



IN THE HIGH COURT OF UTTARAKHAND AT
NAINITAL

Criminal Misc. Application No.2115 of 2023

Madan Gopal Sharma Alias Amit Sharma Applicant

Versus

State of Uttarakhand and another Respondents

Present:-

Mr. Sandeep Kothari, learned counsel for the applicant.

Mr. Chitratha Kandpal, learned Brief Holder for the State.

Mr. Davesb Bishnoi, learned counsel for respondent no.2.

Hon'ble Siddhartha Sah, J. (Oral)

By means of the present criminal miscellaneous application under Section 482 of the Code of Criminal Procedure, the applicant has sought quashing of the summoning order dated 19.08.2023 passed by the Addl. Chief Judicial Magistrate, Kashipur pertaining to Case Crime No. 154 of 2023, under Section 376 of the IPC, pending before the court of the Addl. Chief Judicial Magistrate, Kashipur, District Udham Singh Nagar.

2. Brief facts of the case are that a First Information Report was registered at Police Station I.T.I.,



Kashipur, District Udham Singh Nagar, as Case Crime No. 154 of 2023, wherein respondent no. 2 alleged that she had been acquainted with the applicant for a couple of years and that the applicant used to visit her house. It has been alleged that on 12.09.2021, the applicant came to her house when the mother of respondent no. 2 was not present. On the pretext of marriage, he applied sindoor and stated that from that day onwards respondent no. 2 was his wife, and thereafter forcibly established physical relations with her. It has further been alleged that since respondent no. 2 believed that the applicant would solemnize marriage with her, she did not disclose the aforesaid incident to anyone. However, the applicant, on the pretext of marriage, physically and mentally exploited respondent no. 2 and established physical relations with her without her consent. On the basis of the aforesaid allegations, it was prayed that an FIR be registered. After investigation, a charge sheet under Section 376 of the IPC was filed, and on the basis of the said charge sheet, the summoning order was passed.

3. Assailing the charge sheet and the summoning order, learned counsel for the applicant submitted that



both parties had been in a relationship from 12.09.2021 to 21.06.2023, as is evident from the FIR itself.

4. The FIR itself states that the applicant had told respondent no. 2 that he would marry her, and there is a further allegation of forcible physical relations. Learned counsel for the applicant would submit that, in fact, it is not merely a case of a relationship between the two parties. The matter had progressed further and a Roka ceremony (engagement ceremony) was, in fact, performed. However, subsequently, due to some dispute regarding the date of marriage, the actual marriage ceremony could not be solemnized. He would submit that there was no false promise to marry. Both parties were agreeable to the marriage, and since the relationship fell apart at a later stage, the offence under Section 376 of the IPC would not be made out. He would further submit that, in fact, the Roka ceremony has been admitted by respondent no. 2 herself, and in this regard, he would refer to paragraphs 6, 7 and 22 of the counter affidavit filed by respondent no. 2. Paragraphs 6, 7 and 22 of the counter affidavit are extracted hereinunder:-

“6. That engagement ceremony (रोका), was, done between the applicant & deponent had done, by their families on 21.02.2023.



7. That after the ceremony the behaviour of the application suddenly became bad to worse. He was trying to ignore the entire issue. He raised stupid arguments to delay the marriage. This led to deponent in a very difficult situation. She had been given to understand by the applicant that he is ready to marry and under this pretext he had forced her into a physical relationship. Even the family members of the applicant who had accepted her as their 'would be daughter-in-law', started maintaining distance. The sole reason given by the applicant for breaking-up the relationship between him & the applicant was stated to be that he wants to get his house constructed & they have some family dispute between his father and his uncle. This was no excuse, therefore, the deponent got scared and felt cheated. Her entire life was on the dependent on the sole decision of the applicant.

22. That the contents of Para no. 16 of the C-482 application are again wrong as stated and hence vehemently denied. As a matter of fact, the relationship had been accepted by both the families; engagement ceremony (रोका) was, also, performed, and only the marriage was left to be solemnized. around the same time. It is submitted that the applicant had ulterior motive behind his actions, and therefore, under the pretext of marriage, the deponent was made to enter into physical relationship. No prudent person would ever break the relationship for the petty reasons; that too when even the engagement ceremony (रोका) has, also, been performed with the consent of both the families.”



5. Learned counsel for the applicant would further refer to the statement of the victim recorded under Section 164 Cr.P.C., wherein the victim categorically stated that the Roka ceremony was performed on 22.02.2023 with the consent of both families at Hotel Sunshine, Bajpur. Thereafter, the behaviour of the applicant changed. Even thereafter, he established physical relations with her on several occasions and continued to assure her that he would marry her. The last physical relationship was established with her on 12.05.2023. On 24.05.2023, without there being any fault on her part, the applicant informed her that he was terminating the relationship. Since that day, she has been under mental stress. On 25.05.2023, the victim, her mother and her cousin brother went to the applicant's house, but they were misbehaved with, turned away from the house, and told to do whatever they wanted. They were also threatened and defamed.

6. It is further submitted on behalf of the applicant that respondent no. 2 had known the applicant for the last 6 to 7 years, that they are distant relatives, and that they were in a relationship with each other. In fact, both families had agreed to the marriage. The dispute arose only with respect to fixing the date of the



marriage ceremony. Since the father and uncle were involved in a family dispute and applicant wanted some time gap for marriage, respondent no. 2 was unhappy with the same and kept pressurizing for the marriage.

7. In support of his contention, learned counsel for the applicant has relied upon 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 hereinunder:-

“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.”



8. 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 hereinunder:-

“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.”

9. Learned counsel for the applicant has also referred to the judgment of this Court in the case of *Sachin Kumar Singh Chauhan Vs. State of Uttarakhand and Another*, passed in Criminal Misc. Application No. 274 of 2020 on 12.06.2026, and has referred to paragraph 22 of the said judgment, which are extracted hereinunder:-

“22. In this background, reference may be made to the judgments of the Hon’ble Supreme Court in the cases of Sonu @ Subhash Kumar v. State of Uttar Pradesh and Another, Nitin B. Nikhare v. The State of Maharashtra & Anr., Ravish Singh Rana v. State of Uttarakhand and Another, and Jothiragwan v. State Rep. by the Inspector of Police and Another & the judgment of the High Court of Delhi in Dr. Avdesh Kumar vs. State of NCT of Delhi and Another as well as the judgment of the Coordinate Bench of this Court in Shubham Kumar v. State of



Uttarakhand & Anr., and the judgment of this Court in Lalit Mohan Joshi v. State of Uttarakhand & Anr.. It is evident from the aforesaid judgments that the Hon'ble Supreme Court has held that, in cases involving a 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. In the aforesaid cases, either the FIRs or the criminal proceedings were quashed by the Hon'ble Supreme Court."

10. Relying upon the aforesaid judgments, 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.

11. Referring to the judgment of the Hon'ble Apex Court in *Samadhan Vs. State of Maharashtra and Another* (supra), learned counsel for the applicant would submit that 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 and the Hon'ble Apex Court has also held that the High Court's refusal to



exercise its jurisdiction under Section 528 of BNSS is unsustainable.

12. Learned counsel for the applicant would urge the Court to exercise its powers 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. Per contra, learned counsel for respondent no. 2 would submit that the parties had known each other since 2017-2018. Affection had developed between them. On the pretext that the applicant would marry respondent no. 2, he entered into a physical relationship with her. Immediately after the Roka ceremony, the behaviour of the applicant changed and he started avoiding the performance of the marriage.

14. Learned counsel for respondent no. 2 would further submit that the physical relationship was entered into by the applicant on the false pretext of marriage. He would further submit that respondent no. 2 had given a substantial amount of money to the applicant. He would also submit that the Roka ceremony was performed by the applicant only to buy time and to continue physical relations with respondent no. 2. He would further submit



that the family members tried to persuade the applicant to solemnize the marriage, but the applicant did not pay any heed, leaving respondent no. 2 with no option but to lodge the FIR. He would further submit that, although a dispute arose between the father and uncle of the applicant after the Roka ceremony, the same is a factual controversy and would be a matter for trial. Such disputed questions of fact cannot be considered in proceedings under Section 482 Cr.P.C.

15. Learned counsel for respondent no. 2 would submit that there is no whisper in the Section 482 application that the applicant was ever ready to resolve the matter or take any steps towards solemnizing the marriage, despite repeatedly postponing the same. The only grievance expressed on behalf of respondent no. 2 is that the applicant failed to fulfil his promise of marriage and, as such, it is evident that he had established physical relations on the pretext of marriage. Therefore, the offence under Section 376 IPC would be made out.

16. Learned Brief Holder for the State, Mr. Chitrartha Kandpal, would submit that there is no denial of physical relations between the applicant and respondent no. 2. He would further draw the attention of



this Court to paragraph 17 of the counter affidavit, wherein reference has been made to the statement recorded under Section 164 Cr.P.C. He would submit that the applicant entered into physical relations with respondent no. 2 on the false pretext of marriage and that his actions were initiated on such false promise. Therefore, there is no scope for interference under Section 482 Cr.P.C. He would further submit that this is not a case of casual relations, but a serious matter wherein the applicant had, in fact, promised to marry respondent no. 2. However, such promise was merely a ruse to enter into a physical relationship and, ultimately, he refused to marry her. As such, the offence under Section 376 IPC would be made out.

17. After considering the rival submissions of learned counsel for the parties and having gone through the record, it is evident that respondent no. 2 entered into a physical relationship with the applicant out of her own free will and accord. Though she alleges that the relationship was established on a false pretext of marriage, from the statement of respondent no. 2 recorded under Section 164 Cr.P.C., it is clear that the Roka Ceremony was, in fact, held at Hotel Sunshine, Bajpur. Hence, what has been submitted on behalf of the



applicant appears to be correct, namely, that this is not merely a case where the parties had promised to marry each other; rather, the matter had progressed much further and, with the consent of the family members of both the applicant and respondent no. 2, the Roka Ceremony had in fact been performed and the relationship had moved forward. It appears that respondent no. 2, being in haste and unwilling to wait, lodged the FIR, while the applicant wanted some time for settling the marriage.

18. Learned counsel for the applicant would further submit that the FIR was lodged within four months of the engagement/Roka Ceremony, though the applicant had throughout been ready and willing to solemnize the marriage. He would thus submit that this is not a case where the applicant entered into a physical relationship with respondent no. 2 on a false pretext of marriage.

19. So far as the contention raised on behalf of the State, that there is no denial that physical relations were established between the applicant and respondent no. 2, is concerned, it is clear that respondent no. 2 was a mature person who, out of her own free will and accord,



entered into a physical relationship with the applicant. If subsequently the relationship turned sour and did not culminate in marriage, that by itself cannot be a ground to term the relationship between the parties as one involving forcible physical relations by the applicant.

20. It is quite evident from the nature of the allegations and the admitted facts that the relationship between the parties continued for a considerable period of time, in fact for nearly two years, as is clear from a bare perusal of the FIR itself.

21. In view of the overall facts and circumstances of the case, and in 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 established by the applicant with respondent no. 2. In fact, it is an admitted case of respondent no. 2 that the Roka Ceremony was also held with the consent of the family members of both parties. Thus, it is clear that this is a case of consensual relations which, however, subsequently turned sour and did not culminate in marriage. Hence, the charge sheet filed under Section 376 IPC and the summoning order passed on the basis thereof cannot be sustained.



22. Accordingly, in such circumstances, the further continuation of the proceedings under Section 376 IPC against the applicant would amount to an abuse of the process of law. Therefore, in exercise of powers under Section 482 Cr.P.C. to secure the ends of justice, the present Criminal Miscellaneous Application filed under Section 482 Cr.P.C. deserves to be allowed.

23. In view of the above and considering the overall facts and circumstances of the case, the present Criminal Miscellaneous Application under Section 482 Cr.P.C. is allowed, and the summoning order dated 19.08.2023 passed by the Addl. Chief Judicial Magistrate, Kashipur, District Udham Singh Nagar in Criminal Case No. 1421 of 2023, State of Uttarakhand Vs. Madan Gopal Sharma @ Amit Sharma pertaining to Case Crime No. 154 of 2023 under Section 376 IPC, registered at P.S. I.T.I., along with the consequential proceedings arising therefrom, are hereby quashed.

(Siddhartha Sah, J.)
19.06.2026

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