

**HIGH COURT OF UTTARAKHAND AT****NAINITAL****Criminal Misc. Application U/s 482 No. 1112 of****2021****21st August, 2026**

Chaman Kumar

--Applicant

Versus

State Of Uttarakhand

2: Manju Chauhan Sagar

--Respondent

Presence:-

Mr. Vipul Sharma, Advocate for the Applicant.

Mr. Siddhartha Bisht, AGA for the State.

Mr. Avidit Noliyal, Advocate for respondent no.2.

By means of the instant criminal miscellaneous application under Section 482 of the Cr.P.C., the applicant has sought quashing of the charge-sheet under Section 376, 506 IPC filed before the court of learned Chief Judicial Magistrate, Pithoragarh in Criminal Case No. 331 of 2020 "State Vs. Chaman Kumar" and the cognizance order dated 18.02.2020 passed by Chief Judicial Magistrate, Pithoragarh in Criminal Case No. 331 of 2020 "State Vs. Chaman Kumar" under Sections 376, 506 IPC and the entire



proceedings of Criminal Case No. 331 of 2020 “State Vs. Chaman Kumar” under Sections 376, 506 IPC pending before the court of Chief Judicial Magistrate, Pithoragarh.

2. Facts necessary for adjudication of the present criminal miscellaneous application under Section 482 Cr.P.C. are as follows:-

“An FIR was lodged by respondent no.2 against the applicant on 04.12.2019 under Sections 312, 376, 506 IPC, wherein it was alleged that the applicant and the complainant were married on 27.11.2019. The applicant was posted as a Patwari in Tehsil Bhanoli, District Almora. The respondent no.2 and her husband knew each other from the year 2011-12 and they were in love which also culminated into marriage. The applicant developed physical relations on the pretext of marriage. Respondent no.2 even got pregnant. She was asked to abort the child and the applicant allegedly forcibly administered contraceptives to her which resulted into abortion. The applicant had developed relations with respondent no.2 in Pithoragarh, Almora, Betalghat, Haldwani and Jaspur. On 26.11.2019, applicant developed relations at Pithoragarh and on 27.11.2019, both of them were married. It is further



alleged that thereafter applicant and his parents were threatening the respondent no.2. The respondent no.2 has come to know that applicant was wanting to marry with some other girl and is not accepting the complainant as his wife.

3. The aforesaid FIR was registered as FIR No.0169 of 2019, under Sections 312, 376 and 506 of IPC at P.S. Kotwali, Pithoragarh on 04.12.2019. Pursuant to the aforesaid FIR, investigation ensued and culminated in filing of the charge-sheet under Sections 376 and 506 of IPC. However, the Investigating Officer did not find the allegations under Section 312 to be true. The learned Chief Judicial Magistrate, Pithoragarh vide its order dated 18.02.2020 passed in Criminal Case No.331 of 2020 took cognizance of the offence under Sections 376 and 506 of IPC.

4. Assailing the impugned charge-sheet and the cognizance order as well as the entire proceedings of Criminal Case No.331 of 2020, State vs. Chaman Kumar, under Sections 376, 506 of IPC pending in the court of Chief Judicial Magistrate, Pithoragarh, the learned counsel for the applicant would submit that from a bare perusal of the FIR, it is evident that it is a case of mutually destructive pleas of the prosecution. If



the applicant is deemed to be husband then there is no question of the offence under Section 376 of IPC. Even if he is not deemed to be the husband, even then the offence under Section 376 of IPC would not be made out.

5. Learned counsel for the applicant has invited the attention of the Court to the judgment of the Coordinate Bench of this Court in the case of Dr. Kirti Bhushan Mishra vs. State of Uttarakhand and another rendered in Criminal Misc. Application No.2697 of 2019 and in particular has drawn the attention of the Court to Para Nos. 25, 27 and 30 thereof. Para Nos.25, 27 and 30 thereof are being reproduced hereunder for ready reference:-

“25. The definition of rape has been expanded to include other kinds of penetration also so as to protect a victim of sexual assault. Committee’s observations with regard to expansion of definition of rape is to be quoted hereunder:-

“67. We are of the considered opinion that in the Indian context it is important to keep a separate offence of ‘rape’. This is a widely understood term which also expresses society’s strong moral condemnation. In the current context, there is a risk that a move to a generic crime of ‘sexual assault’ might signal a dilution of the political and social commitment to respecting, protecting and promoting women’s right to integrity, agency and autonomy. However, there should also be a criminal prohibition of other, non-penetrative forms of sexual assault, which currently is not found in the IPC, aside from the inappropriate references to ‘outraging the modesty’ of women in Sections 354 and 509. We recommended the



enactment of Section 354 in another form while we have recommended the repeal of Section 509.

68. We have kept in mind that the offence of rape be retained but redefined to include all forms of nonconsensual penetration of a sexual nature. Penetration should itself be widely defined as in the South African legislation to go beyond the vagina, mouth or anus. 71. By virtue of the Amendment, the legislature has sought to widen the scope of the offence under section 375 to 376D by substituting the expression rape with “sexual assault”. While we feel that the proposed Bill (as placed before Parliament) proposes some welcome changes to the law, there is still much ground that needs to be covered. Accordingly, this Committee has recommended amendments (appended to this Report) to the Criminal Law Amendment Bill 2012, which should be considered and enacted by Parliament at the earliest possible, if not immediately. In any event, we feel that the same ought to be promulgated by the Government as an ordinance.”

27. Subsequently, amendments were incorporated in Section 375 IPC, but Exception 2 has been retained with little more addition in it. Earlier Exception 2 was as follows:-

“Exception – Sexual intercourse by a man with his own wife, the wife not being under fifteen years of age, is not rape.”

30. In view of the principle of law, as laid down in the case of Navtej Singh Johar (Supra), if a man and a woman indulged in anal sex with their free consent in private, no offence under Section 377 IPC is made out. What is being argued is that in case of husband and wife, who are major, the consent is informed and explicit. No further consent is required. Therefore, no offence under Section 377 IPC is made out, such act is exempted under Exception 2 to Section 375 IPC. The principle of interpretation requires that statute should be read in a manner that all the provisions may be given life.

6. Placing reliance upon the aforesaid judgment in the case of Dr. Kirti Bhushan Mishra (*supra*), learned counsel for the applicant has drawn the attention of this Court to Exception 2 of Section 375 of IPC and he would submit that sexual intercourse or sexual acts by a man



with his own wife, the wife not being under fifteen years of age, is not rape. He would also refer to the judgment of the Hon'ble Supreme Court in the case of Independent Thought vs. Union of India and another reported in (2017) 10 SCC 800 and has also drawn the attention of this Court to para 197 of the said judgment which are being reproduced hereunder for ready reference:-

197. In view of the above discussion, I am clearly of the opinion that Exception 2 to Section 375 IPC insofar as it relates to a girl child below 18 years is liable to be struck down on the following grounds:

(i) it is arbitrary, capricious, whimsical and violative of the rights of the girl child and not fair, just and reasonable and, therefore, violative of Articles 14, 15 and 21 of the Constitution of India;

(ii) it is discriminatory and violative of Article 14 of the Constitution of India; and

(iii) it is inconsistent with the provisions of the POCso Act, which must prevail.

Therefore, Exception 2 to Section 375 IPC is read down as follows:

"Exception 2. Sexual intercourse or sexual acts by a man with his own wife, the wife not being 18 years, is not rape."

7. Learned counsel for the applicant has further relied upon a judgment of this Court in the case of Sachin Kumar Singh Chauhan vs. State of Uttarakhand and another rendered in Criminal Misc. Application No.274 of 2020 and in particular has placed reliance upon para nos.11, 12, 13, 14 and 22 of the said judgment and the learned counsel for the applicant



would submit that after taking into consideration, the recent judgment of the Hon'ble Supreme Court in the case of Sachin Kumar Singh Chauhan (*supra*), this Court has come to the conclusion that in cases involving consensual relationship between the accused and the prosecutrix, where the initial promise to marry does not appear to have been false and the promise could not be fulfilled due to intervening circumstances and the relationship subsequently ended, resulting in the registration of an FIR, compelling the accused to face trial would amount to an abuse of the process of law and he would submit that in the aforesaid cases, either the FIRs or the criminal proceedings were quashed by the Hon'ble Supreme Court.

8. Thus relying upon the aforesaid judgment in the case of Dr. Kirti Bhushan Mishra (*supra*) and Sachin Kumar Singh Chauhan (*supra*), the learned counsel for the applicant would submit that in the present case, even from the bare reading of the FIR offence under Section 376 of IPC would not be made out. He would further submit that even in the counter affidavit, the respondent no.2 has come out with a certificate of marriage. Accordingly, in view of the above facts and circumstances of the case, no offence is made



out under Section 376 of IPC against the applicant. Hence the entire prosecution case would be an abuse of process of law and thus the present Criminal Misc. Application under Section 482 of the Cr.P.C. deserves to be allowed.

9. Per contra, learned counsel for respondent no.2/informant Mr. Avidit Noliyal would submit that the applicant has tried to twist the law. He would further submit that both the applicant as well as respondent no.2 were in relationship and when the applicant was asked to marry the respondent no.2, he started making excuses. The *Mens rea* of the applicant was clear that he had entered into relationship only to fulfill his physical desires. To figure out the truth, the trial is necessary where all the facts would be dealt with. However, he would very fairly submit that the parties were in relationship from the year of 2011 which continued up to the year 2019 and the parties were in long relationship of eight years. However, he would submit that from the very inception, the purpose of the applicant was to fulfill his physical desires.

10. The learned counsel for respondent no.2 has further drawn the attention of this Court to page 10 of



the counter affidavit wherein on a stamp paper there is a written document of marriage which states that on 27.11.2019, the marriage of the applicant and respondent no.2 was solemnized at Ulka Devi Mandir, Pithoragarh and they were living as husband and wife and he would submit that the applicant and the respondent no.2 had been under a relationship. He would further submit that the document dated 27.11.2019 is a written document, but it is not a certificate of marriage. However, the same would reveal that the applicant and respondent no.2 were living together. He would further submit that the applicant had all along been keeping the respondent no.2 in dark. He would further submit that if a person enters into a relationship then it would amount to rape.

11. Learned counsel for respondent no.2 has cited the judgment of Hon'ble Supreme Court in the case of Jaspal Singh Kaural vs. State of NCT of Delhi and another reported in (2025) 5 SCC 756 and in particular has drawn the attention of this Court to para 14 of the said judgment. Para 14 thereof is being reproduced hereunder for ready reference:-

“14.The decision in Naim Ahamed is squarely applicable to the conspectus of present case. It has been time and again settled by this Hon'ble Court, that the mere fact that physical relations were



established pursuant to a promise to marry will not amount to a rape in every case. An offence under Section 375 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.”

12. While placing reliance of the aforesaid judgment of the Hon’ble Supreme Court in the case of Jaspal Singh Kaural (*supra*), he would submit that since the applicant had no intent of fulfilling the promise for marriage from the very beginning, hence it would attract offence under Section 376 of IPC and thus in view of the aforesaid facts and circumstances and in view of the judgment of Hon’ble Supreme Court in the case of Jaspal Singh Kaural (*supra*), the learned counsel for respondent no.2 would submit that it is not a fit case for interference under Section 482 of the Cr.P.C.

13. Learned AGA for the State Mr. Siddhartha Bisht would however submit that the applicant and the respondent no.2 came to know each other in the year 2011 and in between, there have been a number of developments. The marriage has taken place between the applicant and the respondent no.2 and resultantly, there was a pregnancy as well. The statements that have been made under Section 164 of the Cr.P.C. are



not present in the FIR. He would further submit that the medical examination report of respondent no.2 is not of any use.

14. In rejoinder, learned counsel for the applicant Mr. Vipul Sharma would submit that an FIR was filed alleging abortion, however, after investigation, no case of abortion was made out against the applicant. Hence the charge-sheet was filed only under Sections 376 and 506 of IPC. He would further submit that even from a bare perusal of the FIR, no offence under Section 376 is made out against the applicant.

15. Learned counsel for the applicant would also try to distinguish the judgment of the Hon'ble Supreme Court in the case of Jaspal Singh Kaural (*supra*) and drawing the attention to para 4 thereof, he would submit that the said judgment is distinguishable on facts.

16. After having heard the learned counsel for the parties and going through the record, the main question which falls for determination in the present case is whether the offence under Section 376 of IPC would be made out under the facts and circumstances of the case? A bare perusal of the FIR would reveal that in



the very opening sentence of the FIR, the informant admits marriage with the applicant. She also admits that in pursuance to the love relationship between the parties the marriage took place and they were in a love relationship right from the year 2011-12. She also admits that the physical relations being established between the applicant and respondent no.2 at numerous places and at numerous times. However, the FIR ends with the allegations that now the applicant is not accepting the respondent no.2 as his wife.

17. On one hand, learned counsel for the applicant has submitted that if the respondent no.2 admits the applicant as her husband then no question of offence under Section 376 of IPC would arise and in particular, he has made reference to Exception 2 to Section 375 of IPC. However, if Exception 2 of Section 375 of IPC is considered in the light of the FIR allegations, then it is difficult to comprehend that the offence under Section 376 of IPC would be made out from a bare reading of the FIR itself. If, on the other hand, the submission of the learned counsel for respondent no.2 is accepted that the respondent no.2 is not the wife of the applicant, then in that case also, there is admitted long drawn relationship between the



applicant and respondent no.2 and in view of the judgment of the Hon'ble Supreme Court in the case of Ravish Singh Rana vs. State of Uttarakhand and another, reported in 2025 SCC OnLine SC 1055, where there was a long drawn relationship between the accused and the victim the Hon'ble Supreme Court had come to the conclusion that their relationship was based on valid consent.

18. On going through the record, it is evident that there was a consensual relationship between the applicant and the respondent no.2 which admittedly continued for a period of almost eight years. The FIR came to be lodged only when the applicant was not agreeable to accept the respondent no.2 as his wife. So far as, the judgment of the Hon'ble Supreme Court in the case of Jaspal Singh Kaural (*supra*) is concerned as cited by learned counsel for respondent no.2, from perusal of the said judgment, it is clear that from the back ground facts as stated in para 4 of the said judgment are different and as such reliance placed upon it by the learned counsel for respondent no.2 is misplaced.

19. Thus the question which is tried to be answered is whether on the admitted facts and



documents on record, the respondent no.2 entered into a physical relationship with the applicant under a misconception of fact or not, and whether it was an outright consensual relationship. From perusal of the FIR, it is clear that there was a love relationship and there was a long drawn relationship between the applicant and the respondent no.2 total around 8 years period and there has been continuous establishment of physical relationship by the applicant with respondent no.2 during the said period. The respondent no.2 is a mature lady and she knew the consequences of physical relationship. Thus it would not be a case as canvassed by the learned counsel for the respondent No.2 that the applicant had entered into relationship with respondent no.2 for his physical desires.

20. In view of the overall facts and circumstances of the case and in view of the settled law laid down by the Hon'ble Supreme Court in the aforesaid judgments and the judgment of the Coordinate Bench of this Court Dr. Kirti Bhushan Mishra (*supra*) and the judgment of this Court in the case of Sachin Kumar Singh Chauhan (*supra*), it is clear that offence under Section 376 of IPC is not made out and the FIR lodged by respondent no.2 would amount to abuse of process of law.



Consequently, the proceedings culminating in filing of charge-sheet and the summoning order cannot be permitted to continue.

21. Therefore, in exercise of powers under Section 482 of the Cr.P.C. and to secure the ends of justice the instant Criminal Misc. Application under Section 482 of the Cr.P.C. deserves to be allowed. Hence the charge-sheet under Section 376, 506 IPC filed before the Court of learned Chief Judicial Magistrate Pithoragarh in Criminal Case No. 331 of 2020 State Vs. Chaman Kumar and the cognizance order dated 18.02.2020 passed by Chief Judicial Magistrate, Pithoragarh in Criminal Case No. 331 of 2020 State Vs. Chaman Kumar under Section 376, 506 IPC and the entire proceedings of Criminal Case No. 331 of 2020 State Vs. Chaman Kumar under Section 376, 506 IPC pending before the court of Chief Judicial Magistrate, Pithoragarh are hereby quashed.

22. Accordingly, the present Criminal Miscellaneous Application under Section 482 of the Cr.P.C. stands allowed.

(Siddhartha Sah, J.)



21.08.2026
Ravi