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IN THE HIGH COURT OF UTTARAKHAND AT
NAINITAL

Criminal Misc. Application No.686 of 2020

Lalit Mohan Joshi Applicant

Versus

State of Uttarakhand & Anr. Respondents

Presence:-

Mr. D. N. Sharma, learned counsel for the applicant.

Mr. Sandeep Sharma, learned, learned A.G.A. assisted by Ms. Rangoli Purohit, learned Brief Holder for the State.

Mr. Sanjay Bhatt, 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 quashing of the charge-sheet dated 08.09.2019 filed in FIR No.0020 of 2019, the entire proceedings of Criminal Case No.533 of 2020, 'State of Uttarakhand vs. Lalit Mohan Joshi' under Sections 376 & 506 of IPC Police Station Nanakmatta, District Udham Singh Nagar pending in the court of Judicial Magistrate 1st Class, Khatima, District Udham Singh Nagar and summoning order dated 31.01.2020 passed by learned Judicial Magistrate 1st Class, Khatima, District Udham Singh Nagar.

2. The FIR was registered as FIR No.0020 of 2019 under Sections 376, 313 and 506 of IPC at Police Station Nanakmatta, District Udham Singh Nagar with the allegations that the applicant came on leave in the year 2016 and the



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complainant met with him in the marriage of her Mausi at Nanakmatta and has asked for friendship but the applicant said to have obtained her mobile number and thereafter on the pretext of marriage with her the applicant said to have started telephonic conversation. It is further alleged that in the year 2017 the applicant said to have come on leave in Holi and on 17-3-2017 he mount a pressure upon her and alleged to have brought her to TRC Guest House Nanakmatta where the applicant said to have picked up a quarrel with her and has maintained physical relations on the pretext that he will marry with her. It is also alleged that the applicant has extended a threat to the complainant stating that he will prepare her nude photograph and will show to her parents and relatives. It is also alleged that on 6-9-2018 the applicant said to have come on leave and called the complainant at Holiday Hotel Khatima by extending threats for life to the complainant and her family members and mount a pressure for maintaining physical relations. It is also alleged that on 14-9-2018 the applicant said to have brought the complainant to the house of his friend Chamki at Chor Galiya Haldwani on the pretext of shopping and where he again maintained physical relation with her. It is also alleged that in October, 2018 when the periods of complainant were stopped she informed the applicant who said to have asked for getting check-up and on getting check-up by complainant it was found that she was pregnant and thereafter the applicant said to have mount a pressure on the pretext of marriage to abort



the said pregnancy and thereafter the complainant said to have got aborted the pregnancy and thereafter the applicant said to have refused to marry her.

3. Learned counsel for the applicant would submit that after lodging of the FIR, the applicant challenged the FIR before this Court by filing a writ petition, wherein an interim order dated 16.07.2019 was passed.

4. In pursuance to the FIR, the Investigating Officer conducted the investigation and filed a charge-sheet against the applicant under Sections 376 & 506 of IPC.

5. On the aforesaid charge-sheet, the learned Judicial Magistrate First Class, Khatima, District Udham Singh Nagar passed the summoning order dated 31.01.2020 by taking cognizance for the offence punishable under Sections 376 & 506 of IPC.

6. Learned counsel for the applicant would further submit that to some extent the allegations made by respondent no. 2 were found to be false during the investigation, and consequently, Section 313 of the IPC was excluded from the charge-sheet.

7. Learned counsel for the applicant would further submit that there is no medical evidence on record to establish the case against the applicant; respondent no.2 was a major and was well aware about the consequences of maintaining physical relations and the alleged incidents said



to have taken place were of the year 2017 and 2018, but she has not made any complaint against the applicant which itself shows that she was interested and consenting party, therefore, no offence punishable under Section 376 of IPC is made out against the applicant.

8. In furtherance to the aforesaid arguments, learned counsel for the applicant has placed reliance upon a judgment of Hon'ble Supreme Court in the case of "Sonu alias Subhash Kumar vs. State of Uttar Pradesh and Another" reported in 2021 SCC OnLine SC 181 and has submitted that the facts of the present case are akin to the facts of the said case of Sonu alias Subhash Kumar (supra), and has particularly drawn the attention of the Court to paragraph nos.3, 7 and 8 to 12 thereof. paragraph nos.3, 7 and 8 to 12 of the said judgment are extracted hereunder for ready reference:

"3. In order to consider the grievance of the appellant, it would be necessary to advert to the contents of the FIR. The FIR was lodged by the second respondent on 7-2-2018. The FIR, which is registered on the basis of a written complaint of the second respondent to the SHO, PS Kotwali, Mathura, states that the second respondent developed friendship with the appellant and that he assured that he would marry her. It has then stated that she was exploited physically for one-and-a-half years and that the second respondent had also spoken to the parents and sister of the appellant. It has been stated that the father of the appellant had informed the second respondent that he would arrange the marriage of the appellant with her. After a lapse of about a year-and-a-half, the appellant is stated to have gone back to his hometown which is Jhansi on 5-1-2018 and made a phone call to the second respondent that, since he wishes to perform a "court marriage", the second respondent may come to Jhansi. This was on the ground that the appellant could not travel to Mathura where the second respondent lived. The second respondent has alleged that she proceeded to Jhansi, but on reaching the residence of the appellant, she was informed by the father of the appellant that the appellant does not wish to marry her. The appellant's father also stated that the appellant did not desire to meet her and further asked her to



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take some money and leave from there. The FIR further records that the second respondent was assaulted by the appellant's sister and thrown out of the appellant's house. The statement of the second respondent was recorded under Section 164CrPC. The entirety of the statement is extracted below:

“Statement under Section 164CrPC.

Name of victim : Geeta d/o Ram Babu, Age 25 years, stated on oath that—

I had love affair with Sonu s/o Kamlesh, age 27 years, for the last 1-1/2 years. He used to tell to marry with me. I got influenced by his talks. I voluntarily developed relationship of husband-wife with him. Now, he and his family members are refusing to marry with me. On 5-1-2018 Sonu went to Jhansi and from there also he kept on taking [sic talking] with me on phone. He called me to Jhansi and then on 21-1-2018 without informing anybody in my home, I went to Jhansi on the address given by Sonu. His father met me there and told me that they are not intending to solemnize my marriage with Sonu and advised me to ran away from there after taking some money. Sonu's mother Shobha and sister Neha assaulted me. On 21-1-2018 I stayed at Jhansi station and then on the train [sic train] of 12 O' clock in the night I came back to Mathura. My sole grievance is that Sonu is refusing to marry with me. I have studied up to class 6th. I have nothing more to say.

It is certified that the above statement has been given by the victim with her own voluntary wish and without any force or pressure.

Recorded by

sd/-

6-3-2018

Heard and verified

sd/-

Victim”

7. *On the basis of the rival submissions and with the assistance of the counsel, we have perused the FIR. The FIR specifically records that the second respondent had developed a friendship with the appellant and that he had assured that he would marry her. The FIR then records that the appellant and the second respondent developed a physical relationship which spread over a period of one-and-a-half years, during the course of which the second respondent conversed with the parents and sister of the appellant. It has been alleged in the FIR that the parents of the appellant were agreeable to the couple getting married. As a matter of fact, the appellant returned to his hometown at Jhansi on 5-1-2018 when he had made a phone call to her stating that she should come and visit him so that they can get married. On travelling to Jhansi at the behest of the appellant, the second respondent was informed by the father of the appellant that the appellant did not wish to marry her.*



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The contents of the statement under Section 164CrPC also indicate that the second respondent had “voluntarily developed relationship of husband-wife with him”. The second respondent has then stated that “now, he and his family members are refusing to marry with me”. The second respondent has further stated that “my sole grievance is that Sonu is refusing to marry with me”.

8. *The contents of the FIR as well as the statement under Section 164CrPC leave no manner of doubt that, on the basis of the allegations as they stand, three important features emerge:*

- (i) The relationship between the appellant and the second respondent was of a consensual nature;*
- (ii) The parties were in the relationship for about a period of one and a half years; and*
- (iii) Subsequently, the appellant had expressed a disinclination to marry the second respondent which led to the registration of the FIR.*

9. *In Pramod Suryabhan Pawar [Pramod Suryabhan Pawar v. State of Maharashtra, (2019) 9 SCC 608 : (2019) 3 SCC (Cri) 903] , while dealing with a similar situation, the principles of law which must govern a situation like the present were enunciated in the following observations : (SCC p. 618, para 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...”

10. *Further, the Court has observed : (Pramod Suryabhan Pawar case [Pramod Suryabhan Pawar v. State of Maharashtra, (2019) 9 SCC 608 : (2019) 3 SCC (Cri) 903] , SCC p. 620, para 18)*

“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.”

11. *Bearing in mind the tests which have been enunciated in the above decision [Pramod Suryabhan Pawar v. State of Maharashtra, (2019) 9 SCC 608 : (2019) 3 SCC (Cri) 903], we are of the view that even assuming that all the allegations in the FIR are correct for the purposes of considering the application for quashing under Section 482CrPC, no offence has been established. There is no allegation to the effect that the promise to marry given to the second respondent was false at the inception. On the contrary, it would appear from the contents of the FIR that there was a subsequent refusal on the part of the appellant to marry the second respondent which gave rise to the registration of the FIR. On these facts, we are of the view that the High Court was in error in declining to entertain the petition under Section 482CrPC on the basis that it was only the evidence at trial which would lead to a determination as to whether an offence was established.*

12. *For the above reasons, we allow the appeal and set aside the impugned judgment and order of the High Court dated 26-9-2019 [Sonu v. State of U.P., 2019 SCC OnLine All 6911]. In view of the reasons which have been adduced earlier, the charge-sheet dated 25-4-2018, which has been filed in pursuance of the investigation which took place, shall stand quashed. The order of the trial court dated 3-10-2018 taking cognizance shall accordingly stand quashed and set aside.”*

9. Learned counsel for the applicant has further placed reliance upon a judgment of Hon’ble Supreme Court in the case of “Pramod Suryabhan Pawar vs. State of Maharashtra and Another” reported in (2019) 9 SCC 608 and has particularly drawn the attention of the Court to paragraph nos.21 and 23 thereof. Paragraph nos.21 and 23 of



the said judgment are extracted hereunder for ready reference:

“21. *The allegations in the FIR do 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 IPC has occurred.*

23. *Without entering into a detailed analysis of the content of the WhatsApp messages sent by the appellant and the words alleged to have been spoken, it is apparent that none of the offences set out above are made out. The messages were not in public view, no assault occurred, nor was the appellant in such a position so as to dominate the will of the complainant. Therefore, even if the allegations set out by the complainant with respect to the WhatsApp messages and words uttered are accepted on their face, no offence is made out under the SC/ST Act (as it then stood). The allegations on the face of the FIR do not hence establish the commission of the offences alleged.”*

While referring to the aforesaid judgments of the Hon’ble Supreme Court, learned counsel for the applicant would submit that respondent no. 2 had voluntarily developed a relationship with the applicant and that the relationship between them was consensual. The parties



remained in a relationship for almost two years, and subsequently, when the applicant had expressed his disinclination to marry the respondent no.2 then she lodged the FIR. He would, therefore, submit that in similar circumstances, the Hon'ble Supreme Court was pleased to quash the charge-sheet and the cognizance order in the case of Sonu @ Subhash Kumar (supra) and the facts of the present case are almost identical. Learned counsel for the applicant would urge that in the present case as well, the charge-sheet and the summoning order be quashed.

10. He would rely upon the judgment in the case of Pramod Suryabhan Pawar (supra) and would submit that the allegations made in the FIR do not, on their face, indicate that the promise made by the applicant was false or that the complainant engaged in sexual relations on the basis of such false promise.

He would further submit that there is no allegation in the FIR that the applicant's promise to marry the complainant was done in bad faith or with an intention to deceive her.

He would thus submit that the case of the applicant is also squarely covered by the judgment of Hon'ble Supreme Court in the case of Pramod Suryabhan Pawar (supra).



11. Learned State Counsel would submit that, after due investigation, a charge-sheet has been filed against the applicant. The Investigating Officer, having found that the offences were committed by the applicant, submitted the charge-sheet and, therefore, there is no ground for quashing the charge-sheet or the summoning order.

He would also submit that at the stage of proceedings under Section 482 of Cr.P.C., a mini trial cannot be conducted.

12. Learned counsel for the respondent no.2 would submit that the respondent no.2, though, having admitted the physical relations being having been entered between the applicant and the respondent no.2 but she is no longer interested to pursue the matter any further, and in fact, in her counter affidavit she has categorically stated – *“that the applicant has now performed marriage with some other girl and the couple has also been blessed by child; the respondent no.2 is also getting marriage shortly.”*

13. Having heard the rival submissions of the parties, it is clear from the record that the physical relationship between the applicant and respondent no. 2 was consensual. It is also evident that at the inception of the relationship, there was no intention on the part of the applicant to deceive the respondent no.2 or that the applicant had made relations with respondent no.2 without having any intention to marry her. Even from the FIR, it is evident that the FIR has been



lodged only when the applicant refused to marry the respondent no.2 and there was a long relationship of almost two years between the two of them.

14. However, so far as the contention of the learned State Counsel that the charge-sheet has already been submitted by the Investigating Officer after due investigation and that a mini trial cannot be conducted in proceedings under Section 482 of the Cr.P.C. is concerned, it needs to be stated that the present case is not only covered by the judgments of the Hon'ble Supreme Court in Sonu @ Subhash Kumar (supra) and Pramod Suryabhan Pawar (supra), but it is also not a case where a mini trial is being conducted. Rather, it is a case where the applicant and respondent no. 2, both being major, had voluntarily entered into a relationship, which continued for almost two years, and it was only on account of the applicant's refusal to marry that the FIR came to be lodged by respondent no. 2.

15. The facts of the present case are akin to those in Sonu @ Subhash Kumar (supra), wherein the Hon'ble Supreme Court, in identical circumstances, quashed the charge-sheet and the summoning order. Therefore, the present case is also one in which the charge-sheet and the summoning order deserve to be quashed.

16. In the present case, interference is warranted in the facts and circumstances of the case and in view of the aforesaid judgments of the Hon'ble Supreme Court,



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particularly in light of the fact that respondent no. 2 does not appear to be interested in pursuing the matter any further and wishes to settle down in life. Therefore, it would be a futile exercise to allow the matter to proceed to trial.

17. 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.

18. Consequently, the charge-sheet dated 08.09.2019 submitted in FIR No. 0020 of 2019, the summoning order dated 31.01.2020 passed by the learned Judicial Magistrate First Class, Khatima, District Udham Singh Nagar, and the entire proceedings of Criminal Case No. 533 of 2020, State of Uttarakhand vs. Lalit Mohan Joshi, under Sections 376 and 506 of IPC, arising out of Police Station Nanakmatta, District Udham Singh Nagar, pending before the court of the Judicial Magistrate First Class, Khatima, District Udham Singh Nagar, are hereby quashed.

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

(Siddhartha Sah, J.)
05.06.2026

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