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IN THE HIGH COURT OF DELHI AT NEW DELHI

Date of Decision: 21st May, 2015

+ W.P.(CRL) 771/2014 & CrI.M.A.5999/2014 (stay)

MANOJ BAJPAI

..... Petitioner

Through: Ms.Geeta Luthra, Sr. Advocate with
Mr.V.N.Jha and Ms.Deepti Dwivedi,
Advts.

versus

STATE OF DELHI

..... Respondent

Through: Mr.Rajesh Mahajan, ASC (CrI.) for
State along with Ms. Shinjan Jain,
Advocate with SI Pinki Rana, PS
Ashok Nagar.
Complainant along with her advocate.
(appearance not given)

CORAM:

HON'BLE MS. JUSTICE SUNITA GUPTA

J U D G M E N T

: SUNITA GUPTA, J.

1. This is a writ petition under Article 226 of the Constitution of India r/w Section 482 Cr.P.C. filed by the petitioner for quashing of FIR No.19/2013 u/s 376 IPC dated 17th January, 2013 registered with PS Ashok Nagar, Delhi and the consequential proceedings emanating there from.

2. Following facts emerged from the charge sheet:-

On 17th January, 2013, the complainant Seema Mohal came to police station and got recorded her statement which is as under:-

“Statement of Seema Mohal d/o late Shri J.L. Mohal, r/o H.No.97A, Pocket A-3, Mayur Vihar – III, Delhi stated that I am residing at the above said address alone. This house belongs to Dr. Manoj Vajpayee, S/o Om Shankar Vajpayee, R/o A-17, Sector-17, Noida U.P. I know Dr. Manoj Vajpayee in relation to treatment of my mother. I am married and I have two children but my husband and children are living at Chandigarh but I am living separate from my husband and children for the last 16-17 years. Therefore, I came close to Dr. Manoj Vajpayee, Dr. Manoj took advantage of it and he kept me in this house as his wife. Dr. Manoj put vermilion on my head and garlanded Mangal Sutra on my neck and brought me in his house here. I am residing there for the last 18 months. Dr. Manoj kept me as his wife. That during this period we had physical relationship. But for the last some months, Dr. Manoj has stopped giving household expenses. That during this period Dr. Manoj harassed me physically and mentally and used me. You have written my statement which I read and the same is correct. Legal action be taken.”

3. On the aforesaid statement case under Section 376 IPC was registered by SI Kulbeer and was assigned to ASI Saubhagyawati for investigation. On 18th January, SI Kulbeer arrested the petitioner and took him to LBS Hospital where his potency test was conducted. His medical examination was conducted vide MLC No. 732/13. The doctor gave sealed blood sample and sample seal of LBS hospital to SI Kulbeer Singh which was seized. ASI Saubhagyawati got conducted the medical examination of victim Seema Mohal vide MLC No. 013/13. During the medical examination of the victim, ASI Saubhagyawati took into police possession (i) sexual assault evidence collection kit (ii) clothes of the victim (iii) sample seal of LBS Hospital KP given by the doctor, which were sealed and intact. Thereafter, on 22nd January, 2013, an application for recording statement of victim Seema Mohal was moved for recording her

statement u/s 164 Cr.P.C. and her statement was recorded by Sh. D.K. Garg, Metropolitan Magistrate, Karkardooma Courts. The contents of the same are as follows:-

“On 14.11.1990 my marriage was solemnized with Mukesh Jassal at Chandigarh. On 05.10.1991 my son Yuvraj was born and my daughter Joya was born on 07.03.1996. Some differences arose between my in-laws and my family members. And about the year 1997-98, I had shifted to my parental home at Noida. About the year 2003-04 my children had shifted to their father Mukesh Jassal. My father had expired. My mother was suffering from diabetes. We took the mother and consulted Dr. Manoj Bajpai. By this way Dr. Manoj Bajpai started visiting to our house. During this period Dr. Manoj Bajpai helped us a lot. Thereafter, he kept me as receptionist and trained me nursing. After the death of my mother, I had sold one property. On 08.04.2011, I had gone to Chandigarh along with my son Yuvraj. When I reached there, phone calls of Dr. Manoj Bajpai and his colleague started coming. Then he told me on phone that he wanted to marry me. In spite of my denial, he continued to tell that he wanted to marry me. He also told me on phone that if I shall not come then he would show the objectionable photo to my son which he obtained by applying narcotics on me. Dr. Manoj had indulged into physical relation many times with me by applying narcotics. Again in June, 2011 he kept vermilion on my head and put mangalsutra and then kept me at 97A, Pocket A-3, Mayur Vihar. There I resided till 23.04.2012. During this period he lived with me and kept me like his wife and made physical relations with me which is made between husband and wife. Thereafter he told that we will get married soon. From 18th April to 22nd April, Manoj was with me and he started abusing and mentally harassing me. Manoj took away my mangalsutra by stating that nowadays incidents of chain snatching are happening. Dr. Manoj had been escaping from marriage with me. My 1 lac rupees was in possession of Manoj but he returned me only Rs.8500. I went to my son on 23.04.2012. Then again I returned Mayur Vihar on 24.06.2012. Now, Manoj is backing out from his promise of marriage with me. He has mentally, physically and economically harassed me. Legal action should be taken against him.”

4. Thereafter on 23rd January, 2013, an application for bail was moved by the petitioner and vide order dated 23rd January, 2013, the Additional Sessions Judge granted regular bail to the petitioner.

5. After completing investigation, charge sheet was submitted against the petitioner for offence u/s 376 IPC.

6. Feeling aggrieved, the present petition has been filed by the petitioner for quashing of the FIR.

7. Heard Ms. Geeta Luthra, Sr. Advocate duly assisted by Mr. V.N. Jha and Ms. Naina Dubey, Advocates for the petitioners, Sh. Rajesh Mahajan, Addl. Standing Counsel for State and counsel for complainant and also perused the written submissions filed by them.

8. In the written submissions filed by learned counsel for the petitioner, quashing of FIR is sought inter alia on the following grounds:-

(i) On the basis of statement / complaint of the complainant an FIR No.19/2013 dated 17.01.2013 was registered with the Police Station, New Ashok Nagar under Section 376 IPC. On 22.01.2013 statement under Section 164 Cr.PC of the prosecutrix was recorded in which she repeated the same version of FIR except some improvements to the effect that the petitioner at times indulged into sexual intercourse by giving her narcotics and that he took her objectionable photos and that she had visiting terms with her husband and children at Chandigarh.

(ii) the petitioner is the owner of property 97A, Pocket –A–3, Mayur Vihar, Phase – III, Delhi, where he had been operating his clinic since 1996. The petitioner also owns property bearing number A-15, Sector-22, Noida, U.P. from where he has been operating his

clinic since 2000. At present the petitioner is operating his clinic from the said premises at Noida and the clinic at Delhi is closed due to health reasons. In the year 2006, the complainant met with the petitioner for the treatment of her mother at Noida clinic. Later on she requested for a job in the clinic, and on her persuasions that her financial condition was very poor, the petitioner appointed her as nursing assistant at Noida clinic as she was not having any nursing degree. In March, 2012, the petitioner learnt that she had started taking drugs and due to this she had been misbehaving with the staff and also the patients in a rude and abusive manner. In these circumstances, the petitioner terminated her employment /services and she left for Chandigarh where her family (husband and children) were residing. The petitioner had to close his clinic at Delhi in May, 2012 due to his chronic liver disease (Cirrhosis), which was diagnosed in the beginning of the year 2011. He is still under treatment and has registered for his liver transplantation at Chennai and going to be operated very soon. In the month of June, 2012, the complainant again came to the petitioner and requested him to give her accommodation at Delhi clinic for stay for two-three days, which was since lying vacant. She stated that she had to get certain issues / matters settled with her family as also other relatives of her family at Delhi. Purely on humanitarian ground, the petitioner allowed the complainant to stay at Delhi clinic premises on the condition that she would leave the premises within two-three days. But the complainant did not vacate the premises as promised. Whenever the petitioner asked her to vacate the premises, the complainant on one pretext or the other took time

and did not vacate the premises. In the month of August 2012, the petitioner discovered that the complainant had misused his generosity and that she had changed certain portions of the said property at Delhi without permission, changed the locks of the said premises and illegally started operating medical activities from the said clinic and started treating patients by the use of medical equipment lying there as if she is a qualified doctor. On this, the petitioner got annoyed and understood the malafide intentions of the complainant to grab the said property at Delhi and to defame his reputation. In these circumstances, the petitioner asked the complainant to vacate the premises immediately. But she flatly refused to vacate and threatened the petitioner with dire consequences including threat for life and his false implication in a rape case. In these circumstances, finding no way out the petitioner made representations / complaint to the CDMO, East Delhi on 01.09.2012. The petitioner also gave a general public notice in the Daily Newspaper '*Rashtriya Sahara*' on 02.09.2012. The petitioner made a complaint to the SHO, Police Station New Ashok Nagar on 30.10.2012 received on 01.01.2012. In these circumstances the complainant finding no way out and visualizing the situation that she ultimately had to vacate the premises, filed a false and frivolous complaint with the Police Station New Ashok Nagar on which the impugned FIR No.19/2013 was registered against the petitioner with the sole motive to grab the property of the petitioner at 97A, Pocket A-3, Mayur Vihar, Phase – III, Delhi.

(iii) On 17.01.2013 the FIR was registered and on 18.01.2013 the

petitioner was arrested and on 22.01.2013 statement under Section 164 Cr.PC of complainant was recorded. On 23.01.2013 the petitioner was released on bail by the Ld. ASJ, KKD Court, Delhi on the following grounds – (a) the nature of the allegations made in the FIR do not disclose the offence of rape; (b), the petitioner had made various complaints and public notices against the complainant prior to the registration of the FIR (c) the proposition of law laid down by the Hon'ble Supreme Court and High Courts in this regard; (d) the medical treatment received by the petitioner for his ill health.

(iv) On 28.02.2013, the petitioner filed Civil Suit bearing Suit No.26/2013 for mandatory injunction / possession / mesne profits against the complainant before the learned Additional Sessions Judge, Karkardooma Courts, Delhi.

(v) On 02.06.2013, the complainant made another complaint that at about 8.35 pm when she was going to Syndicate Bank for depositing a cheque on a rickshaw and reached near liquor shop near Shanti Van Park, then the tyre of the rickshaw burst and she got down from it and started going on foot. At that time the petitioner came from behind from his vehicle and asked the complainant to withdraw the statement in the case FIR No.19/2013 under section 376 IPC and vacate the property at Delhi and thereafter attacked on her with a sharp edged thing on her right hand and while returning stated that till now he has done only this thing and if she did not withdraw her statement then he would kill her and fled away. On the basis of this complaint an FIR No.245/2013 dated 02.06.2013 under Section 195A/323/506 IPC was registered at Police Station New Ashok Nagar. The petitioner was

arrested on the same day.

(vi) On 03.06.2013, the petitioner was produced before the learned Metropolitan Magistrate who vide his order dated 03.06.2013 granted bail to the petitioner. The allegation of the petitioner has been found to be false and it has been found that at the time the complainant alleged that the incident took place, the petitioner was at Badarpur attending some patients there. As such, the case has been cancelled.

(vii) In September 2013, the charge-sheet in the present case was filed. On 07.10.2013, the complainant entered into a memorandum of understanding / settlement with the petitioner. Under the settlement it was agreed that the petitioner would give the residential rights to the complainant in the property in Delhi belonging to the petitioner and the complainant would cooperate in the present criminal case.

(viii) On 05.12.2013, the petitioner withdrew his aforesaid civil suit bearing Suit (S) No.26/2013. The statement of both the parties were recorded before the Ld. Court and as per the order the complainant was permitted to reside in the half portion at the property in Delhi and the complainant was to hand over the other half portion of the said premises to the petitioner on the same day i.e. 05.12.2103. However, the complainant did not vacate the half portion of the said premises at Delhi as undertaken before the Ld. ADJ, KKD Courts, Delhi and further refused to cooperate in the criminal case and is pressing hard for the transfer of the said Delhi property in her name.

(ix) From a bare perusal of the contents of the FIR, it is clear that no offence is made out against the petitioner. The complaint did not fulfil the ingredients of section 375/376 IPC.

- (x) At the relevant period both the petitioner and the complainant were separately married having their own family and children. Both were major. The petitioner was about 52 years of age and the complainant was about 47 years of age at the relevant time. Both are well educated, the complainant being a graduate and the petitioner a doctor. Therefore, the allegation that the petitioner promised to marry or married with the complainant stands falsified. Even if the allegations are taken as it is, the acknowledged consensual physical relationship between the parties would not constitute offence under section 376. Even as per the FIR, the basic grievance of the complainant is that the petitioner has stopped giving her maintenance.
- xi) Even if the allegations are taken at its face value and to be correct, this is at the most a case of sexual intercourse with consent which does not constitute the offence of rape. At the most, it is a case of live in relationship inasmuch as the complainant's marriage was subsisting although as per her statement she was living separately from her husband.
- xii) The present FIR is filed with mala fide intentions and with ulterior motives and to wreck vengeance against the petitioner. The complainant wanted to grab the aforesaid property at Delhi of the petitioner and when the petitioner wanted to get vacated the said property, out of vengeance the complainant filed the present criminal case out of vengeance.
- xiii) The petitioner filed complaints and representations before different authorities to get the premises vacated which is prior to the date of filing of the FIR.

xiv) The statement of the complainant under section 164 Cr.PC is the repetition of the FIR except some improvement that the petitioner at times indulged in sexual intercourse after giving narcotics and took objectionable photos. Even this allegation would not improve the case of the complainant inasmuch as now the charge-sheet has been filed and no photo has been recovered and it belies her statement. Further, there is no medical evidence filed with the charge-sheet to prove that at the relevant time the petitioner indulged in sexual relationship with the complainant by giving her narcotics and there cannot be any medical evidence to that effect. As per her own statement the petitioner had left the complainant since about one year back from the date when she filed the complaint and was not getting maintenance from him. Therefore, the improved allegations in the statement under Section 164 Cr.PC are false and even if the trial is directed to be proceeded with, the same would not conclude in the conviction of the accused and to proceed with the case would be sheer abuse of process of law.

xv) It is well settled law that any subsequent statement to fill up the lacuna in the complaint made earlier cannot be a ground for proceeding with the case. It is the first version as disclosed in the complaint which is always important for adjudicating as to whether an accused has committed any offence or not.

xvi) The complainant is in the habit of making false complaints and allegation to put pressure on the petitioner so that she can grab his property which is evident from the fact that on the basis of another complaint filed by her, FIR No.245/2013 dated 02.06.2013 under

sections 195A/323/506 IPC was registered at Police Station New Ashok Nagar and after investigation the police has found the allegations to be false and at the relevant time the petitioner was not even present at the place of incident.

xvii) It is well settled as held by the Supreme Court in the *Rajiv Thapar vs. Madan Lal Kapoor*, (2013) 3 SCC 330, that the High Court under Section 482 Cr.PC can quash the FIR at the stage of issuing of process or at the stage of committal or even at the stage of framing of charge, if it is fully satisfied that the material produced by the accused is such that it would lead to the conclusion that his defence is based on sound, reasonable and indubitable facts and rule out the assertions contained in the charges levelled against the accused and reject and overrule the veracity of the allegations.

9. Reliance was placed on *Prashant Bharti vs. State (NCT of Delhi)*, (2013) 9 SCC 293; *Alok Kumar vs. State and Anr.*, 2010 (4) JCC 2385; *Smt. Deepa Bajwa vs. State and Ors*, 115(2004) DLT 202; *Rajiv Thapar and Others vs. Madanlal Kapoor*, (2013) 3 SCC 330; *D. Velusamy vs. D. Patchaiammal*, AIR 2011 SC 479 and *Indra Sarma vs. V.K.V.Sarma*(2013) 15 SCC 755.

10. On the other hand, Sh. Rajesh Mahajan, Additional Standing Counsel for the respondent submitted that the charge sheet in the instant case has already been filed. The pleas taken by the petitioner are in the nature of defence or at least are disputed questions of facts which cannot be gone into in the writ jurisdiction of this court. The prosecutrix has made clear allegations against the accused in her

statement recorded u/s 161 Cr.P.C. and reiterated the same in her statement u/s 164 Cr.P.C. The truth or falsity of allegations cannot be gone into at this stage. Another FIR bearing No.101/15 dated 20th January, 2015 u/s 195A IPC, Police Station Ashok Nagar has been registered against the petitioner on the complaint of the complainant. The conduct of the petitioner on that count disentitles him to any relief. Further, the prosecutrix has furnished a copy of the petition dated 3rd December, 2012 filed by her u/s 13B of Hindu Marriage Act and the judgment and decree of divorce dated 4th July, 2013 granted by the Court of ADJ, Chandigarh which furthers the case of prosecutrix that she was allured into physical relation on the promise of marriage and in furtherance thereof she obtained divorce from her previous husband. In this light, the argument put forth by the defence that there can be no promise of marriage as the prosecutrix was already married, needs to be tested by way of evidence as it cannot be said that she could not have married the petitioner after obtaining divorce from her previous husband. Reliance was placed on *State of Uttar Pradesh v. Naushad*, (2013) 16 SCC 651; *Karthi @ Karthick*, (2013) 12 SCC 710; *Zindar Ali Sheikh v. State of West Bengal and Anr.*, (2009) 3 SCC 761 and *Yedla Srinivas Rao v. State of AP*, 2006 (9) SCALE 692 regarding the aspect of consent for rape secured on promise of marriage.

11. It is further submitted that powers u/s 482 Cr.P.C. for quashing the proceedings ought to be exercised sparingly and in exceptional cases. Reliance was placed on *State of Orissa and Ors. vs. Ujjal Kumar Burdhan*, (2012) 4 SCC 547; *Satvinder Kaur vs. State (Govt.*

of NCT of Delhi) and Anr., (1999) 8 SCC 728; *Mahavir Prasad Gupta vs. State of NCT of Delhi*, (2000) 8 SCC 115.

12. The complainant also relied upon *State of Haryana & Ors. vs. Bhajan Lal & Ors.*, (1992) Supp. (1) SCC 335; *Roshni Malik vs. State & Ors.*, 2006 (87) DRJ 675; *Deelip Singh @ Dilip Kumar vs. State of Bihar*, (2005) 1 SCC 88 in support of the submission that allegations made in the complaint clearly constitute an offence punishable u/s 376 IPC and at this juncture when the case is at its threshold, the FIR cannot be quashed.

13. I have bestowed my considerable thoughts to the respective submissions of the learned counsel for the parties and have perused the material on record.

14. A perusal of the First Information Report lodged by the complainant against the petitioner reveals the following facts:-

- (i) The complainant was married and had two children, however, she was living separate from her husband and children for the last about 16 years who are living at Chandigarh.
- (ii) She came close to the petitioner who took advantage of the same and kept her in his house as his wife. He put vermilion on her head and garlanded *mangalsutra* on her neck and she started residing with him for the last 18 months as his wife.
- (iii) During this period, they had physical relationship.
- (iv) The petitioner stopped giving household expenses for the last two months.

- (v) During this period she was harassed mentally and physically by the petitioner.

15. A bare perusal of these averments made in the FIR reflects that the marriage of the complainant was subsisting when she started living with the petitioner and having physical relation with him. She was not married to the petitioner but as per the allegations she was kept “as his wife”. There was physical relation between the two. Physical relationship was consensual. The FIR was lodged because the petitioner had stopped giving household expenses. Keeping in view the fact that both, the complainant and the petitioner were major and there is no allegation that the physical relation was induced by any extraneous consideration, the allegations *per se* do not attract the provisions of Section 376 IPC. However, when statement of the complainant was recorded u/s 164 Cr.P.C. at that time she took the plea that her objectionable photographs were taken by the petitioner by applying narcotic on her and that the petitioner told her that they will get married soon but he was now backing out from his promise of marriage, as such she wanted legal action against him.

16. In ***Deepa Bajwa*** (supra), it was observed that a complaint, on the basis of which the complainant seeks registration of an F.I.R., must disclose essential ingredients of the offence and in case a complaint lacks or is wanting in any of the essential ingredients, the lacuna or deficiency cannot be filled up by obtaining additional complaint or supplementary statement and thereafter proceed to register the F.I.R. If such a course is permitted, it would give undue

latitude as well as opportunity to unscrupulous complainants to nail others by hook or by crook in spite of the fact that their initial complaint does not make out the offence complained of. Such a course would be utter abuse of the process of law. First version as disclosed in a complaint is always important for adjudicating as to whether an accused has committed an offence or not.

17. In view of the same, as seen above, the first version as disclosed in the complaint made by the complainant does not disclose any offence u/s 376 IPC. It is only subsequently in her statement u/s 164 Cr.P.C. that the complainant has tried to take a plea that her objectionable photographs have been taken after applying narcotic drugs on her or that her consent was obtained on the promise to marry her. Obviously an inducement for marriage is understandable if the same is made to an unmarried person. It is a matter of record that the petitioner was already a married person having children during the period as stated in the FIR. Same is the case with complainant. The averments made in the complaint as well as her statement u/s 164 Cr.P.C. reflect that the complainant was married to Mukesh Jassal on 14th November, 1990 at Chandigarh. Out of wedlock, she had two children. According to her, some differences arose between her in-laws and her family members. As such, in the year 1997-98, she shifted to her parental home at NOIDA. Her children shifted with their father Mukesh Jassal in the year 2003-04. As per the copy of the petition dated 3rd December, 2012 filed by the complainant, the petition for divorce by mutual consent was filed on 3rd December, 2012 and the divorce was granted on 4th July, 2013, i.e., much after

the registration of this FIR which is dated 17th January, 2013. As per the allegations made in the FIR, she was residing with the petitioner at his house for the last 18 months. Meaning thereby she started living with him somewhere in the year 2011 when the petition for divorce by mutual consent was not even filed by her. In such a fact/situation, the assertion made by the complainant that the petitioner/accused had physical relationship with her on the assurance that he would marry her is *per se* false and, as such, unacceptable. She was clearly aware of the fact that she had a subsisting valid marriage with Mukesh Jassal. That being so, there was no question of anyone being in a position to induce her into a physical relationship under an assurance of marriage.

18. In ***Prashant Bharti***(supra), substantially similar facts were involved where plea taken by the complainant was that she was induced into a physical relationship by the accused on the assurance that he would marry her. In that case also, the facts revealed that the complainant/prosecutrix was married to one 'X' when she had physical relation with the accused on the basis of false promise to marry her. It was held that in such a fact situation, the assertion made by the complainant/prosecutrix that the Appellant-accused had physical relations with her on the assurance that he would marry her, is *per se* false and, as such, unacceptable. She, more than anybody else, was clearly aware of the fact that she had a subsisting valid marriage with 'X'. Accordingly, there was no question of anyone being in a position to induce her into a physical relationship under an assurance of marriage. The facts clearly emerge that the complainant

was in a relationship of adultery with the Appellant-accused, while she was validly married to her previous husband 'X'. In the aforesaid view of the matter, the assertion made by the complainant/prosecutrix, that she was induced to a physical relationship by 'X', the Appellant-accused, on the basis of a promise to marry her, stands irrefutably falsified.

19. In **Alok Kumar** (supra) also the plea of inducement to have physical relation on the assurance of marriage was taken and the FIR was quashed by observing as under:-

“ 6. From the allegations made by the complainant, it is apparent that when the complainant started `live-in-relationship' with the petitioner, the petitioner had not even divorced his previous wife though it seems was living separate from her. The complainant was having a child while the petitioner was also having a child. `Live-in-relationship' is a walk-in and walk-out relationship. There are no strings attached to this relationship, neither this relationship creates any legal bond between the parties. It is a contract of living together which is renewed every day by the parties and can be terminated by either of the parties without consent of the other party and one party can walk out at will at any time. Those, who do not want to enter into this kind of relationship of walk-in and walk-out, they enter into a relationship of marriage, where the bond between the parties has legal implications and obligations and cannot be broken by either party at will. Thus, people who chose to have `live-in-relationship' cannot complain of infidelity or immorality as live-in-relationships are also known to have been between married man and unmarried woman or between a married woman and an unmarried man.”

20. In **D. Velusamy**(supra), petition for maintenance u/s 125 of the Code of Criminal Procedure, 1973 was filed and the question for consideration was whether the appellant was married to respondent or whether they lived in relationship in the nature of marriage. The relevant observation so far as the present case is concerned, were to

the effect that not all live-in relationship will amount to a relationship in the nature of marriage. If a man has a 'keep' whom he maintains financially and uses mainly for sexual purpose and/or as a servant it would not, in our opinion, be a 'relationship in the nature of marriage'. Under the circumstances, the allegations of the complainant that she was induced into a physical relationship by the petitioner on the assurance that he would marry her which was conspicuously missing in her initial complaint cannot be sustained keeping in view the fact that both, the petitioner and the complainant were major and were married and, as such, knew the consequences of their entering into physical relationship. She had entered into live-in relationship though she was not even divorced at that time. She being a Graduate and aged 43 years, already once married was not a naive as not to know the reality of live-in relationship. It cannot be thought that she was not aware that live-in relationship was not a marriage but was a relationship of convenience where two parties decide to enjoy company of each other at will and may leave each other at will. The live-in relationship continued for about 18 months. There is no whisper in the FIR that the consent was the result of any inducement. Rather a bare reading of the FIR gives an impression that the same was filed as the petitioner had stopped giving household expenses. It was only subsequently as an afterthought in her statement u/s 164 Cr.P.C. she tried to improve her statement by stating that by applying narcotic drugs, her objectionable photographs were taken and she was induced into this relationship on the pretext of marriage. Prima facie it appears to this Court on the basis of existing averments in the FIR

that it would be unfair to infer an absence of consent which is an essential ingredient of the offence of rape.

21. The Court is also unable to discern parity of facts in *Yedla Srinivas Rao*(supra)and the instant case where the prosecutrix was between 15-17 years living in a village and right from the very beginning, she refused to participate in the act. Accused kept on persisting and persuading her. Under those circumstances, it was observed that the accused made a false promise that he would marry her. His intention right from the very beginning was not bona fide and the poor girl submitted to the lust of the accused, completely being misled by the accused who held out the promise for marriage.

22. *Roshni Malik*(supra) is not applicable to the facts of this case in as much as in that case, accused proposed to marry the prosecutrix and on believing the said promise, the petitioner agreed to have physical relationship with him at several places in India.

23. Similarly, in *Naushad* (supra), the prosecutrix was aged about 15 years. The accused committed rape on her on the inducement of marrying her. She became pregnant and then the accused refused to marry her. Under those circumstances, it was held that the consent of the prosecutrix was obtained under a misconception of fact that he would marry her and, therefore, offence u/s 376 IPC was made out. Substantially similar facts were involved in *Karthik @ Kartik* (supra). In this very judgment, reference was made to *Uday vs. State of*

Karnataka, (2003) 4 SCC 46 where the following observations were made:-

“21. It therefore appears that the consensus of judicial opinion is in favour of the view that the consent given by the prosecutrix to sexual intercourse with a person with whom she is deeply in love on a promise that he would marry her on a later date, cannot be said to be given under a misconception of fact. A false promise is not a fact within the meaning of the Code. We are inclined to agree with this view, but we must add that there is no strait jacket formula for determining whether consent given by the prosecutrix to sexual intercourse is voluntary, or whether it is given under a misconception of fact. In the ultimate analysis, the tests laid down by the Courts provide at best guidance to the judicial mind while considering a question of consent, but the Court must, in each case, consider the evidence before it and the surrounding circumstances, before reaching a conclusion, because each case has its own peculiar facts which may have a bearing on the question whether the consent was voluntary, or was given under a misconception of fact. It must also weigh the evidence keeping in view the fact that the burden is on the prosecution to prove each and every ingredient of the offence, absence of consent being one of them.”

24. As seen above, in the instant case, there is no question of obtaining consent of the prosecutrix on the inducement to marry her. As regards taking the objectionable photographs by applying narcotic, in the reply to the petition filed by the State, it was admitted that allegations regarding use of any narcotic could not be substantiated during the investigation of the case or through medical examination of the complainant.

25. Further the sexual assault evidence collection kit, clothes of the victim and blood sample of the petitioner were sent to FSL. As per the report of Forensic Science Laboratory dated 30th September, 2014,

blood and semen was not detected on victim's exhibits, as such, DNA analysis was not conducted.

26. In view of the same, even if it is assumed that the petitioner actually had physical relationship with the complainant, the same would necessarily have to be consensual. The discussion made above clearly negates an assurance of marriage. A consensual relationship without any assurance obviously will not substantiate the offence u/s 376 of the Penal Code.

27. The plea of the complainant that the petitioner had put vermilion on her forehead and tied *mangalsutra* and they started living as husband and wife again does not bring the case within the four corners of Section 376 IPC, inasmuch as, the complainant was aware that she was not married to the petitioner and as per her own allegations, she was married to Mukesh Jassal which marriage was subsisting at that time. She had developed intimacy and she and petitioner with consent of each other were having sexual relationship.

28. In *Harish Kumar vs. State*, CrI. M.C. 3877/2009 also substantially similar facts were involved and the FIR u/s 376/593 IPC was registered which was quashed by this Court by observing that the relationship between the two was consensual and marriage has not yet taken place. Therefore, no case u/s 376 or 493 IPC is made out.

29. In *Deelip Singh* (supra), it was held that consent given by a woman believing the man's promise to marry her would fall within

the expression “without her consent” only if it is established that from the very inception, the man never really intended to marry her and the promise was a mere hoax. Since it is a case of obvious consent of the prosecutrix, who was aware that no marriage had taken place, no case u/s 376 IPC is made out. **Zindar Ali** (supra) cited by the State is not applicable to the facts of the case in as much as in that case, the first act of sexual intercourse by the accused was without consent and thereby he committed rape upon the prosecutrix.

30. Learned counsel for the appellant relied upon **Rajiv Thapar** (supra) in support of the submission that the continuance of the criminal proceedings in view of the facts and circumstances appearing in the instant case is gross misuse of process of Court and, therefore, the FIR be quashed. In this case Hon’ble Supreme Court while dealing with proposition of law pertaining to quashing of criminal proceedings initiated against an accused by a High Court u/s 482 Cr. P.C., inter alia, held as under:-

“29. The issue being examined in the instant case is the jurisdiction of the High Court under Section 482 of the Code of Criminal Procedure, if it chooses to quash the initiation of the prosecution against an accused, at the stage of issuing process, or at the stage of committal, or even at the stage of framing of charges. These are all stages before the commencement of the actual trial. The same parameters would naturally be available for later stages as well. The power vested in the High Court under Section 482 of the Code of Criminal Procedure, at the stages referred to hereinabove, would have far reaching consequences, inasmuch as, it would negate the prosecution's/complainant's case without allowing the prosecution/complainant to lead evidence. Such a determination must always be rendered with caution, care and circumspection. To invoke its inherent jurisdiction under Section 482 of the Code of Criminal Procedure the High Court has to be fully satisfied, that the material produced by the accused is such, that would lead to the

conclusion, that his/their defence is based on sound, reasonable, and indubitable facts; the material produced is such, as would rule out and displace the assertions contained in the charges levelled against the accused; and the material produced is such, as would clearly reject and overrule the veracity of the allegations contained in the accusations levelled by the prosecution/complainant. It should be sufficient to rule out, reject and discard the accusations levelled by the prosecution/complainant, without the necessity of recording any evidence. For this the material relied upon by the defence should not have been refuted, or alternatively, cannot be justifiably refuted, being material of sterling and impeccable quality. The material relied upon by the accused should be such, as would persuade a reasonable person to dismiss and condemn the actual basis of the accusations as false. In such a situation, the judicial conscience of the High Court would persuade it to exercise its power under Section 482 of the Code of Criminal Procedure to quash such criminal proceedings, for that would prevent abuse of process of the court, and secure the ends of justice.

30. Based on the factors canvassed in the foregoing paragraphs, we would delineate the following steps to determine the veracity of a prayer for quashing, raised by an accused by invoking the power vested in the High Court under Section 482 of the Code of Criminal Procedure:

30.1 Step one, whether the material relied upon by the accused is sound, reasonable, and indubitable, i.e., the material is of sterling and impeccable quality?

30.2 Step two, whether the material relied upon by the accused, would rule out the assertions contained in the charges levelled against the accused, i.e., the material is sufficient to reject and overrule the factual assertions contained in the complaint, i.e., the material is such, as would persuade a reasonable person to dismiss and condemn the factual basis of the accusations as false.

30.3 Step three, whether the material relied upon by the accused, has not been refuted by the prosecution/complainant; and/or the material is such, that it cannot be justifiably refuted by the prosecution/complainant?

30.4 Step four, whether proceeding with the trial would result in an abuse of process of the court, and would not serve the ends of justice?

30.5 If the answer to all the steps is in the affirmative, judicial conscience of the High Court should persuade it to quash such criminal-proceedings, in exercise of power vested in it under Section 482 of the Code of Criminal

Procedure. Such exercise of power, besides doing justice to the accused, would save precious court time, which would otherwise be wasted in holding such a trial (as well as, proceedings arising therefrom) specially when, it is clear that the same would not conclude in the conviction of the accused.”

31. On the other hand, the complainant relied upon ***Bhajan Lal*** (supra) where the following categories of cases were spelt out by way of illustration wherein the extraordinary power under Article 226 of the inherent powers u/s 482 Cr.P.C. can be exercised by the High Court either to prevent abuse of the process of any court or otherwise to secure the ends of justice:-

1. Where the allegations made in the First Information Report or the complaint, even if they are taken at their face value and accepted in their entirety do not prima-facie constitute any offence or make out a case against the accused.
2. Where the allegations in the First Information Report and other materials, if any, accompanying the F.I.R. do not disclose a cognizable offence, justifying an investigation by police officers under Section 156(1) of the Code except under an order of a Magistrate within the purview of Section 155(2) of the Code.
3. Where the uncontroverted allegations made in the FIR or complaint and the evidence collected in support of the same do not disclose the commission of any offence and make out a case against the accused.
4. Where, the allegations in the F.I.R. do not constitute a cognizable offence but constitute only a non-cognizable offence, no investigation is permitted by a police officer without an order of a Magistrate as contemplated under Section 155 (2) of the Code.
5. Where the allegations made in the FIR or complaint are so absurd and inherently improbable on the basis of which no

prudent person can ever reach a just conclusion that there is sufficient ground for proceeding against the accused.

6. Where there is an express legal bar engrafted in any of the provisions of the Code or the concerned Act (under which a criminal proceeding is instituted) to the institution and continuance of the proceedings and/or where there is a specific provision in the Code or the concerned Act, providing efficacious redress for the grievance of the aggrieved party.

7. Where a criminal proceeding is manifestly attended with mala fide and/or where the proceeding is maliciously instituted with an ulterior motive for wreaking vengeance on the accused and with a view to spite him due to private and personal grudge.

32. In *State of Orissa*(supra) and *Satvinder Kaur* (supra), *Ujjal Kumar*(supra) and *Mahavir Prashad Gupta*(supra), the legal proposition was reiterated that the inherent powers vested in the High Court u/s 482 of the Code of Criminal Procedure should be exercised sparingly with circumspection and as far as possible to be exercised where the allegations in the complaint or in the First Information Report, taken on its face value and accepted in their entirety do not constitute the offence alleged.

33. The legal position as enunciated in all the judgments relied upon by the petitioner, respondent and the complainant is well settled. That being so, it is to be seen whether the factual scenario appearing in the instant case warrant the exercise of invoking this power vested in this Court u/s 482 Cr.P.C.

34. The factual details referred in the foregoing paras reflect that:-

- (i) The complainant came in contact with the petitioner and started living in his house for 18 months and during this period, they had physical relationship.
- (ii) The complainant was already married to Mukesh Jassal and had two children. The marriage was subsisting during this period. Even the petition for divorce by mutual consent u/s 13B Hindu Marriage Act was filed only on 3rd December, 2012 and the marriage was dissolved by decree of divorce dated 4th July, 2013, i.e., much after the registration of this FIR.
- (iii) The allegations of the complainant that her objectionable photographs were taken by applying narcotic on her is not substantiated as her allegations of use of narcotic could not be substantiated during the investigation of the case or through medical examination.
- (iv) Keeping in view the fact that both, the petitioner as well as the complainant, were married which marriage was still subsisting, therefore, the complainant could not have been induced into physical relationship based on assurance of marriage.
- (v) The physical relationship between the complainant and the accused was admittedly consensual.
- (vi) In her statement u/s 164 Cr.P.C., the complainant asserted that her consent was based on inducement of marriage, however, this aspect of assurance stands falsified.
- (vii) The acknowledged consensual physical relationship between the parties would not constitute an offence u/s

376 IPC, especially, because both the complainant as well as petitioner were major on the date of occurrence.

- (viii) As per the FSL report, there was no evidence of any blood or semen and, therefore, DNA analysis was not conducted.
- (ix) After the filing of this FIR, another complaint was filed by the complainant against the petitioner on the allegations of threatening her to withdraw this case which resulted in registration of FIR 295/13 dated 2nd June, 2013 u/s 195A/323/506 IPC, with PS New Ashok Kumar. As per the status report dated 9th March, 2015 filed by the State, allegations were not substantiated and as such, the case was cancelled on 2nd September, 2013.
- (x) The petitioner had alleged that due to his ill health he closed his clinic at Mayur Vihar, Delhi in the month of May, 2012. On the request of the complainant to provide her accommodation for 2-3 days, petitioner allowed her to reside in Delhi Clinic for a few days, however, in the month of August, 2012, he came to know that the complainant had changed the locks of the premises and started misusing the clinic premises without his knowledge, therefore, he asked her to vacate the said premises. The complainant failed to accede to his request rather threaten to implicate him in false and baseless cases, as such, the petitioner approached different authorities vide his letter dated 1st September, 2012 to CDMO, East Delhi, SHO Police Station, New Ashok Nagar and through newspaper dated 2nd September, 2012 in *Rashtriya Sahara*. Against these allegations, no pleadings whatsoever have been filed by the complainant. Even during the course of hearing, the material relied upon by the accused was not refuted.

- (xi) The petitioner filed a civil suit bearing Suit No.26/2013 for mandatory injunction/possession/mesne profits/damages against the complainant.
- (xii) A settlement deed dated 7th October, 2013 was arrived at between the parties whereby it was agreed that the petitioner shall withdraw his suit pending before the Additional District Judge and the complainant would cooperate with the petitioner in quashing the FIR. As per the copies of the proceedings placed on record pursuant to the statement made by both the parties, the petitioner withdrew the suit.
- (xiii) The factum of entering into a compromise deed between the parties has been verified by the State and in fact the prosecutrix herself furnished the copy of the MOU executed in October, 2013, whereby the petitioner agreed to execute a gift deed in respect of half portion of LIG Flat No. 97A, Ground Floor, Pocket A-III, Mayur Vihar, Phase-III, Delhi-96 in favour of the complainant after getting conversion from lease hold to free hold by DDA and the petitioner shall pay a sum of Rs.11,000/- per month to the complainant and both the parties would withdraw the cases filed against each other. It is the case of the petitioner that pursuant to this compromise, he withdrew the suit filed by him but the complainant resiled from the settlement and further put the condition that the petitioner should deposit sufficient amount in fixed deposit in bank in her name.

35. In view of the facts and circumstances summarized in the foregoing paras, all the steps delineated in ***Rajiv Thapar*** (supra) stands satisfied. All the steps can only be answered in the affirmative.

36. Keeping in view the above circumstances, I consider that it is a fit case where FIR should be quashed to prevent the misuse of criminal justice system for personal vengeance of a partner of “live-in relationship.

37. The petition is accordingly allowed. FIR No. 19/2013 u/s 376 IPC registered with PS Ashok Nagar, Delhi and the consequential proceedings emanating therefrom are hereby quashed. Pending applications, if any, also stands disposed of accordingly.

(SUNITA GUPTA)
JUDGE

MAY 21, 2015

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