



IN THE HIGH COURT OF UTTARAKHAND AT
NAINITAL

Criminal Misc. Application No.530 of 2023

Vipin Gusain Applicant

Versus

State of Uttarakhand & Anr. Respondents

Presence:-

Mr. Sandeep Kothari, learned counsel for the applicant.

Mr. Siddhartha Bisht, learned, learned A.G.A. for the State.

Mr. Abhishek Verma, learned counsel for the respondent no.2.

Hon'ble Siddhartha Sah, J. (oral)

By means of the present criminal misc. application under Section 482 of the Code of Criminal Procedure, the applicant has sought setting-aside of the impugned cognizance order dated 14.10.2022 passed by learned Chief Judicial Magistrate, Dehradun in Criminal Case No.6889 of 2022 titled as "State vs. Vipin Gusain", under Sections 376 of IPC (arising out of Case Crime No.119 of 2022), P.S. Nehru Colony, Dehradun.

2. The facts necessary for the adjudication of the present application under Section 482 of the Cr.P.C., are as follows:

- (i) A First Information Report dated 13.04.2022 was lodged by the informant/complainant/respondent



no.2 herein, which was registered as Case Crime No.119 of 2022 under Sections 376 & 313 of IPC, P.S. Nehru Colony Dehradun with the allegations that she is working as a Staff Nurse in C.M.I. Hospital, Dehradun. The applicant and informant/respondent no.2 went to Hotel Solitaire on 16.11.2020 on the occasion of the birthday of the applicant. It is further alleged in the FIR that the applicant made false assurance of marriage to her and made physical relation with the informant/complainant. Other than this, it is also alleged that due to physical relation, the informant/respondent no.2 conceived and due to mental pressure, there was miscarriage of the pregnancy of informant/complainant/respondent no.2.

(ii) It is further alleged in the FIR that the accused/applicant had made promise to marry her in future and also caused her miscarriage when she got pregnant again. The informant/respondent no.2 obtained consent for entering into physical relations by cheating her and on the false pretext of marriage.

(iii) It is also alleged that when she entertained doubt about his false assurances, then she met the



accused/applicant's mother on 10.04.2022 and applicant's mother refused to recognize her and refused to talk to her and the applicant also refused to marry her. It is further alleged in the FIR itself that she was constrained to take legal advice and the accused/applicant had been making physical relationship with her on the false pretext of marriage and, therefore, the FIR was registered.

3. During the investigation, the statements of the informant/respondent no. 2 were recorded under Sections 161 and 164 of the Cr.P.C., and the investigation culminated in the submission of a charge-sheet under Section 376 IPC. Based on the said charge-sheet, cognizance was taken by the learned Magistrate vide order dated 14.10.2022.

4. Assailing the aforesaid charge sheet and the cognizance order, learned counsel for the applicant would submit that when the respondent no.2 and the applicant had met each other through a common friend while the respondent no. 2 was working in CMI Hospital, the applicant has frequently visited CMI Hospital. When the applicant had frequently visited CMI Hospital, then the informant/respondent no.2 helped him many times regarding illness of father of the applicant, and after sometime, informant/respondent no.2 informed the applicant that she is



a divorcee, and with free consent of the informant/respondent no.2 and the applicant, the relationship of both the parties were developed. It is relevant to mention herein that as both applicant and the informant/respondent no.2 were happy in their relationship, it was consented by both the parties and there was no commitment of marriage. The relations between the respondent no.2 and the applicant were consensual.

5. It is further submitted by the learned counsel for the applicant that respondent no. 2 was working as a Staff Nurse at C.M.I. Hospital, Dehradun. It is further submitted that the informant/respondent no. 2, who was a divorcee and employed as a Staff Nurse, was fully aware of the consequences of her relationship with the applicant. Since the relationship between the parties was consensual and based on their free will, the allegations made by respondent no. 2 in the FIR that the applicant got her pregnancy terminated twice are an afterthought, false, and could not be substantiated during the investigation.

6. It is further submitted that the relationship between the informant/complainant and the applicant was friendly and consensual, and that from the very beginning, there was no promise of marriage between the applicant and respondent no. 2. It is submitted that the allegation of a physical relationship on the false pretext of marriage has been made only for the sake of implicating the applicant.



Admittedly, the acquaintance between the applicant and respondent no. 2 commenced in October 2020, and it can be inferred from the record that the relationship continued till March 2022. Thus, the relationship lasted for more than one and a half years.

7. Learned counsel for the applicant would further submit that detailed allegations have been made in the FIR only to make out a case against the applicant, and that the FIR has been lodged as an afterthought and on legal advice.

8. He would further submit that it is not in dispute that it was a consensual relationship.

9. To buttress his submissions, learned counsel for the applicant has relied upon a judgment of the Hon'ble Supreme Court in the case of 'Pramod Kumar Navratna vs. State of Chhattisgarh & Others', rendered by the Hon'ble Supreme Court in Special Leave Petition (Criminal) No. 4452 of 2025, and learned counsel for the applicant has drawn the attention of the Court to paragraph nos.18, 22, 24 and 25 thereof and relying upon the same, he would submit that in the said case, the Hon'ble Supreme Court has held that where a consensual relationship goes sour, it would not be a case under Section 376 of IPC and to convert every sour relationship into an offence of rape would inflict indelible stigma and grave injustice. The relevant paragraphs nos.18,



22, 24 and 25 of the said judgment are extracted hereinunder for ready reference:-

“18. It has been time and again settled by this Court, that the mere fact that the parties indulged in physical relations pursuant to a promise to marry will not amount to a rape in every case. An offence under Section 375 of the IPC could only be made out, if promise of marriage was made by the accused solely with a view to obtain consent for sexual relations without having any intent of fulfilling said promise from the very beginning and that such false promise of marriage had a direct bearing on the prosecutrix giving her consent for sexual relations. The issue for consideration is whether, given the facts and circumstances of the case and after examining the FIR, the High Court was correct in refusing to quash the ongoing criminal proceedings against the accused-appellant arising out of FIR No. 213/2025 dated 06.02.2025 and the Chargesheet No. 269/2025.

22. The Courts have to be extremely careful and cautious in identifying the genuine cases filed under Section 376(2)(n) of the IPC by identifying the essential ingredients to constitute the said offence i.e. there should be a promise of marriage made by the accused solely with a view to obtain consent for sexual relations and without having any intent of fulfilling said promise from the very beginning, and that such false promise of



marriage had a direct bearing on the prosecutrix giving her consent for sexual relations. Such genuine cases that deserve prosecution of the accused must be clearly demarcated from the litigation that arises from the cases of consensual relationships between consenting adults going acrimonious on account of dispute and disagreement or a future change of mind. In view of the aforesaid settled position of law, the respondent No. 1-State and the complainant-respondent No. 3 has failed to place any material on record to show how the accused-appellant on the subsequent meetings managed to repeatedly coax and dupe the complainant-respondent No. 3 into having physical relations with him on the false pretext of marriage considering the fact that within initial meetings, both parties were aware about the marital status of the victim and therefore it cannot be, by any stretch imagination said that the consent of the complainant-respondent No. 3 has been vitiated or obtained on fraud and misrepresentation made by the accused-appellant.

24. On a perusal of the allegations made in the present case, it is an admitted fact that the complainant-respondent No. 3, within the first initial meetings told the accused-appellant that she was a married woman with divorce proceedings pending before the Family Court. Therefore, in the same breath, she cannot be allowed to claim and allege that she was also coaxed by the accused-appellant into having a physical



relationship with him on the false pretext of marriage as the two facts cannot stand together on the same plane and simultaneously as both are antagonistic and antithetical to each other. In our opinion, the facts of the present case clearly indicate a consensual relationship gone sour whereas both the parties should have exercised restraint and should have refrained from involving the State into their personal relationship turning rancour.

25. At this juncture, it is important to place reliance upon the observations in Prashant v. State of NCT of Delhi, (2025) 5 SCC 764, wherein this Court speaking through one of us (Nagarathna, J.) observed that a mere break-up of a relationship between a consenting couple cannot result in the initiation of criminal proceedings. What was a consensual relationship between the parties at the initial stages cannot be given a colour of criminality when the said relationship does not fructify into a marriage. Furthermore, this Court in Samadhan v. State of Maharashtra, 2025 SCC OnLine SC 2528 through one of us (Nagarathna, J.) observed that this Court has, on numerous occasions, taken note of the disquieting tendency wherein failed or broken relationships are given the colour of criminality. The offence of rape, being of the gravest kind, must be invoked only in cases where there exists genuine sexual violence, coercion, or absence of free consent. To convert every soured relationship into an offence of rape not



only trivialises the seriousness of the offence but also inflicts upon the accused indelible stigma and grave injustice. Such instances transcend the realm of mere personal discord. The misuse of the criminal justice machinery in this regard is a matter of profound concern for the judiciary already facing a heavy load and calls for condemnation.”

10. Learned counsel for the applicant has also relied upon the judgment of the Hon'ble Supreme Court in 'Nitin B. Nikhare vs. The State of Maharashtra and Another', rendered in SLP (Crl.) No. 1889 of 2024. He has placed reliance upon paragraphs 6, 7, 8, and 9 of the said judgment and has submitted that even if a promise of marriage could not ultimately be fulfilled, it would not amount to rape unless it was made in bad faith from the very inception. The relevant paragraphs 6, 7, 8, and 9 of the aforesaid judgment are extracted hereinbelow for ready reference:

“6. This Court in a catena of judgments has held that the mere fact that physical relations were established pursuant to a promise to marry will not amount to a rape in every case. In order for the offence of rape to be made out, two conditions need to be satisfied i.e. that the promise of marriage was made by the accused solely with a view to obtain consent for sexual relations without having any intention of fulfilling said promise from the very beginning, and that the false promise of



marriage had a direct bearing on the prosecutrix giving her consent for sexual relations. [See: Pramod Suryabhan Pawar v. The State of Maharashtra and Ors. (2019) 9 SCC 608; Mahesh Damu Khare v. The State of Maharashtra and Ors. 2024 SCC OnLine SC 347]

7. From a perusal of the record, it is clear that this was a case of a consensual relationship from the beginning. Even if the case of the prosecutrix is accepted, it does not appear that the initial promise to marry was in bad faith. It was only the subsequent circumstances that prevented fulfilment of alleged false promise to marry. Resultantly, the relationship turned sour which has given rise to the present FIR. Further, in view of the material on record, we do not see this as a case where provisions of Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act can be attracted.

8. Hence, the entire criminal proceedings initiated against the appellant are nothing but an abuse of the process of law. In our opinion the High Court should have exercised its inherent power under Section 482 of the Code of Criminal Procedure to quash the proceedings.

9. For the reasons stated above, we allow this appeal and set aside the order of the High Court dated 19.10.2023 and quash the criminal proceedings arising out of FIR bearing Crime No.646 of 2021 registered at



Lonikand Police Station, Pune for the offences punishable under sections 376(2)(n) and 417 of the IPC and sections 3(1)(r)(w)(i)(ii), 3(2)(v) & 6 of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act.”

11. Learned counsel for the applicant has also relied upon a judgment of the Hon’ble Supreme Court in the case of ‘Biswajyoti Chatterjee vs. State of West Bengal and Anr.’, reported in 2025 (5) SCC 749, and has drawn the attention of the Court to paragraph no. 21 of the said judgment and he would submit that again in the case of Biswajyoti Chatterjee (supra), the Hon’ble Supreme Court, in fact, has held that *there is a growing tendency of resorting to initiation of criminal proceedings when relationships turn sour*. Every consensual relationship, where a possibility of marriage may exist cannot be given a colour of a false pretext to marry, in the event of a fall out. The relevant paragraph 21 of the aforesaid judgment is extracted hereinbelow for ready reference:

21. We find that there is a growing tendency of resorting to initiation of criminal proceedings when relationships turn sour. Every consensual relationship, where a possibility of marriage may exist, cannot be given a colour of a false pretext to marry, in the event of a fall out. It is such lis that amounts to an abuse of process of law, and it is under such circumstances, that we deem



fit to terminate the proceedings at the stage of charge itself.

12. On the aforesaid premise, and in the facts and circumstances of the present case, particularly in view of the aforesaid judgments of the Hon'ble Supreme Court, learned counsel for the applicant would submit that the lodging of the FIR at the instance of respondent no. 2 amounts to a grave abuse of the process of law. It is, therefore, submitted that to prevent such abuse of the process of law and to secure the ends of justice, this Court may exercise its powers under Section 482 of the Cr.P.C. and quash the charge-sheet, the summoning/cognizance order, as well as the entire criminal proceedings against the applicant.

13. *Per contra*, learned counsel for the respondent no.2 would submit that though there was a consent between the applicant and the respondent no.2, but the consent of the respondent no. 2 for physical relationship has been obtained on a false pretext of marriage. The applicant took benefit of the precarious condition of the respondent no.2 and has entered into physical relationship by cheating her.

14. Learned counsel for respondent no. 2, however, admits that, from a bare reading of the FIR, it appears that the FIR was lodged on legal advice.

He would further submit that, from the very inception, the applicant had obtained the consent of



respondent no. 2 to enter into a physical relationship on the false pretext of marriage.

He would further submit that respondent no. 2 had, in fact, gone to meet the mother of the applicant, and it was thereafter that she realized that the applicant had not been honest with her. It is further submitted that even the applicant's mother refused to engage in any discussion regarding the marriage. Thus, he would submit that the consent of respondent no. 2 was obtained on the false pretext of marriage, thereby attracting the offence under Section 376 IPC, therefore, no interference is called for in the present proceedings under Section 482 of the Cr.P.C.

15. Opposing the present application under Section 482 of the Cr.P.C., Mr. Siddharth Bisht, learned A.G.A. for the State, would submit that, upon a plain reading of Section 482 Cr.P.C., the inherent powers of the High Court can be exercised only in three eventualities: (i) to give effect to any order under the Code; (ii) to prevent the abuse of the process of any Court; and (iii) to otherwise secure the ends of justice. He would further submit that these powers are to be exercised sparingly and that the expression "to otherwise secure the ends of justice" has to be read in the context of preventing the abuse of the process of law.

He would further submit that in the present case, there is no abuse of process of law and that the proceedings



under Section 482 Cr.P.C. cannot be used as a mini-trial in the garb of proceedings under Section 482 Cr.P.C.

16. Learned State counsel would further submit that the statements of the victim were recorded under Sections 161 and 164 of the Cr.P.C., and that the victim has remained consistent in her allegations that the applicant obtained her consent on the false promise of marriage. He would further draw the attention of the Court to the statement of the victim recorded under Section 164 of the Cr.P.C. and submit that the very first relationship was made between the applicant and the respondent No.2 in November 2020, when the applicant had invited the respondent no.2 for a birthday party in November 2020, where he spiked her drink and then made physical relations with her. Thereafter, she told him in March 2021 that she is pregnant, and the applicant told her he will marry her, but said that his sister is yet to be married, and then they would get married. As of now, she may get aborted and she consumed the pills at home. Whenever they used to meet, the relationship used to be entered into between the two.

Learned State counsel would further submit that in March 2022 also, she got pregnant, she told the applicant, and he told her that he is still not settled; therefore, he forced her to get an abortion and when she was not ready, he gave



her a pill mixing it in a drink, and now he is refusing to marry.

17. After hearing the learned counsel for the parties, perusing the record, and considering the judgments relied upon by the learned counsel for the applicant, the only question that arises for consideration in the present criminal miscellaneous application under Section 482 of the Cr.P.C. is whether, in the factual matrix of the present case as borne out from the record, the consent of respondent no. 2 to enter into a physical relationship with the applicant was a consensual, free and voluntary or was obtained on the false pretext of marriage.

18. From perusal of the FIR, which is a very long and elaborate and admittedly drafted on legal consultation, as per the FIR itself, it is evident that it is replete with the allegations of entering into a physical relationship by the applicant with the respondent no.2 on the false pretext of marriage. However, in her statements under Section 164 of the Cr.P.C. recorded before the Magistrate, the applicant has categorically stated that the relationship was entered into between the applicant and the respondent no.2 in a birthday party, where the applicant spiked the drink and then made physical relations with her. This version is totally missing in the FIR. Also, in the statements under Section 164 of Cr.P.C., it is not the case of the respondent no.2 that the applicant



had made a physical relationship with the respondent no.2 on the false pretext of marriage. In fact, in the statements under Section 164 of the Cr.P.C., she has categorically stated that the applicant told the respondent no.2 that he will marry her when his sister gets married. It is also evident that in March 2022, admittedly she got pregnant again, and the applicant told her that still he is not settled. At the end, the respondent no.2 has stated that the applicant has refused to marry her.

19. If the FIR contents and the statements of the respondent no.2 are compared, then it is evident that the respondent No. 2 has a different version in the statements under Section 164 of Cr.P.C. The statements under Section 164 of Cr.P.C. do not specifically state about entering into a physical relationship between the applicant and the respondent No. 2 on the false pretext of marriage.

20. It is also clear from the record, as well as from the statements of respondent no. 2, that the relationship between the applicant and respondent no. 2 continued for a little over one and a half years. It is also the admitted case of respondent no. 2 that the relationship between them was consensual in nature and that there was no element of force involved.

21. In this regard, the judgment of the Hon'ble Supreme Court cited by the learned counsel for the applicant is also relevant, wherein it has been held that if the



relationship between the accused and the victim turns sour at a later point of time, that cannot be deemed to be a case of making a physical relationship on the false pretext of marriage. In this regard, the judgment of the Hon'ble Supreme Court in the case of 'Jothiragawan vs. State Rep. by the Inspector of Police and Anr.', reported in 2025 SCC OnLine SC 628, is also relevant. The relevant paragraphs 12 and 13 thereof are extracted hereinunder for ready reference:-

"12. On a reading of the statements made by the victim before the Police, both the First Information Statement and that recorded later on, we are not convinced that the sexual relationship admitted by both the parties was without the consent of the victim. That they were closely related and were in a relationship is admitted by the victim. The allegation is also of threat and coercion against the victim, to have sexual intercourse with the accused, which even as per the victim's statement was repeated thrice in the same manner, when she willingly accompanied the accused to a hotel room. The victim had also categorically stated that after the first incident and the second incident she was mentally upset, but that did not caution her from again accompanying the accused to hotel rooms.

13. Having heard both sides in this case, we have absolutely no doubt in our mind that the criminal proceedings initiated against the present appellant are nothing but an abuse of process of the court. This is



precisely a case where the High Court should have interfered in exercise of its inherent and extraordinary powers under Section 482 of the Cr. P.C. These proceedings cannot go on. Hence, we direct that the proceedings initiated at the instance of the complainant which are presently going on before Sessions Judge (Mahila Court), Erode in S.C. No. 49 of 2022, be hereby quashed.”

Another judgment of the Hon’ble Supreme Court in the case of ‘Samadhan vs. State of Maharashtra and Another’, reported in 2025 SCC OnLine SC 2528, is also relevant, wherein the Hon’ble Supreme Court has held that where it pertains to a consensual relationship, and the acts of the respondent no.2 clearly manifest consent to such relationship, devoid of any coercion, fraud, or misrepresentation as contemplated under Section 90 of the Indian Contract Act, 1872, in our opinion, the High Court refused to exercise its jurisdiction under Section 528 of BNSS erroneously and the Hon’ble Supreme Court proceeded to quash the FIR under Sections 376, 376(2)(n) and 507 of the IPC and the charge-sheet. Relevant paragraphs 40 and 41 of the said judgment are being quoted hereinunder for ready reference:-

40. In view of the foregoing analysis, we are unable to concur with the findings recorded by the High Court, inasmuch as the present case pertains to a consensual



relationship, and the acts of respondent No. 2 clearly manifest consent to such a relationship devoid of any coercion, fraud, or misrepresentation as contemplated in Section 19 of the Indian Contract Act, 1872. In our opinion, the High Court's refusal to exercise its jurisdiction under Section 528 of BNSS is unsustainable. The acts complained of in the present case occurred within the contours of a relationship that was, at the time, voluntary and willing. The continuation of the prosecution in such facts would be nothing short of an abuse of the court machinery.

41. We accordingly allow the appeal and set aside the impugned judgment and order of the High Court dated 06.03.2025 in application under Section 528 BNSS bearing Criminal Application No. 601 of 2025. The said application accordingly stands allowed. Consequently, FIR No. 294 of 2024 dated 31.08.2024, registered with City Chowk Police Station, District Chhatrapati Sambhajinagar City under Sections 376, 376(2)(n) and 507 of the IPC and Chargesheet No. 143 of 2024 dated 25.10.2024, filed in the Court of the 3rd Judicial Magistrate First Class, Aurangabad, accordingly stands quashed.

22. The Court has also considered the submissions advanced on behalf of the learned counsel for respondent no. 2. However, in the peculiar facts and circumstances of the present case, it is borne out from the record that the



relationship between the applicant and respondent no. 2 was consensual. The allegation that the consent of respondent no. 2 was obtained on the false pretext of marriage does not appear to hold water, particularly when her statement recorded under Section 164 of the Cr.P.C. is materially at variance with the version set out in the FIR. Moreover, the consensual nature of the relationship is an admitted position on the part of respondent no. 2.

23. So far as the contentions raised on behalf of the learned A.G.A. for the State are concerned, namely, that the powers under Section 482 of the Cr.P.C. can be exercised only in certain eventualities and that respondent no. 2 has remained consistent in her statements under Sections 161 and 164 of the Cr.P.C., it needs to be observed that, from the record, it is abundantly clear that the relationship between the applicant and respondent no. 2 was a long-drawn one, lasting for a little over one and a half year. The material on record further indicates that the relationship was consensual. In view of the legal position enunciated by the Hon'ble Supreme Court in the judgments referred to hereinabove, such a consensual relationship cannot be brought within the ambit of Section 376 IPC.

24. Thus, having considered the entire facts and circumstances of the case, this Court is of the view that the charge-sheet and the summoning order cannot be sustained.



25. In view of the facts and circumstances of the case, the present criminal misc. application under Section 482 of the Cr.P.C. deserves to be allowed.

26. Consequently, the impugned cognizance order dated 14.10.2022 passed by learned Chief Judicial Magistrate, Dehradun in Criminal Case No.6889 of 2022 titled as “State vs. Vipin Gusain”, under Sections 376 of IPC (arising out of Case Crime No.119 of 2022), P.S. Nehru Colony, Dehradun, are hereby set-aside.

27. The present criminal misc. application under Section 482 Cr.P.C. is, accordingly, allowed.

(Siddhartha Sah, J.)

07.08.2026

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