

HIGH COURT OF UTTARAKHAND AT NAINITAL

Criminal Miscellaneous Application No.1803 of 2022

Tafseer Ahmad Saifi

.....Applicant

Versus

State of Uttarakhand and Another

.....Respondents

Present:-

Mr. Abhishek Verma, Advocate for the applicant.

Mr. Vikas Uniyal, Brief Holder for the State.

Ms. Sangeeta Adhikari Patni, Advocate for respondent no.2.

Hon'ble Siddhartha Sah, J.(Oral)

By means of the present criminal miscellaneous application under Section 482 of the Cr.P.C., the applicant has sought setting aside of cognizance order dated 16.07.2022 as well as Charge Sheet dated 5.07.2022 and further setting aside of the Special Sessions Trial No. 82 of 2022 (FIR No. 0029 of 2022), "State versus Tafseer Ahmad Saifi" under Sections 376 (2) (n), 323 & 506 of IPC & Sections 3/4 of the Dowry Prohibition Act, 1961 at Police Station Bhimtal, District Nainital, pending in the court of Ld. 2nd Additional District & Sessions Judge, Nainital.

2. Brief facts of the case are that an FIR was lodged on 10.05.2022 against the applicant which was registered as FIR No. 0029 of 2022, under Sections 376 & 506 of IPC at Police Station Bhimtal, District Nainital, alleging therein that the victim was working in Krishna Hospital, Rudrapur in the year of 2016-17, the applicant as well as alleged victim came in touch there and thereafter at several times and at several

places on the pretext of marriage, the applicant made physical relations with the victim. It is further alleged that when the victim asked to marry, the applicant and his sister threatened the victim with dire consequences and further threatened regarding making viral of the obscene videos. It is further alleged that on 27.05.2021 an engagement took place at the house of the applicant whereby certain articles as well as cash was given from the side of the alleged victim and again after six months the applicant as well as his family members demanded dowry and were threatening the victim with making videos viral on the internet.

3. After lodging of the FIR, the victim underwent medical examination on 9.06.2022. Before the concerned doctor the victim stated that on the pretext of marketing meetings the applicant took her away outside from the city and then forcibly made physical relations and further denied for her internal and external medical examination.

4. The statements of victim were recorded under Section 161 of Cr.P.C. wherein she stated that the applicant had to give rupees 4-4.5 lakhs to the respondent no.2. Thereafter, the concerned I.O. submitted its charge- sheet on 5.07.2022. On the basis of charge-sheet as well as other material available on record, the learned trial court took cognizance as against the applicant on 16.07.2022 and the said cognizance order is endorsed upon the charge-sheet.

5. Assailing the charge-sheet and the cognizance order, learned counsel for the applicant would submit that from perusal of the FIR itself it is very much clear there is no mention of any date, month, year and place of the alleged incident as narrated by the victim. It is also submitted on behalf of the applicant that admittedly the victim is a major lady and was in touch with the applicant for last six years and as such, it cannot be presumed that the alleged victim for such a long period under the misconception of fact was having physical relations with the applicant and as such, the same seems to be consensual in nature. It is submitted that according to the FIR, the last day of commission of the offence was shown to be 27-05-2021 and for the same the FIR has been registered after about more than eleven months and as such the same also seems to be doubtful.

6. It is further submitted on behalf of the applicant that the applicant never made any obscene video nor threatened the victim for making it viral, therefore, no offence under the I.T. Act would be made out against the applicant. It is also submitted on behalf of the applicant that admittedly the alleged informant/victim is a major girl and she is very much well aware with her ill and good things and in that eventuality, it can't be said that the alleged physical relations were made forcibly or by any misconception of fact. It is further submitted on behalf of the applicant that the victim with her own sweet will and

wish was in touch with the applicant and certain times, she herself asked the applicant to meet her and only under the said relationship and trust the alleged victim without any misconception of fact as well as inducement or abduction joined the company of the applicant as both were having healthy relations.

7. It is further submitted on behalf of counsel for the applicant that there is no allegation regarding any kind of "*Mar-Peet*" and as such without there being any evidence on record the charge-sheet under Section 323 of IPC too was also filed. It is also submitted that except the general omnibus allegation regarding dowry the charge-sheet has been filed under Section 3/4 of the Dowry Prohibition Act, 1961 and there is no such evidence with regard to demand of dowry. Learned counsel for the applicant would further submit that the present case is under the category of those cases which requires interference of the Hon'ble court to prevent abuse of process of law and to prevent an innocent person from being put behind the bars. He further submits that the allegations made in the F.I.R. do not make out any offence against the applicant and there has been great misuse of process of law and the impugned summoning order as well as the proceedings are liable to be quashed.

8. Learned counsel for the applicant would rely upon the judgment of the Hon'ble Supreme Court in the case of *Sonu @ Subhash Kumar vs. State of Uttar Pradesh* and

Another reported in 2021 SCC OnLine SC 181, (2021) 18 SCC 517 and made reference to para nos.6, 7, 8, 9, 10 and 11 thereof, which are extracted hereunder for ready reference:-

“6. 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. The contents of the statement under Section 164 Cr.P.C. 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”.

7. The contents of the FIR as well as the statement under Section 164 Cr.P.C. leave no manner of doubt that, on the basis of the allegations as they stand, three important features emerge.

7.1. The relationship between the appellant and the second respondent was of a consensual nature.

7.2. The parties were in the relationship for about a period of one-and-a-half years.

7.3. Subsequently, the appellant had expressed a disinclination to marry the second respondent which led to the registration of the FIR.

8. 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.”

9. 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.”

10. 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 482 CrPC, 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 482 CrPC on the basis that it was only the evidence at trial which would lead to a determination as to whether an offence was established.

11. 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. While placing reliance on the judgment of the Hon'ble Supreme Court, the learned counsel for the applicant would submit that it is not that the promise to marry the respondent no.2 was false at the inception and as such, this case is covered by the judgment of the Hon'ble Supreme Court in the case of Sonu @ Subhash Kumar (*supra*).

10. Learned counsel for the applicant would also draw the attention of this Court to the judgment of the Hon'ble Apex Court in the case of Biswajyoti Chatterjee Vs. State of West Bengal and another, reported in (2025) 5 SCC 749, and has referred to paragraphs 22 and 23 of the said judgment, which are extracted hereunder:-

“22. The incident is of the year 2014 and any further litigation, will only prolong the suffering of both the parties, who are living their own separate lives.

23. In our considered view, considering the factual matrix of the case, it is clear that the physical relationship between the complainant and the appellant was consensual, cannot be said to be without her consent or against her will. In light of the aforesaid, we are also of the considered opinion that it would be in the interest of justice if the proceedings are terminated at this stage itself. Consequently, the impugned order of the High Court dated 23-2-2024 passed by the Hon'ble High Court of Calcutta in Biswajyoti Chatterjee, In re [Biswajyoti Chatterjee, In re, 2024 SCC OnLine Cal 12045] is set aside. The special leave petition/criminal appeal is accordingly allowed.”

11. He has also relied upon another judgment of the Hon'ble Apex Court in the case of Samadhan Vs. State of

Maharashtra and Another, reported in 2025 SCC OnLine SC 2528, and has referred to paragraphs 28, 29 and 40 thereof, which are extracted hereunder:-

“28. We find that the present case is not a case where the appellant lured respondent No. 2 solely for physical pleasures and then vanished. The relationship continued for a period of three long years, which is a considerable period of time. They remained close and emotionally involved. In such cases, physical intimacy that occurred during the course of a functioning relationship cannot be retrospectively branded as instances of offence of rape merely because the relationship failed to culminate in marriage.

29. 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 sour 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 and calls for condemnation.

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.”

12. Learned counsel for the applicant also relied upon the judgment of this Court rendered in the case of Madan Gopal Sharma Alias Amit Sharma vs. State of Uttarakhand and another and relying upon the aforesaid judgment,

learned counsel for the applicant would submit that, in the event of a fallout of a consensual relationship where there was a possibility of marriage, the same cannot be given the colour of a false promise of marriage and thus the learned counsel for the applicant would urge the Court to exercise its power under Section 482 Cr.P.C. to secure the ends of justice and to quash the entire proceedings, including the summoning order and charge-sheet.

13. Learned counsel for respondent no.2-Ms. Sangeeta Adhikari Patni and Mr. Vikas Uniyal, learned Brief Holder for the State would submit that in her statement under Section 161 Cr.P.C., the victim has narrated that the applicant had made physical relations by cheating her and he would blackmail her on account of obscene videos and photos and on refusal for making the physical relations, he would threat her to make the videos viral. Learned counsel for respondent no.2 would submit if any such obscene videos or photos are available then the applicant should be directed to delete the same. However, learned Brief Holder for the State would very fairly submit that though there are allegations regarding the obscene videos and photographs, there is no evidence of obscene videos or photographs collected during investigation nor provided by the victim herself. He would further submit that during the investigation, the victim has supported the version of the prosecution along with other witnesses and hence under

Section 482 Cr.P.C., the facts cannot be considered and as such the C-482 application is liable to be dismissed.

14. It is clear from a bare reading of the FIR that the allegations therein are that on the pretext of marriage, the applicant made physical relations with the victim and he would make physical relations under the threat of making obscene videos viral. The perusal of the FIR would further reveal that the parents of the victim herself had gone to the house of the applicant on 27.05.2021 for the purpose of *Mangni* (engagement ceremony) and certain ornaments were also given to the mother of the applicant and it is the FIR version that the marriage was to be held six months thereafter and the FIR has been lodged when the demand of dowry was made and there was threat of making the videos viral and lastly, it has been alleged that the family members though were ready, but the applicant and his family members have refused for marriage.

15. In her statement under Section 164 Cr.P.C., the victim has alleged that the applicant would make physical relations after taking the victim to hotels of Bhimtal and Mallital, Nainital and made physical relations and used to blackmail her on the pretext of making the obscene videos viral. In her statement under Section 164 Cr.P.C., the victim has further alleged that her number was blocked and the

mobile was hacked and all the proof was deleted and thereafter, the applicant refused for marriage and also made demand of dowry of Rs.5 lakhs in cash and a four wheeler.

16. Referring to the FIR, the learned counsel for the applicant would submit that the parties were in relationship since 2016 and the relationship continued for well over six years up to the year 2022 when the FIR was lodged on 10.05.2022 and thus there is no question that the physical relations were entered under any misconception on the pretext of false marriage inasmuch as it is admittedly the victim's case that the parents of the victim herself had visited the house of the applicant for the purpose of engagement ceremony and he would thus submit that the case of the applicant is squarely covered by 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, reference was made to paragraphs 15 and 16 of the judgment, which are extracted herein below for ready reference:-

"15. Moreover, in a long drawn live-in relationship, occasions may arise where parties in that relationship express their desire or wish to formalize the same by a seal of marriage, but that expression of desire, or wish, by itself would not be indicative of relationship being a consequence of that expression of desire or wish. A decade or two earlier, live-in relationships might not have been common. But now more and more women are financially independent and have the capacity to take conscious decision of charting their life on their own terms. This financial freedom, inter alia, has led to proliferation of such live-in relationships. Therefore, when a matter of this nature comes to a court, it must not adopt a pedantic approach rather the Court may,

based on the length of such relationship and conduct of the parties, presume implied consent of the parties to be in such a relationship regardless of their desire or a wish to convert it into a marital bond.

16. In that view of the matter, in our considered view, the long-drawn relationship of the appellant and the second respondent including the circumstance of their living together and cohabiting with each other, that too, in a separate rented accommodation, would give rise to a presumption that their relationship was based on a valid consent.”

17. In view of the aforesaid facts and in the factual matrix of the case, learned counsel for the applicant would thus submit that in the event of fallout of a consensual relationship where there was a possibility of marriage, the same cannot be given the colour of a false promise of marriage.

18. After considering the rival submissions of the learned counsel for the parties and after going through the record, it is evident that the respondent no.2 entered into the physical relationship with the applicant out of her own free will and accord. Though she alleges that the physical relationship was established on the false pretext of marriage and under the threat of making the videos viral, but learned Brief Holder for the State would submit that no obscene videos or photos was given by the victim to the I.O. It is also clear from the FIR itself that for the engagement ceremony of the victim and the applicant, the parents of the victim had gone to the house of the applicant. Hence what has been submitted on behalf of the applicant appears to be correct that this is not merely a case where the parties had promised

to marry each other; rather, the matter had progressed much further and there was a consent for marriage of the parents of the victim and the family of the applicant.

19. Learned counsel for the applicant would also draw the attention of the Court to the judgment of the Hon'ble Supreme Court in the case of Nitin B. Nikhare vs. the State of Maharashtra and another passed in SLP (Crl.) No.1889 of 2024. Learned counsel places reliance on para Nos.7, 8 and 9 of the said judgement which are being quoted hereunder:-

"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 3(1)(r)(w)(i)(ii), 3(2)(v) & 6 of the and sections Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act."

20. It is evident from the nature of allegations as levelled by the prosecution and the admitted facts that the relationship between the parties continued for a considerable

period of six years which is clear from a bare perusal of the FIR itself.

21. In view of the overall facts and circumstances of the case and in the light of the settled law as enunciated by the Hon'ble Supreme Court in the cases referred to hereinabove, it is clear that the matter does not appear to be a case of forcible physical relations by threat or under misconception of facts. In fact, it is an admitted case of the respondent no.2 that parents of the victim had themselves gone to the extent of engagement ceremony. Thus it is a clear case of consensual relations which however, subsequently turned sour and could not conclude into the marriage, hence the charge-sheet and the summoning order passed on the basis thereof cannot be sustained. The other allegations as levelled by the victim appeared to give colour to the case.

22. Accordingly, in such circumstances, the further continuation of the proceedings of the Special Sessions Trial No. 82 of 2022 (FIR No. 0029 of 2022), "State versus Tafseer Ahmad Saifi" under Sections 376 (2) (n), 323 & 506 of IPC & Sections 3/4 of the Dowry Prohibition Act, 1961 against the applicant would amount to abuse of process of law. Therefore, to secure the ends of justice, the criminal miscellaneous application under Section 482 Cr.P.C. deserves to be allowed.

23. Accordingly, the entire proceedings of Special Session Trial No. 82 of 2022 (FIR No. 0029 of 2022), "State versus Tafseer Ahmad Saifi" under Sections 376 (2) (n), 323 & 506 of IPC & Sections 3/4 of the Dowry Prohibition Act, 1961, Police Station Bhimtal, District Nainital, pending in the court of learned 2nd Additional District Judge & Session Judge, Nainital are hereby quashed.

24. The Criminal Miscellaneous Application under Section 482 Cr.P.C. is, accordingly, allowed.

25. All the pending applications, if any, stand disposed of accordingly.

(Siddhartha Sah, J.)

03.07.2026

Ravi