

Court No. - 70

Case :- APPLICATION U/S 482 No. - 6903 of 2025

Applicant :- Shubham Mukharjee

Opposite Party :- State of U.P.

Counsel for Applicant :- Abhijeet Mukherji

Counsel for Opposite Party :- G.A.

Hon'ble Rajeev Misra,J.

Heard Mr. Abhijeet Mukherji, the learned counsel for applicant, the learned A.G.A. for State/opposite party-1.

Perused the record.

At the very outset, the learned counsel for applicants submits that due to inadvertence the first informant has not been impleaded as party respondent in present application. He, therefore, seeks permission of Court to implead prosecutrix/first informant as opposite party-2 in the present application.

Prayer made by the learned counsel for applicant is bonafide.

Same is not not opposed by the learned A.G.A.

Accordingly it is allowed.

Let necessary amendment in the cause title of this application be carried out by the learned counsel for applicant during course of the day.

Applicant- Shubham Mukharjee, who is a charge sheeted accused and facing trial before Court below has approached this Court by means of present application with the following prayer:

"It is, therefore, most respectfully prayed that, during the pendency of the present application, this Hon'ble Court may be pleased to stay the effect and operation of the Impugned Judgment and order dated 04.02.2025 passed by Additional District and Sessions Judge, FTC-1, Varanasi whereby the discharge application of the applicant has been rejected under Section 227 of the Cr.P.C. as well as the Cognizance-cum-Committal Order dated 26.09.2024 passed by learned CJM-III Varanasi in S.T. No. 945 of 2024 (State Vs. Subham Mukharjee), and the impugned charge sheet No. 01 of

2024 dated 02.09.2024, under Section 376(2)(n), 506 I.P.C. in S.T. No. 945 of 2024 pending before FTC/ADJ-I, Varanasi, arising out of Case Crime No. 0310 of 2024, Police Station Lanka, District Kashi (Commissionerate Varanasi), as well as the entire further proceedings pending before the court of Additional District Judge/FTC-I, Varanasi.

Further, this Hon'ble Court may graciously be pleased to set aside the Impugned Judgment and order dated 04.02.2025 passed by Additional District and Sessions Judge, FTC-I, Varanasi whereby the discharge application of the applicant has been rejected under Section 227 of the Cr.P.C. as well as the Cognizance-cum-Committal Order dated 26.09.2024 passed by learned CJM-III Varanasi in S.T. No. 945 of 2024 (State Vs. Subham Mukharjee), and the impugned charge sheet No. 01 of 2024 dated 02.09.2024, under Section 376(2)(n), 506 I.P.C. in S.T. No. 945 of 2024 pending before FTC/ADJ-I, Varanasi, arising out of Case Crime No. 0310 of 2024, Police Station Lanka, District Kashi (Commissionerate Varanasi), as well as the entire further proceedings pending before the court of Additional District Judge/FTC-I, Varanasi..

And/or to pass such other and further orders as this Hon'ble Court may deem fit and proper in the facts and circumstances of the instant case."

Record shows that in respect of an incidents which are alleged to have occurred from 29.5.2024 to 2.7.2024, a belated F.I.R. dated 16.8.2024 was lodged by the prosecutrix/first informant/opposite party-2 and same was registered as Case Crime No. 0310 of 2024, under sections 351(2) BNS and 69 BNS, Police Station- Lanka, District- Kashi, Commissionerate, Varanasi. In the aforesaid F.I.R. two persons namely, Shubham Mukherjee (applicant herein) has been nominated as named accused wherein an unknown person has also been arraigned as an accused.

After aforementioned FIR was lodged, Investigating Officer proceeded with statutory investigation of concerned case crime number. During course of investigation, Investigating Officer recorded the statement of first informant under section 180 BNSS, copy of same is on record at page 66 onwards of the paper book. The prosecutrix in her aforesaid statement has fully supported the F.I.R. Subsequent to above, the statement of the prosecutrix was recorded under section 183 BNSS, wherein prosecutrix has rejoined her previous statement recorded under section 180 BNSS. Copy of same is on record at page 93 onwards of the paper book.

On the basis of above, and other material collected by Investigating Officer, during course of investigation, he came to the conclusion that complicity of named accused Shubham Mukherjee is alone established in the crime in question. He accordingly, submitted charge sheet/police report in terms of

Section 193 (BNSS), whereby and whereunder applicant has been charge sheeted under section 376 (2)N, 506 IPC.

After submission of aforementioned charge sheet cognizance was taken upon same by the Jurisdictional Magistrate i.e. ACJM III vide Cognizance Taking Order dated 26.9.2024. Since offence complained of is triable exclusively by the Court of sessions, accordingly concerned Magistrate committed the case to the Court of Sessions. Resultantly, Sessions Case No. 945 of 2024 (State Vs. Shubham Mukherjee) came to be registered. During pendency of aforesaid trial, applicant was enlarged on bail by this Court vide order dated 30.9.2024.

At this juncture, applicant approached this Court by means of an Application under section 482 Cr.P.C. No. 354 of 2025 (Shubham Mukharjee Vs. State of U.P.). The aforesaid application was disposed of finally by this Court vide order dated 8.1.2025. For ready reference, the order dated 8.1.2025 is reproduced herein under:

"1. Heard Mr. Abhijeet Mukherji, the learned counsel for applicant and the learned A.G.A. for State.

2. Perused the record.

3. Applicant Shubham Mukharjee, who is a charge sheeted accused, has approached this Court by means of present application under Section 482 Cr. P. C. with the following prayer:-

"It is, therefore, most respectfully prayed that during the pendency of the present application, this Hon'ble Court may be pleased to stay the effect and operation of the impugned Cognizance Order dated 26.09.2024 passed by learned CJM-III Varanasi in S.T. No. 945 of 2024 (State Vs. Subham Mukharjee) under Section 376 (2) (n), 506 IPC, arising out of Case Crime No. 0310 of 2024, under Sections 376 (2) (n), 506 of IPC, Police Station Lanka District Kashi (Commissionerate Varanasi) as well as entire proceedings pending before the court of Additional District Judge/FTC-I, Varanasi.

Further this Hon'ble Court may graciously be pleased to set aside the Impugned Cognizance Order dated 26.09.2024 passed by learned CJM-III Varanasi in S.T. No. 945 of 2024 (State Vs. Subham Mukharjee) under Section 376 (2) (n), 506 IPC, arising out of Case Crime No. 0310 of 2024, under Sections 376 (2) (n), 506 of IPC, Police Station Lanka District Kashi (Commissionerate Varanasi) as well as entire proceedings pending before the court of Additional District Judge/FTC-I, Varanasi.

And/or to pass such other and further orders as this Hon'ble Court may deem fit and proper in the facts and circumstances of the instant case."

4. At the very outset, the learned A.G.A. submits that applicant has rushed to this Court by filing the present application under Section 482 Cr.P.C. without availing statutory remedy available under Section 227 Cr.P.C. Learned A.G.A. further submits that Court below can deal with the grounds raised in support of this application threadbare at the first instance as it has the advantage of original record. On the above premise, the learned A.G.A. submits that no interference is warranted by this Court in present application under Section 482 Cr.P.C.

5. When confronted with above, the learned counsel for applicant could not overcome the same.

6. Having heard the learned counsel for applicant, the learned A.G.A. for State and upon perusal of record, this Court finds that no useful purpose shall be served in keeping this application pending, as the grounds raised by the learned counsel for applicant in support of this application can very well be examined by Court below meticulously at the time of deciding the discharge application as Court below has the advantage of having the original record.

7. Accordingly this application is disposed of finally with a direction to the applicants to approach Court below by filing a discharge application in terms of Section 227 Cr.P.C. seeking his discharge in above mentioned criminal case. In case, such a discharge application is filed by applicant within a period of two weeks from today along with a certified copy of this order, the Court below shall proceed to decide the same by a reasoned and speaking order within a period of two months thereafter, provided there is no other legal impediment.

8. It goes without saying that till the disposal of discharge application as directed above, Court below shall not proceed further with the matter. "

In compliance of above order dated 8.1.2025, applicant filed discharge application dated 21.1.2025 in terms of Section 227 Cr.P.C./250(2)BNSS, seeking his discharge in aforesaid sessions case. The discharge application filed by accused was opposed by prosecution. Ultimately, vide order dated 4.2.2025, court below rejected the discharge application filed by accused/applicant.

Thus feeling aggrieved by above order dated 4.2.2025, charge sheet/police report submitted by Investigating Officer and also the Cognizance Taking Order/Committal order, applicant has now approached this Court by means of present application under section 482 Cr.P.C.

Mr. Abhijeet Mukherji, the learned counsel for applicant, in support of this application has made the following submission:

" 1. It is apparent from a bare perusal of the statements of prosecutrix recorded under sections 161 and 164 crps that the applicant or his family

had never made any false promise of marriage.

2. Rather applicant was being pressurised to marry the informant

3. This fact becomes more apparent by a bare perusal of the 5'h last line of the statement under section 164 crpc of the victim/informant at page 101 of the paper-book

4. ???The statement of the victim-informant is strewn with major contradictions and improvements which even if taken together do not prima facie make out sufficient material for trial against the applicant under section 376 (2) (n) IPC and 506 IPC

5. ???There is no other material in the case diary collected by the Investigating Officer

6. The material collected by the Investigating Officer i.e. the statements of the victim does not even qualify in the category of "grave suspicion" It may only cause some suspicion or conjecture in the mind of the Court. It is a trite of law that when there is just suspicion there are all the powers with the court to discharge the accused. [Tarunjit Tejpai vs State of Goa and Another (2020) 17SCC 556 FB para 8.2

7. Even otherwise the entire proceedings against the applicant are an abuse of process of the Court as the cognisance and committal order have been passed by a single order without any application of mind and assigning of reasons.

8. There is a considerable and unexplained delay of 17 days in lodgement of FIR.

9. While rejecting the discharge application the court has acted as post office and mouth piece of prosecution. It has failed to assign its own reasons."

To lend legal support to his submission, he has referred to the following judgements of Supreme Court:

1. *State of Haryana.. Vs.. Bhajan Lal*

1992 SCC (SUPP) (1) 335 paragraph 107 (7)

2. *Prashant.. Vs.. State of N.C.T. of Delhi.*

(decided on 20 Nov. 2024 by the Hon'ble Supreme Court in SLP Criminal No. 2793 of 2024), Paragraph No. 19

3. *Tarun Jit Tejpai .. Vs.. State of Goa and another (2020) 17 SCC 566 Pargraph 8.2*

4. ???*Sudarshan Singh Wazir Vs.. State of N.C.T. of Delhi and others.*

2025 live law (SC) 262 Paragraph 10 to 12

5. ???Vishnu Kumar Shukla.. Vs.. State of U.P.

(2023) 15 (SCC) 502 Paragraph 5 to 13 and 18 to 23

6. Ram Prakash Chada.. Vs.. State of U.P.

(2024) 10 (SCC) 651 paragraph 23, 24 and 27

On the above premise, it is urged by the learned counsel for applicant that since the part of prosecution story as unfolded in the F.I.R. and re-affirmed in the statement of prosecutrix was found to be false, the entire prosecution story as disclosed in the F.I.R. is unworthy of reliance and therefore, the applicant was liable to be discharged by Court below. He, therefore contends that Court below erred in law and fact in negating the prayer for discharge made by applicant. Consequently, the order impugned dated 21.1.2025, passed by Court below cannot be sustained. Present application is thus liable to be allowed.

Per contra, the learned A.G. representing opposite party-1 has vehemently opposed the present application. Learned A.G.A. submits that no illegality has been committed by Court below in rejecting the prayer for discharge made by accused. Order impugned in present application is perfectly just and legal. As such, same is not liable to be interfered with by this Court. With reference to record, the learned A.G.A. submits that criminality alleged is in two parts. The first part relates to false promise of marriage extended by accused and second part is that on the basis of false promise of marriage, physical relations with prosecutrix were forcibly made by accused. According to learned A.G.A. the issue as to what constitutes a false promise of marriage or breach of promise of marriage is no longer res integra and stands settled by the judgement of Supreme Court in **Pramod Suryabhan Pawar Vs. State of Maharashtra and Another, (2019) 9 SCC 608**, wherein following has been served in paragraph 16:

"16. 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. In Deepak Gulati this Court observed: (SCC pp. 682-84, paras

21 & 24)

"21.... 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 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.

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 on 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."

(emphasis supplied)"

On the above premise, the learned A.G.A. submits that once the prosecutrix in her statement recorded under section 180 and 183 BNSS has clearly and categorically stated that false promise of marriage was extended by accused and on basis thereof her modesty was dislodged by applicant, the burden is upon applicant himself to explain as to why the marriage could not be solemnized. In Case according to accused, no such false promise was made then the said issue, being a triable issue can be answered conclusively only if the evidence has been recorded. In view of above, no illegality can be said to have been committed by Court below in rejecting the discharge application filed by applicant. As such, no interference is warranted by this Court.

Learned A.G.A. further contends that court while taking cognizance on the basis of police report and summoning the accused thereafter is not requested to give detail reason. In respect of above, he has referred to the judgement of Supreme Court in **State of Gujarat Vs. Afroz Mohammed Hasanfatta, A.I.R. (2019) 20 SCC 539.**

Having heard the the learned counsel for applicant and the learned A.G.A. for State/opposite party-1, this Court finds that the issue as to when an accused can be tried, stands answered by three Judges Bench Judgement of Supreme Court in **Tarun Jit Tejpal Vs. State of Goa, (2020) 14 SCC 556**. The Apex Court in aforesaid judgement in unequivocal terms has held that if the material collected by Investigating Officer, prima facie goes to establish the criminality committed by accused, then consequential prosecution of such an accused can be maintained. The Bench in aforesaid judgement has gone a step further and has observed that prosecution of an accused can be sustained even on the ground of grave suspicion which is different from mere suspicion. Admittedly, the prosecutrix in her statement under section 180 and 183 BNSS has clearly and categorically stated that her modesty was dislodged by applicant by extending false promise of marriage. The veracity of the aforesaid statements of the prosecutrix cannot be looked into at this stage. Furthermore the fact that no false promise of marriage was made by applicant, can be adjudicated during the course of trial.

In view of above, this Court finds that no illegality has been committed by Court below in negating the discharge prayed for by accused/applicant.

For the facts and reasons record above, this Court finds that no substantial question of law and fact is involved in present case. Since prima facie case is made against applicant, therefore, no illegality has been committed by Court below, in negating the prayer of discharge prayed by applicant.

As a result, this application is liable to be dismissed.

It is accordingly **dismissed**.

Order Date :- 4.3.2025

Arshad