



CNR: KAHC010444312022

NC: 2026:KHC:42502
CRL.P No. 9740 of 2022

IN THE HIGH COURT OF KARNATAKA AT BENGALURU
DATED THIS THE 11TH DAY OF AUGUST, 2026
BEFORE
THE HON'BLE MR. JUSTICE RAVI V HOSMANI
CRIMINAL PETITION NO. 9740 OF 2022

BETWEEN:

- 1 . MR SHYAM PRASAD @ SHASHANK
S/O RAMAKRISHNA ACHARYA
AGED ABOUT 45 YEARS
NO.95, 1ST MAIN,
4TH CROSS,
KALIDAS LAYOUT
SHREE NAGARA
BENGALURU - 560 050
KARNATAKA.
- 2 . DR. RAMAKRISHNA ACHARYA
S/O LATE ANANDRAMA ACHARYA
AGED ABOUT 75 YEARS
NO.95, 1ST MAIN, 4TH CROSS
KALIDAS LAYOUT,
SHREE NAGARA,
BENGALURU - 560 050,
KARNATAKA.

Digitally signed
by ANUSHA V
Location: High
Court of
Karnataka

(BY SMT.URMILA PULLAT, ADVOCATE)

...PETITIONERS

AND:

- 1 . THE STATE OF KARNATAKA
UDUPI WOMEN POLICE STATION
REP BY THE STATE PUBLIC PROSECUTOR
HIGH COURT OF KARNATAKA
BENGALURU - 01.



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2 . SMT.SHREEDEVI K BHAT
AGED ABOUT 34 YEARS
D/O GOPAL KRISHNA BHAT
2/60E GOLAMPARE
SWASTHIK HOUSE
NEJAR ROAD
OPPOSITE SWARNODYAMA
KELARKALA BETTU
UDUPI - 574 111.

...RESPONDENTS

(BY SMT.SOWMYA R., HCGP FOR R1;
R2 - SERVED & UNREPRESENTED)

THIS CRL.P IS FILED U/S.482 CR.P.C PRAYING TO SET
ASIDE ORDER DATED 26.07.2022 DISMISSING DISCHARGE
APPLICATION U/S.227 OF CRPC FILED BY PETITIONER IN
S.C.NO.20/2021 ON THE FILE OF THE PRINCIPAL DISTRICT
AND SESSIONS JUDGE, UDUPI FOR THE OFFENCES
P/U/S.376(2)(n), 417, 504, 506 OF IPC AGAINST PETITIONER
NO.1 AND 2 AND QUASH ENTIRE PROCEEDINGS PENDING ON
THE FILE OF THE PRINCIPAL DISTRICT AND SESSIONS JUDGE,
UDUPI.

THIS PETITION IS COMING ON FOR '*DICTATING
ORDERS*', THIS DAY, ORDER WAS MADE THEREIN AS UNDER:

CORAM: HON'BLE MR. JUSTICE RAVI V HOSMANI



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ORAL ORDER

Challenging order dated 26.07.2022 passed by Principal District and Sessions Judge, Udupi in SC no.20/2021 dismissing application under Section 227 of Code of Criminal Procedure, 1973 (**CrPC**), this petition is filed.

2. Smt.Urmila Pullat, learned counsel for petitioners submitted that petitioners were accused no.1 and 2 (**petitioners**) in complaint filed by respondent no.2 (**complainant**) with Udupi Women Police Station on 09.12.2020, alleging that she came to know accused no.1 on matrimonial website in February 2012. And after returning from United Kingdom in 2017, he was practicing medicine in Bengaluru. She stated that though she was a divorcee after knowing each other sufficiently they agreed to marry. Accused no.1 went to her home in Kasaragod and assured her family members that he would marry her within six months. After gaining their trust on promise of marriage, accused induced her to move into his house at Udupi, where accused forcibly had sexual intercourse without her consent. She endured same in view of promise of marriage. That accused no.1 also introduced



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her to his family members and also took her to his home at Hanumantanagar, Bengaluru. But, accused no.1 kept postponing marriage on one pretext or other. After secretly recording their intimate videos and taking photos subjected her to repeated physical assault and severe mental torture and that she endured same in view of his promise to marry her.

3. And during 12th to 14th November, 2020, accused no.1 informed that he would not marry her and refused to permit her to reside with him. He warned her not to speak about their relationship to anyone and if she resorted to legal remedies he would spoil her image by circulating her intimate photos/videos on social media and also threatened to kill her if she insisted on marriage.

4. And instead of advising accused no.1, accused no.2 (father of accused no.1) sided with his son and on 07.12.2020, they came to Udupi and abused complainant in filthy language, accused no.2 told her that he would not permit her marriage with accused no.1. Stating that above acts were offences, complainant sought legal action against accused. Same was



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registered as Crime no.35/2020 for offences punishable under Sections 376, 417, 504, 506 read with Section 34 of Indian Penal Code, 1860 (**IPC**). And after investigation, charge-sheet was filed on 01.02.2021 against accused no.1 for offences punishable under Sections 376 (2) (n), 417, 504 and 506 of IPC and against accused no.2 for offences punishable under Sections 504 and 506 of IPC. Thereafter cognizance was taken and matter committed to Sessions Court and registered as SC no.20/2021.

5. In said proceedings, accused filed application for discharge under Section 227 of CrPC on ground that material collected during investigation did not substantiate offences alleged and contending that continuation of proceedings would amount to abuse of process of law. On 26.07.2022, application was rejected. Aggrieved, this petition was filed.

6. At outset, it was submitted that both complainant and accused no.1 being majors, cohabitation was consensual. Fact that complainant stayed in his house for more than 2 years also indicated same. Therefore, offence of cheating under



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Section 417 of IPC was not attracted. It was submitted absence of injuries in medical report dated 11.12.2020 and allegation of assault or about forcible sexual intercourse would also attest to fact that sexual acts were consensual. Further, even as per complainant acquaintance with accused no.1 was on matrimonial site and accused no.1 had expressed his intention to marry her even before her family members. Not marrying her later for other reasons would not attract offence of cheating or rape under promise of marriage. Hence, offences under Section 375 and 376 of IPC would not be attracted. Further allegation of verbal abuse etc. were with intention of harassing family members of accused no.1 and invocation of offences under Section 504 and 506 of IPC were abuse of process. In light of above, learned counsel submitted that rejection of petitioners' application for discharge was liable for interference and prayed for allowing petition.

7. On other hand, Smt.Sowmya R., learned HCGP for respondent no.1 - State opposed petition. It was submitted that both as per complaint as well as charge sheet, consent of complainant for physical relationship was obtained on false



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promise of marriage and incident took place in house of accused attracting offences of rape and cheating. It was submitted both accused had abused complainant in filthy language and also threatened her attracting offences under Sections 504 and 506 of IPC. Hence, sought for dismissal.

8. Respondent no.2 (complainant) is served and unrepresented. In her objections filed by post appending copy of petition filed by her under provisions of Protection of Women from Domestic Violence Act, 2005 (**DV Act**) and pending before I Additional Civil Judge and JMFC, Udupi in Crl.Misc. no.35/2021, she prays for reading contents to be part and parcel of her objections. She alleges that accused no.1 by claiming to be a doctor had gone to Australia impersonating Chitale Sarang Prakash by affixing his photo on passport and worked as doctor from 2003 till 2014. During that period, he had married Pratibha and a daughter was born to them. That his date of birth in his PAN card and SSLC marks card differed, that he had obtained two driving licences bearing his photograph but differing in father's name. That he had worked in clinical research centre at Bangalore by claiming to be doctor



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in 2020 and was also facing proceedings for offence of rape in Spl. Case no.34/2021 filed by Shantini wherein he was referred to as Shashank @ Shyam Prasad Acharya. She also alleges that accused no.1 has cheated several women on false promise of marriage, in Bangalore and Hyderabad. She also alleged that during pendency of proceedings under DV Act, accused no.1 had filed an application for appointment of Court Commissioner for preparation of inventory of household articles in Udupi house and even when said application was not opposed by complainant, he had entered house by breaking open lock. She also alleges that accused no.1 had removed computer, TV, fan etc. from house to harass complainant, while accused no.2 had sought to oust her from Udupi house by approaching Assistant Commissioner under provisions of Maintenance and Welfare of Parents and Senior Citizens Act, 2007. She also alleges that accused no.1 was sending threatening messages to her. On said ground sought for dismissal of petition.

9. Heard learned counsel and perused material on record.



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10. This petition is by accused no.1 and 2 challenging order of rejecting application for discharge for offences punishable under Sections 376 (2) (n), 417, 504 and 506 of IPC against accused no.1 and Sections 504 and 506 of IPC against accused no.2.

11. Law regarding consideration for an application for discharge is well settled. Hon'ble Supreme Court in **Sajjan Kumar v. CBI** reported in **(2010) 9 SCC 368**, wherein it is held:

"17. Exercise of jurisdiction under Sections 227 & 228 of Cr.P.C.

On consideration of the authorities about the scope of Section 227 and 228 of the Code, the following principles emerge:

- (i) *The Judge while considering the question of framing the charges under Section 227 of the Cr.P.C. has the undoubted power to sift and weigh the evidence for the limited purpose of finding out whether or not a prima facie case against the accused has been made out. The test to determine prima facie case would depend upon the facts of each case.*
- (ii) **Where the materials placed before the court disclose grave suspicion against the accused** *which has not been properly explained, the court will be fully justified in framing a charge and proceeding with the trial.*
- (iii) **The court cannot act merely as a post office or a mouthpiece of the prosecution but has**



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to consider the broad probabilities of the case, the total effect of the evidence and the documents produced before the court, any basic infirmities, etc. However, at this stage, there cannot be a roving enquiry into the pros and cons of the matter and weigh the evidence as if he was conducting a trial.

- (iv) ***If on the basis of the material on record, the court could form an opinion that the accused might have committed offence, it can frame the charge,*** though for conviction the conclusion is required to be proved beyond reasonable doubt that the accused has committed the offence.
- (v) At the time of framing of the charges, the probative value of the material on record cannot be gone into ***but before framing a charge the court must apply its judicial mind on the material placed on record and must be satisfied that the commission of offence by the accused was possible.***
- (vi) At the stage of Sections 227 and 228, ***the court is required to evaluate the material and documents on record with a view to find out if the facts emerging therefrom taken at their face value disclose the existence of all the ingredients constituting the alleged offence. For this limited purpose, sift the evidence as it cannot be expected even at that initial stage to accept all that the prosecution states as gospel truth even if it is opposed to common sense or the broad probabilities of the case.***
- (vii) *If two views are possible and one of them gives rise to suspicion only, as distinguished from grave suspicion, the trial Judge will be empowered to discharge the accused and at this stage, he is not to see whether the trial will end in conviction or acquittal."*

(emphasis supplied)



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12. While passing impugned order, learned Sessions Judge has taken note of allegations against accused as well as grounds on which application for discharge was filed. It rejected contention based on admission by complainant in her petition filed under DV Act that she voluntarily cohabited with accused no.1 in house at Kelarkalabettu, on ground that mere live-in relationship would not amount to licence for committing rape and prosecution material showed *prima facie* material about accused committing offences as alleged. It observes at said stage, defence cannot be considered and decisions relied upon were distinguishable on facts. Relying on ratio in **Ajay Kumar Parmar v. State of Rajasthan**, reported in **(2012) 12 SCC 406** that at stage of consideration of application for discharge, only prosecution material can be considered, proceeded to reject application.

13. Indeed, Hon'ble Supreme Court in case of **Pramod Suryabhan Pawar v. State of Maharashtra and Anr.**, reported in **(2019) 9 SCC 608** held that a subsequent breach of promise to marry does not amount to rape, explicitly



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distinguish it from a false promise to marry given with fraudulent intent from inception. And in **Dr.Dhruvaram Murlidhar Sonar v. State of Maharashtra and Ors.**, reported in **(2019) 18 SCC 191**, that consensual involvement in sexual intercourse by victim without misconception created by accused would not constitute rape and distinguished between 'rape and consensual sex'. But such examination would require to be at stage of considering application for discharge, to sift through prosecution material to find out if facts emerging prosecution material taken at their face value disclose existence of ingredients constituting alleged offences, without evaluating veracity of material by conducting mini trial.

14. Since there is no consideration of prosecution material vis-à-vis offences alleged and conclusion arrived by mere statement that prosecution material *prima facie* contains all ingredients of offences alleged, impugned order rejecting application is passed. Hence, on ground of failure to follow requirement of law and non-application of mind interference is warranted. Consequently, following:



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ORDER

Petition is allowed, order dated 26.07.2022 passed by Principal District and Sessions Judge, Udupi in SC no.20/2021 on application for discharge is set-aside, matter is remitted for consideration of application afresh and to pass considered order in light of observations made herein above.

**Sd/-
(RAVI V HOSMANI)
JUDGE**

GRD,YKL
List No.: 1 Sl No.: 45