



THE HIGH COURT OF UTTARAKHAND AT NAINITAL

Criminal Misc. Application No. 1826 of 2023

Harshit Nagarkoti

... Applicant

Versus

State of Uttarakhand and Others

... Respondents

Presence:-

Mr. Piyush Sammal, learned counsel for the applicant.

Mr. Rakesh Kumar Joshi, learned A.G.A. with Mr. Manoj Bhatt, learned Brief Holder for the State.

Mr. Vivek Sanguri, learned counsel holding brief of Mr. Lalit Sharma, learned counsel for the respondent no.3.

Hon'ble Siddhartha Sah, J. (Oral)

By means of the present Criminal Misc. Application filed under Section 482 of the Code of Criminal Procedure, 1973 (in short, "Cr.P.C."), the applicant has sought quashing of the impugned charge-sheet No. 45/23 dated 03.02.2023 pursuant to FIR No. 0298/2022 P.S Mukhani and also quashing of the cognizance & summoning order dated 14.03.2023 passed by the learned 2nd Additional Civil Judge/J.M Haldwani District- Nainital in Criminal Case No. 1243/2023 'State v. Harshit Nagarkoti punishable under section 376, 323, 506 of IPC, pending in the Court of 2nd Additional Civil Judge/Judicial Magistrate Haldwani District Nainital.

2. Facts necessary for the adjudication of the present Criminal Misc. Application under Section 482 of the Cr.P.C. are as follows:

- i. On the basis of the complaint given at Police Station Haldwani on 06.12.2022, FIR was registered as FIR No. 0298 of 2022 under Sections 376, 323 & 506 of the IPC against the applicant. According to the prosecution case,



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the complainant's husband passed away on 19.05.2019. The complainant / respondent no. 3, herein, had become emotionally weak. In the meantime, the complainant got acquainted with applicant through Facebook and started talking with him on the social platform. In the month of November, 2020, the complainant had come to attend a marriage ceremony of a relative at Fatehpur Police Station Haldwani. Applicant was aware that the complainant had come to attend the marriage ceremony in Haldwani. Applicant called the complainant and asked her to meet him in the market at Haldwani. Applicant took her to his room, and on the very same day, i.e., 09.11.2020, applicant against the will of the complainant, forcibly made physical relations with the complainant. When the complainant tried to complain about it to her relatives and the police, the applicant told her that he would marry her and also said that he would adopt her children. Subsequently, applicant asked the complainant to move to Haldwani from her house in Jainti, Almora. The complainant moved to Haldwani with her children and started living near his room from 2021.

ii. It is further alleged that the applicant had physically abused the informant. It is also alleged that on 11.08.2022, when the complainant told applicant that he has been postponing the marriage with her for a long time, then the applicant committed marpeet



with her and also criminally intimidated and threatened the complainant about her children.

3. On the aforesaid FIR, investigation ensued and culminated in the filing of a charge-sheet against the applicant under Sections 323, 376, and 506 of the IPC. On the basis of the said charge-sheet, cognizance was taken by the Court of the IInd Additional Civil Judge / Judicial Magistrate Haldwani, District Nainital, vide order dated 14.03.2023, and summons were issued to the applicant vide the said order.

4. Assailing the charge-sheet and the cognizance / summoning order, the learned counsel for the applicant would submit that as per the FIR itself, the informant is 28 years old widow with two children. She got acquainted with the applicant in November, 2020 through Facebook, and she alleges that she was taken by the applicant to a room and he forcibly made physical relations with her.

5. He further draws the attention of the Court to the FIR itself, wherein the informant / respondent No. 3 herself states that the applicant called the informant / respondent No. 3 to Haldwani from her home in Jainti, Almora, and she came to Haldwani along with her children and since the month of August, 2021, she started residing in Haldwani, and wherever the applicant used to change his room, the applicant also used to get a room for the informant / respondent No. 3 nearby.

6. It is further submitted that from the FIR, it is revealed that the applicant had been postponing the marriage, and when the applicant was confronted by the informant / respondent No. 3 about why he is delaying



the marriage, then the applicant committed marpeet with her and also threatened her.

7. The learned counsel for the applicant would submit that the widow admittedly is 28 years of age and having two children. There is an age gap of seven years between the informant and the applicant, who is 21 years of age. He would further submit that the FIR is significantly delayed. As per the FIR itself, the first instance of making physical relations was in the year 2020. However, the FIR came to be lodged only on 06.12.2022, therefore, there is a delay of almost two years in lodging the FIR.

8. The learned counsel for the applicant would further submit that the relationship between the applicant and the informant / respondent No. 3 was consensual in nature. The relationship spread over a period of two years. Only on account of the disinclination shown by the applicant for the marriage with the informant / respondent No. 3, the same has resulted in registration of the FIR.

9. The learned counsel for the applicant, while drawing the attention of the Court to the charge-sheet wherein in the list of the witnesses the mobile number of the informant has been stated to be 7668913317, the learned counsel for the applicant has drawn the attention of the Court to Annexure No. 6, which contains Instagram chats, and would submit that from a bare perusal of the Instagram chats between the applicant and the informant / respondent No. 3, the relationship between the applicant and the informant / respondent No. 3 is consensual in nature. There is nothing to



suggest that any marriage was committed or there was any breach of trust.

10. Learned counsel for the applicant has relied upon a judgment of the Hon'ble Supreme Court in the case of Sonu alias Subhash Kumar v. State of Uttar Pradesh and Another, reported in (2021) 18 SCC 517, and has drawn the attention of the Court to paragraph Nos. 7 and 6 thereof. Paragraphs 7 and 8 thereof are being extracted hereunder for ready reference:

“7. 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.

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.””

11. Placing strong reliance upon the aforesaid judgment of the Hon’ble Supreme Court, the learned counsel for the applicant would submit that the relationship between the applicant and the informant was consensual in nature, and in the instant case, the relationship between the applicant and respondent No. 3 spread over more than two years and only when the applicant expressed his disinclination to marry the informant / respondent No. 3, it led to the registration of the FIR. Thus, drawing attention of the judgment in the case of Sonu alias Subhash Kumar (Supra), the learned counsel for the applicant would submit that the case of the applicant is squarely covered by the judgment of the Hon’ble Supreme Court, inasmuch as the facts are identical in the said case. Therefore, the powers under Section 482 Cr.P.C. need to be invoked to prevent the abuse of the process of law, and the summoning order and the charge-sheet deserve to be quashed.

12. Per contra, the learned AGA for the State would submit that from a perusal of the statement of the victim under Section 164 of the Cr.P.C., it is clear that the victim has corroborated her version by reiterating the FIR allegations. At the stage of cognizance, there is sufficient material to proceed against the applicant for the offence of rape, etc.

13. Learned AGA for the State very fairly submits that the judgment cited on behalf of the applicant is quite similar on facts, but since there is an element of threat to



the children of the victim, hence the same would not be attracted to the factual matrix of the present case.

14. Learned counsel for respondent No. 3 / informant, Mr. Vivek Sanguri, would adopt the arguments advanced on behalf of the learned AGA.

15. In rejoinder, the learned counsel for the applicant would submit that apart from the bald allegations of the victim, there is nothing to suggest that there was any threat or any marpeet committed with the informant / respondent No. 3. From the Instagram chats between the applicant and the victim, it is clear that it is the victim / informant who was herself calling the applicant.

16. Lastly, he would submit that from the three tests as laid down by the Hon'ble Supreme Court in paragraph No. 7 of the judgment in the case of Sonu alias Subhash Kumar (Supra), the present case is a fit case for quashing of the charge-sheet and the summoning order.

17. Having heard the learned counsel for the parties and after going through the record, it is apparent that from the reading of the FIR, charge-sheet and Section 164 statements of the victim, the very first incident alleged by the victim / informant of November, 2020 was of making the physical relations forcibly with her and only when she was inclined to make a complaint that the applicant stated that he wanted to marry her.

18. However, from the further perusal of the FIR, it is evident that though the first incident was alleged to be forcible, the informant / respondent No. 3 has herself come to Haldwani along with her children and started



living since the month of August, 2021 near to wherever the applicant used to reside.

19. It is further clear from the reading of the FIR that the physical relations continued to be made between the applicant and the informant / respondent No. 3, and it was only in August 2022, when the applicant showed his disinclination for marriage, that the informant / respondent No. 3 was constrained to lodge the FIR, that too in the month of December, 2022.

20. In this regard, reference needs to be made to the judgment of the Hon'ble Supreme Court in the case of Jothiragawan v. State Rep. by the Inspector of Police and another, reported in 2025 SCC OnLine SC 628, wherein, in paragraphs 12 and 13, the Hon'ble Supreme Court came to the conclusion that the allegation 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 was allegedly accompanying the accused to a hotel room. In that case, the Hon'ble Supreme Court, taking into account that after the first incident and the second incident, the victim did not caution her from again accompanying the accused to hotel, the Hon'ble Supreme Court came to the conclusion that the criminal proceedings against the accused was nothing but an abuse of process of the court. For ready reference paragraph nos. 12 & 13 of the said judgment are extracted hereunder 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



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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.”

21. Reference also needs to be made to the judgment of the Hon’ble Supreme Court in the case of Ravish Singh Rana v. State of Uttarakhand & Another, reported in 2025 SCC OnLine SC 1055, and the relevant paragraphs 14, 15, and 16 thereof are being extracted for ready reference.

“14. In the instant case also, we find that the relationship between the appellant and the second respondent (the informant) was spread over two years. Further, they not only admit of having physical relations with each other but also of living together in a rented accommodation as a live-in couple. In our view, if two able-minded adults reside together as a live-in couple for more than a couple of years and cohabit with each other, a presumption would arise that they voluntarily chose that kind of a relationship fully aware of



its consequences. Therefore, the allegation that such relationship was entered because there was a promise of marriage is in the circumstances unworthy of acceptance, particularly, when there is no allegation that such physical relationship would not have been established had there been no promise to marry.

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.”

22. In the case of Ravish Singh Rana (Supra), the Hon’ble Supreme Court came to the conclusion that the relationship between the accused and the informant was spread over two years, and they were having physical relations with each other and also living together, hence, in such a case, the Hon’ble Supreme Court came to the



conclusion that the presumption would arise that they voluntarily chose that kind of a relationship and were fully aware of its consequences and the Hon'ble Supreme Court proceeded to quash the FIR and the consequential proceedings, finding the same to be nothing but an abuse of process of the court.

23. In the present case, it is evident that after the first incident, the applicant, instead of reporting the matter, chose to keep silent and in fact, she came to live in Haldwani at the instance of the applicant from August, 2021 and only in August, 2022, when the applicant showed his disinclination to marry the informant/respondent No. 3, the FIR came to be lodged much later in the month of December, 2022.

24. Though the learned AGA has made an attempt to portray that the victim has corroborated the FIR version, and at the stage of cognizance, there is sufficient material to proceed against the applicant for allegations of rape and threat, however, from the aforesaid narration of facts and the documents on record, it is quite evident that the relationship between the applicant and the informant/respondent No. 3 appears to be consensual in nature.

25. Thus, what emerges from the aforesaid is that the relationship between the applicant and the informant/respondent No. 3 was consensual. The parties were in a relationship for a period of about two years and only when the applicant expressed his disinclination to marry the respondent no.3/informant, it has led to the registration of the FIR at the behest of the informant.

26. Therefore, the present Criminal Misc.



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Application is squarely covered by the judgment of the Hon'ble Supreme Court in the case of Sonu alias Subhash Kumar (Supra).

27. The alleged forcible making of physical relations on 09.11.2020 would also be covered by the judgment of the Hon'ble Supreme Court in the case of Jothiragawan (Supra), and the long-drawn relationship between the applicant and the informant/respondent No. 3 would also be covered by the judgment of the Hon'ble Supreme Court in the case of Ravish Singh Rana (Supra).

28. Thus, on the overall conspectus of the case, it is evident that the criminal proceedings at the behest of the informant/respondent No. 3 against the applicant is nothing but an abuse of process of law. Thus to prevent the abuse of process of law, the powers under Section 482 of the Cr.P.C. needs to be invoked.

29. Accordingly, the present Criminal Misc. Application under Section 482 of the Cr.P.C. deserves to be allowed, and it is allowed accordingly. Consequently, the impugned charge-sheet No. 45/23 dated 03.02.2023 pursuant to FIR No. 0298/2022 P.S Mukhani and also the cognizance & summoning order dated 14.03.2023 passed by the learned 2nd Additional Civil Judge/J.M Haldwani District- Nainital in Criminal Case No. 1243/2023 'State v. Harshit Nagarkoti punishable under section 376, 323, 506 of IPC, pending in the Court of 2nd Additional Civil Judge/Judicial Magistrate Haldwani District Nainital, are quashed.

30. Pending application(s), if any, stands disposed of accordingly.

(Siddhartha Sah, J.)

20.08.2026

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