) 775 : (2003) 2 Scale 329] . The Calcutta High Court rightly qualified the proposition which it stated earlier by adding the qualification at the end (Cri LJ p. 1538, para 7) — “unless the court can be assured that from the very inception the accused never really intended to marry her”. (emphasis supplied) In the next para, the High Court referred to the vintage decision of the Chancery Court which laid down that a misstatement of the intention of the defendant in doing a particular act would tantamount to a misstatement of fact and an action of deceit can be founded on it. This is also the view taken by the Division Bench of the Madras High Court in Jaladu case [ILR (1913) 36 Mad 453 : 15 Cri LJ 24] (vide passage quoted supra). By making 14 the solitary observation that “a false promise is not a fact within the meaning of the Code”, it cannot be said that this Court has laid down

the law differently. The observations following the aforesaid sentence are also equally important. The Court was cautious enough to add a qualification that no straitjacket formula could be evolved for determining whether the consent was given under a misconception of fact. Reading the judgment in Uday case [(2003) 4 SCC 46 : 2003 SCC (Cri) 775 : (2003) 2 Scale 329] as a whole, we do not understand the Court laying down a broad proposition that a promise to marry could never amount to a misconception of fact. That is not, in our understanding, the ratio of the decision. In fact, there was a specific finding in that case that initially the accused's intention to marry cannot be ruled out.”

16. In *Deepak Gulati vs. State of Haryana*, this Court gave one more dimension of the word ‘consent’ by distinguishing ‘Rape’ and ‘consensual sex’ and observed as under:

“21. Consent may be express or implied, coerced or misguided, obtained willingly or through deceit. Consent is an act of reason, accompanied by deliberation, the mind weighing, as in a balance, the good and evil on each side. There is a clear distinction between rape and consensual sex and in a case like this, the court must very carefully examine whether the accused had actually wanted to marry the victim, or had mala fide motives, and had made a false promise to this effect only to satisfy his lust, as the latter falls within the ambit of cheating or deception. There is a distinction between the mere breach of a promise, and not fulfilling a false promise. Thus, the court must examine whether there was made, at an early stage a false promise of marriage by the accused; and whether the consent involved was given after wholly understanding the nature and consequences of sexual indulgence. There may be a case where the prosecutrix agrees to have sexual intercourse on 5 (2013) 7 SCC 675 15 account

of her love and passion for the accused, and not solely on account of misrepresentation made to her by the accused, or where an accused on account of circumstances which he could not have foreseen, or which were beyond his control, was unable to marry her, despite having every intention to do so. Such cases must be treated differently. An accused can be convicted for rape only if the court reaches a conclusion that the intention of the accused was mala fide, and that he had clandestine motives.

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24. Hence, it is evident that there must be adequate evidence to show that at the relevant time i.e. at the initial stage itself, the accused had no intention whatsoever, of keeping his promise to marry the victim. There may, of course, be circumstances, when a person having the best of intentions is unable to marry the victim owing to various unavoidable circumstances. The “failure to keep a promise made with respect to a future uncertain date, due to reasons that are not very clear from the evidence available, does not always amount to misconception of fact. In order to come within the meaning of the term “misconception of fact”, the fact must have an immediate relevance”. Section 90 IPC cannot be called into aid in such a situation, to pardon the act of a girl in entirety, and fasten criminal liability on the other, unless the court is assured of the fact that from the very beginning, the accused had never really intended to marry her”.

17. Again in *Dr. Dhruvaram Murlidhar Sonar Vs. State of Maharashtra and others (supra)*, this Court interpreting the Section 90 and the Clause – Secondly in Section 375 of IPC, observed as under -

“23. Thus, there is a clear distinction between rape and consensual sex. The court, in such cases, must very carefully examine whether the complainant had actually wanted to marry the victim or had mala fide motives and had made a false promise to this effect only to satisfy his lust, as the latter falls within the ambit of cheating or deception. There is also a distinction between mere breach of a promise and not fulfilling a false promise. If the accused has not made the promise with the sole intention to seduce the prosecutrix to indulge in sexual acts, such an act would not amount to rape. There may be a case where the prosecutrix agrees to have sexual intercourse on account of her love and passion for the accused and not solely on account of the misconception created by accused, or where an accused, on account of circumstances which he could not have foreseen or which were beyond his control, was unable to marry her despite having every intention to do. Such cases must be treated differently. If the complainant had any mala fide intention and if he had clandestine motives, it is a clear case of rape. The acknowledged consensual physical relationship between the parties would not constitute an offence under Section 376 IPC.”

18. Thus, from the survey of the aforesaid case laws, the legal position in this regard is very clear that there is a distinction between the rape and consensual sex. In case of rape, besides other categories, there is absence of will and consent with regard to the sexual activities. Consent should always be free and voluntary in case of consensual sex. If consent is obtained under the misconception of fact in that case, consent cannot be considered to have been giving freely and voluntarily. There is a distinction between false promise to marry and breach of promise to marry. In the latter case, does not amount to a case of rape, if the circumstances were

in the knowledge of the prosecutrix and were beyond the control of the accused. A false promise to marry amounts to the case of rape, if there has been a false promise from the inception not to marry. Two tests are laid down under the law to establish whether the consent is vitiated by misconception of fact, arising out of a promise to marriage;

(i) The promise of marriage must have been a false promise, given in a bad faith and with no intention of being adhered to at the time it was being given. (ii) 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. The misconception of fact has to be in proximity of time to the occurrence and cannot be spread over a period of nine years.

17. From bare and plain reading of allegations made in the FIR as well as statements recorded under Sections 161 Cr.P.C. and 164 Cr.P.C. of the prosecutrix, the picture emerges, of which the salient features are as follows:-

- (i) Prosecutrix (first informant) is a major lady and an active member of BJP and indulging in political activities;
- (ii) Prosecutrix (first informant) has met the applicant no.1 in the year 2003-04 at the Oxford Institute while taking tuition together with him and, thereafter, she was in love till 2011;
- (iii) Prosecutrix (first informant) has not stated that there has been a false promise to marry since beginning/inception.
- (iv) Prosecutrix herself has admitted that both, she and applicant no.1 have accepted themselves as wife and husband before the presiding deity in Balaji Mandir, Meerut and she took vow before the deity as a wife of the applicant no.1. and established physical sexual relationship.
- (v) She was aware and had knowledge that their relationship was strongly objected and opposed by the family members of

the applicant no.1.

(vi) She mounted pressure for solemnizing the valid marriage but the applicant no.1 could not manage valid marriage and kept physical and sexual relations till 28.12.2019. Thereafter, he maintained distance resultantly hot-talks occurred between them.

(vii) Applicant no.1's family members misled him against her and her sister Rashmi Mittal, particularly, created atmosphere against her by stating that prosecutorix is a political lady and meetings will be held with other boys, if she gets married with her brother and she tried to tarnish and destroy her political image.

(viii) Prosecutorix visited different hotels over a period of time and established sexual relationship.

(ix) The physical and sexual relationship between the prosecutorix and applicant no.1 remain active for a period of nine years.

(x) Prosecutorix never resisted or opposed the sexual relationship with the applicant no.1 and there has been a consensual sex between the parties, though allegedly under the conception of fact.

19. Considering the facts and circumstances of the case and perusal of records, it is apparent that allegations in the FIR do not on their face value, indicate that promise by the applicant no.1 was false or that prosecutorix engaged in sexual relationship on the basis of that promise only. Relationship between them has been activated and prompt by love and affection also. There is no allegation in the FIR that when the applicant no.1 accepted her as his wife before the deity in the temple, it was done in bad faith or with the intention to deceive her. The applicant no.1's failure in 2019 to fulfill his

promise made in 2011 cannot be construed to mean the promise itself was false. The allegations in the FIR indicate that the prosecutrix was aware that there existed obstacles to marrying the applicant no.1 since beginning as applicant no.1's family members were strongly against their relationship particularly, his sister was creating atmosphere against the prosecutrix, despite all this, the prosecutrix and applicant no.1 continued to engage in sexual relations over a long period of time i.e. nine years, after their getting married had become a disputed matter. Even thereafter, the prosecutrix travelled to visit several hotels and remained there with the applicant no.1 and had established sexual relations there. The allegations in the FIR belie the case that the prosecutrix was deceived by the applicant no.1's promise of marriage. Therefore, even if the facts set out in the prosecutrix's statements are accepted in totality, no offence under Section 375 of IPC is made out, as such, the present criminal proceedings against the applicants is nothing but an abuse of process of law, which is liable to be quashed.

20. So far as the proceedings against the applicant nos.2 to 4 is concerned, offences against them are levelled under Section 506 and 120-B IPC. As they are the family members of the applicant no.1 as father, mother and sister, they have every right of choice to approve and oppose the relationship of applicant no.1 with any woman even the prosecutrix in this case. By virtue of their strong objection and opposition to the relationship and proposed marriage of applicant no.1 with the prosecutrix they cannot be said to have conspired against the prosecutrix and extended threat to her life. Thus, from the plain reading of the FIR and statements of the prosecutrix, no offence under Section 506 and 120-B is made out.

21. Thus, considering the facts and circumstances of the case as well as the arguments made by the learned counsel for the parties and case-laws cited above, the present Application succeeds and is, accordingly, **allowed**.

22. Consequently, the entire criminal proceedings of Crl. Case no. 20577 of 2021 (state vs. Aruni Mittal and others) is hereby quashed against the applicants.

23. Let a copy of this order be sent to the court concerned forthwith.

Order Date :- 27.10.2023

Ashutosh

(Gajendra Kumar, J.)