

AFR**HIGH COURT OF CHHATTISGARH, BILASPUR****CRMP No. 175 of 2019**

Komal Soni S/o Shri Lakhanlal Soni Aged About 27 Years R/o Gram
Ward No. 16, Link Road Janjgir, P. S. Janjgir District Janjgir Champa CG

---- Petitioner**Versus**

1. State of Chhattisgarh Through The Station House Officer, Police Station Janjgir District Janjgir Champa Chhattisgarh
2. Smt. Sandhya Mishra W/o Siyaram Mishra Aged About 29 Years Caste Bramhan R/o Village Bazaarpura, Janjgir, P. S. And Tahsil Janjgir District Janjgir Champa Chhattisgarh

---- Respondent

For petitioner	:	Mr. Shivang Dubey, Adv.
For respondent No.1	:	Mr. H.S. Ahluwalia, Dy. AG
For respondent No. 2	:	Ms. Sareena Khan, Adv.

Hon'ble Shri Sharad Kumar Gupta, Judge**ORDER ON BOARD****29-8-2019**

1. Petitioner has preferred this CRMP under Section 482 of the Criminal Procedure Code, (for short 'Cr.P.C.') to quash the FIR, charge sheet and charge framed pending before the Special Judge (Atrocity), Distt. Janjgir Champa, in Special Case No. 02/2019.
2. In brief the case of the respondents is that on 22-9-2018 respondent No. 2 / prosecutrix was residing at Sakhi Van Staff Centre, Janjgir. Her marriage was solemnized with one Siyaram Mishra. Since 2015 to 2017 petitioner repeatedly committed forcible sexual intercourse with her giving threatening to kill her husband and children. After 2017 he committed sexual intercourse with her promising that he will marry her, he also used to ask to obtain divorce from her husband. Pursuant to it she filed a divorce petition on 23-3-2018 before the Principal Judge, Family Court, Janjgir, District Janjgir Champa, to dissolve their marriage. Thereafter he refused to marry her.
3. In brief the petitioner's case is that prosecutrix and her husband had taken a loan from him for treatment of husband of the prosecutrix.

When he demanded back the loan amount, they falsely implicated him in the case. She is already a married woman, her marriage is subsisting, she knew that performance of marriage with him is impossible. She and her husband tried to blackmail him.

4. The case of the respondents in brief is that prima facie cognizable offence is made out against the petitioner, thus this Court cannot intervene under Section 482, Cr.P.C. Instant petition deserves to be dismissed.

5. Counsel for the petitioner argued that petitioner has been falsely implicated in the case on account of demanding back the loan amount which was given to the husband of the prosecutrix for his treatment. During subsistence of legal marriage, alleged promise to marry does not amount as it was given under the misconception of the fact. Thus, prima facie no cognizable offence is made out against him.

6. Counsel for the respondents submitted that as per the statement of the prosecutrix recorded under Section 164 of Cr.P.C. it is clear that during the 1st part, consent of the prosecutrix was obtained under fear, thus for this part a case under Section 376 of IPC prima facie is made out. In the 2nd part, he promised to marry her, also asked her to obtain divorce from her husband and committed sexual intercourse with her, she filed divorce petition in pursuance of promise. Thus, for the 2nd part also, an offence punishable under Section 376 of IPC is made out.

7. The provisions of Section 90 of the IPC are noteworthy which are extracted herebelow:-

“90. Consent known to be given under fear or misconception.
—A consent is not such a consent as is intended by any section of this Code, if the consent is given by a person under fear of injury, or under a misconception of fact, and if the person doing the act knows, or has reason to believe, that the consent was given in consequence of such fear or misconception; or...

8. The provisions of Section 114-A of the Evidence Act which are substituted on 03.02.2013, are notable reads as under:-

“114 A. Presumption as to absence of consent in certain prosecutions for rape :-

In a prosecution for rape under clause (a) or clause (b) or clause (c) or clause (d) or clause (e) or clause (g) of sub-section (2) or section 376 of the Indian Penal Code, (45 of 1860) where sexual intercourse by the accused is proved and the question is whether it

was without the consent of the woman alleged to have been raped and she states in her evidence before the Court that she did not consent, the Court shall presume that she did not consent.

Explanation- In this section, “sexual intercourse” shall mean any of the acts mentioned in clause (1) to (d) of Section 375 of the Indian Penal Code.”

9. Counsel for respondent No. 1/State placed reliance in the judgment of Hon'ble Supreme Court in the matter of **Umesh Kumar Vs. State of Andra Pradesh and another** [(2013) 10 SCC 591], Para 20 is relevant which is mentioned below:-

“**20.** The scope of Section 482 CrPC is well defined and inherent powers could be exercised by the High Court to give effect to an order under CrPC; to prevent abuse of the process of court; and to otherwise secure the ends of justice. This extraordinary power is to be exercised *ex debito justitiae*. However, in exercise of such powers, it is not permissible for the High Court to appreciate the evidence as it can only evaluate material documents on record to the extent of its prima facie satisfaction about the existence of sufficient ground for proceedings against the accused and the Court cannot look into materials, the acceptability of which is essentially a matter for trial. Any document filed along with the petition labelled as evidence without being tested and proved, cannot be examined. The law does not prohibit entertaining the petition under Section 482 CrPC for quashing the charge-sheet even before the charges are framed or before the application of discharge is filed or even during the pendency of such application before the court concerned. The High Court cannot reject the application merely on the ground that the accused can argue legal and factual issues at the time of the framing of the charge. However, the inherent power of the Court should not be exercised to stifle the legitimate prosecution but can be exercised to save the accused from undergoing the agony of a criminal trial.”

10. Counsel for respondent No. 1 further placed reliance in the judgment of Hon'ble Supreme Court in the matter of **Tilly Gifford Vs. Michael Floyd Ishwar and other** [(2018) 11 SCC 205] wherein Hon'ble Supreme Court has observed in Para 3 as under:-

“**3.**Time and again, it has been emphasised by this Court that the power under Section 482 CrPC would not permit the High Court to go into disputed questions of fact or to appreciate the defence of the accused. The power to interdict a criminal proceeding at the stage of investigation is even more rare. Broadly speaking, a criminal investigation, unless tainted by clear mala fides, should not be foreclosed by a court of law.”

11. Counsel for the petitioner placed reliance in the judgment of Hon'ble Supreme Court in the matter of **Prashant Bharti Vs. State (NCT of Delhi)** [2013 (9) SCC 293], in which in para 17 Hon'ble Supreme

Court observed as under:-

“17. It is relevant to notice, that she had alleged, that she was induced into a physical relationship by Prashant Bharti, on the assurance that he would marry her. Obviously, an inducement for marriage is understandable if the same is made to an unmarried person. The judgment and decree dated 23-9-2008 reveals that the complainant/prosecutrix was married to Lalji Porwal on 14-6-2003. It also reveals that the aforesaid marriage subsisted till 23-9-2008, when the two divorced one another by mutual consent under Section 13-B of the Hindu Marriage Act. In her supplementary statement dated 21-2-2007, the complainant/prosecutrix accused Prashant Bharti of having had physical relations with her on 23-12-2006, 25-12-2006 and 1-1-2007 at his residence, on the basis of a false promise to marry her. It is apparent from irrefutable evidence, that during the dates under reference and for a period of more than one year and eight months thereafter, she had remained married to Lalji Porwal. 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 Lalji Porwal. Accordingly, there was no question of anyone being in a position to induce her into a physical relationship under an assurance of marriage. If the judgment and decree dated 23-9-2008 produced before us by the complainant/prosecutrix herself is taken into consideration along with the factual position depicted in the supplementary statement dated 21-2-2007, it would clearly emerge that the complainant/prosecutrix was in a relationship of adultery on 23-12-2006, 25-12-2006 and 1-1-2007 with the appellant-accused, while she was validly married to her previous husband Lalji Porwal. In the aforesaid view of the matter, we are satisfied that the assertion made by the complainant/prosecutrix, that she was induced to a physical relationship by Prashant Bharti, the appellant-accused, on the basis of a promise to marry her, stands irrefutably falsified.”

12. Counsel for the petitioner also placed reliance in the judgment of Hon'ble Kerla High Court dated 11.08.2016 in the matter of **Sideeque Vs. State of Kerala** [2016 SCC Online Ker 27100], Para 4 and 5 of the same are extracted herebelow:-

“4. Even from the complaint, it is clear that the de facto complainant was earlier married and two children were born in the matrimonial relationship. There is absolutely nothing on record to show that she had obtained a legal divorce from the husband. Essentially, the chance of maintaining a belief that she can then enter into a lawful marriage with another person was not available to her. This issue has been considered by the Honourable Supreme Court in *Prashant Bharti v. State of NCT of Delhi* ((2013) 9 SCC 293) as well as in *Panchu Ram v. State of Rajasthan* (2014 KHC 3166)”.

5..... in **Uday Vs. State of Karnatka** [(2003) 4 SCC 46] the

Supreme Court considered all the above legal proposition and ultimately held that except in a case wherein it is alleged and established that the time of very inception of relationship between two adult persons a false promise was made and thereby consent was obtained, it will fall within the scope of Section 19 there is absolutely nothing on record to show that the relationship between the parties was based on a misconception of fact. On a mere belief that the accused herein will marry her on a future date and physical relationship entered into therein can not amount to an offence under Section 376 IPC. In the light available materials, there is no scope for successful prosecution and hence I am inclined to quash the entire proceedings.

13. Counsel for the petitioner further placed reliance in the judgment of Hon'ble High Court of Himachal Pradesh in the matter of **Dushyant Kumar Vs. State of Himachal Pradesh and Anr.** [2016 SCC Online HP 4166], wherein Hon'ble High Court of Himachal Pradesh has observed in Paras 9, 10, 11 and 12 as under:-

“9. Admittedly, there were physical relations between the accused-petitioner and the complainant. Such relations on the face of the record available at this stage cannot be said to be forcible or against her will and without her consent and rather consensual as she was a consenting party to such relation with the accused-petitioner. A married woman having her husband alive and three children maintaining physical relation with a third person that too during the currency of her marriage, cannot be said to be heard of any complaint that she has been subjected to sexual intercourse without her consent and against her will.

10. Scientific investigation is not there because the prosecutrix did not opt for undergoing the medical examination. In such a situation, allowing the criminal proceedings to continue would amount to abuse of process of the court as is held by the Apex Court in *Prashant Bharti's case* cited supra. As a matter of fact in that case also the complaint was that the accused allured the prosecutrix, a married woman, to solemnize marriage with her and at that pretext subjected her to sexual intercourse. The Apex Court has held that in the case of an unmarried woman one can understand that she fell prey to the allurements so given to her by the accused. However, there is no question of a married woman to fall prey to any such allurements given to her knowing fully well that she was married and could have not solemnized the second marriage till subsistence of her first marriage. Similar were the facts of *Manoj Bajpai's case* supra.

11. In view of legal as well as factual aspect of the matter discussed hereinabove in the light of the arguments addressed on both sides, this court is satisfied that the evidence available at this stage even if taken as it is no findings of conviction under Section 376 of the Indian Penal Code can be recorded against the accused-petitioner. Allowing the criminal proceedings to continue would rather amount to abuse of the process of law, besides wastage of the precious court time which can be utilized to decide

the genuine cases pending in large number in the Court.

12. The petition is accordingly allowed. Consequently, FIR No. 48 of 2015 registered against the accused-petitioner in Police Station, Chintpurni District Una is quashed and further proceedings pending in the Court of learned Additional Sessions Judge-II, Una shall also stand quashed. The petition is accordingly disposed of.”

14. Counsel for the petitioner placed also reliance in the judgment of Hon'ble High Court of Delhi in the matter of **Mohit Nagar Vs. State and Another** (2017 SCC Online DEL 7616) wherein it has been observed in para 10 and 11 that:-

“**10.** On the facts noted above which are not disputed by the respondent No. 2 it is evident that:

“i) As per statement under Section 164 Cr.P.C. of the respondent No. 2 recorded, her education qualification is MBA and she is doing the job of Government liaison. She has a daughter aged 8 years old.

ii) The allegations in FIR No. 135/2016 registered at PS Greater Kailash-I against the petitioner relate to the period end of December 2015 to 4th April, 2016.

iii) Respondent No. 2 had lodged FIR No. 208/2015 against one Naveen on 11th February, 2015. After registration of FIR No. 208/2015 against Naveen she married him on 14th February, 2015 and last resided with him on 20th February, 2015.

iv) The statement for first motion for grant of divorce by mutual consent and the order thereon was passed by the Principal Judge, Family Courts, South, Saket on 9th March, 2016 wherein in the statement of respondent No. 2 there is an admission of marriage subsisting. Thus from end of December, 2015 till 4th April, 2016 even as per the respondent No. 2 she had a valid subsisting marriage with Naveen.

v) Once as per the own showing respondent No. 2 was having a subsisting marriage with Naveen at the time of alleged offence, she cannot claim that she was forced into sexual relationship on the pretext of marrying and her allegation stands falsified.

vi) In the statement recorded under Section 164 Cr.P.C. of the respondent No. 2, the respondent No. 2 categorically stated “I do not want to pursue with the case because the misunderstanding with the accused had been sorted out and we are going to get married very soon”.

vii) This statement of respondent No. 2 was not recorded by the learned MM on 7th April, 2016 and recorded on 8th April, 2016 giving the respondent No. 2 sufficient time to reflect and after assuring that she was under no pressure or threat.

viii) Allegations in respect of offence punishable under

Section 506 IPC are vague and general in nature.”

11. The stand of respondent No. 2 in the present petition is that after grant of bail, the petitioner refused to marry her. This cannot be ground to reject the petition filed by the petitioner if on undisputed facts and material collected during investigation, no case is made out against the petitioner to proceed further in the charge-sheet filed. Applying the test laid down by the Supreme Court in **Rajiv Thapar** [(2013) 3 SCC 330] it is a fit case where the FIR and the proceedings pursuant thereto are liable to be quashed to prevent the misuse of the criminal justice system and also to prevent the abuse of the process of the Court.”

15. Counsel for the petitioner further placed reliance in the judgment of Hon'ble High Court of Delhi in the matter of **Mohit Narula Vs. State of NCT of Delhi and Another** (2018 SCC Online DEL 8764) wherein Hon'ble Delhi High Court observed in Para 13 as under:-

“**13.** In view of the admitted situation in the FIR and the supplementary statement of the complainant recorded during the course of the investigation that the complainant had not legally divorced from her husband, this Court finds that during the subsistence of the earlier marriage there could be no promise of marriage to the respondent No. 2 and her allegations that fraud was played on her for receiving consent for sex cannot be substantiated.”

16. In the matter of **Dr. Dhruvram Murlidhar Sonar -v- State of MH and another** [(2018 SCC Online 3100)] Hon'ble Supreme Court observed in para 23 as under :-

“**23.** Thus, there is a clear distinction between rape and consensual sex. The court, in such cases, must very carefully examine whether the complainant had actually wanted to marry the victim or had mala fide motives and had made a false promise to this effect only to satisfy his lust, as the later falls within the ambit of cheating or deception. There is also a distinction between mere breach of a promise and not fulfilling a false promise. If the accused has not made the promise with the sole intention to seduce the prosecutrix to indulge in sexual acts, such an act would not amount to rape. There may be a case where the prosecutrix agrees to have sexual intercourse on account of her love and passion for the accused and not solely on account of the misconception created by accused, or where an accused, on account of circumstances which he could not have foreseen or which were beyond his control, was unable to marry her despite having every intention to do. Such cases must be treated differently. If the complainant had any mala fide intention and if he had clandestine motives, it is a clear case of rape. The acknowledged consensual physical relationship between the parties would not constitute an offence under Section 376 of the IPC.”

17. In the matter of **Anurag Soni -v- state of CG** [Cr. A. No. 629/2019]

decision dated 9-4-2019 [2019 SCC Online SC 509], Hon'ble Supreme Court observed in para 37 as under :-

“37. The sum and substance of the aforesaid decisions would be that if it is established and proved that from the inception the accused who gave the promise to the prosecutrix to marry, did not have any intention to marry and the prosecutrix gave the consent for sexual intercourse on such an assurance by the accused that he would marry her, such a consent can be said to be a consent obtained on a misconception of fact as per Section 90 of the IPC and, in such a case, such a consent would not excuse the offender and such an offender can be said to have committed the rape as defined under Section 375 of the IPC and can be convicted for the offence under Section 376 of the IPC.”

18. In the matter of **State of Haryana and others -v- Choudhary Bhajan Lal and others** reported in AIR 1992 SC 604, Hon'ble Supreme Court has observed in para 108 as under:-

“108. we give the following categories of cases by way of illustration wherein such power could be exercised either to prevent abuse of the process of any court or otherwise to secure the ends of justice, though it may not be possible to lay down any precise, clearly defined and sufficiently channelised and inflexible guidelines or rigid formulae and to give an exhaustive list of myriad kinds of cases wherein such power should be exercised.

(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 FIR 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 FIR 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.”

19. In the matter of **R.P. Kapur -v- State of Punjab** reported in AIR 1960 SC 866, in para 6, the Full Bench of Hon'ble Supreme Court has observed as under :-

“The inherent power of the High Court under Section 561-A of the Code cannot be exercised in regard to matters specifically covered by the other provisions of the Code. The inherent jurisdiction of the High Court can be exercised to quash proceedings in a proper case either to prevent the abuse of the process of any court or otherwise to secure the ends of justice. Ordinarily criminal proceedings instituted against an accused person must be tried under the provisions of the Code, and the High Court would be reluctant to interfere with the said proceedings at an interlocutory stage. It is not possible, desirable or expedient to lay down any inflexible rule which would govern the exercise of this inherent jurisdiction.

Some of the categories of cases where the inherent jurisdiction to quash proceedings can and should be exercised are :-

(i) Where it manifestly appears that there is a legal bar against the institution or continuance of the said proceeding in respect of the offence alleged. Absence of the requisite sanction may, for instance, furnish cases under this category.

(ii) Where the allegations in the first information report or the complaint, even if they are taken at their face value and accepted in their entirety, do not constitute the offence alleged; in such cases no question of appreciating evidence arises; it is a matter merely of looking at the complaint or the first information report to decide whether the offence alleged is disclosed or not.

(iii) Where the allegations made against the accused person do constitute offence alleged but there is either no legal evidence adduced in support of the case or evidence adduced clearly or manifestly fails to prove the charge. In dealing with this class of cases it is important to bear in mind the distinction between a case where there is no legal evidence or where there is evidence which is manifestly and clearly inconsistent with the accusation made and cases where there is legal evidence which on its appreciation may or may not support the accusation in question. In exercising its jurisdiction under Section 561-A the High Court would not embark upon an enquiry as to whether the evidence in question is reliable or not. That is the function of the trial Magistrate, and ordinarily it would not be open to any party to invoke the High Court's inherent jurisdiction and contend that on a reasonable appreciation of the evidence the accusation made against the accused would not be sustained.”

20. In **Parbatbhai Aahir v. State of Gujarat**, [(2017) 9 SCC 641], again the Hon'ble Supreme Court has had an occasion to consider whether the High Court can quash the FIR/complaint/criminal proceedings, in exercise of the inherent jurisdiction under Section 482 CrPC. Considering a catena of decisions on the point, the Hon'ble Supreme Court summarised the following propositions:

“(1) Section 482 CrPC preserves the inherent powers of the High Court to prevent an abuse of the process of any court or to secure the ends of justice. The provision does not confer new powers. It only recognises and preserves powers which inhere in the High Court.

(2) xxx xxx xxx

(3) In forming an opinion whether a criminal proceeding or complaint should be quashed in exercise of its jurisdiction under Section 482, the High Court must evaluate whether the ends of justice would justify the exercise of the inherent power.

(4) While the inherent power of the High Court has a wide ambit and plenitude it has to be exercised (i) to secure the ends of justice, or (ii) to prevent an abuse of the process of any court.

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(6) xxx xxx xxx

(7) xxx xxx xxx

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(9) xxx xxx xxx

(10) xxx xxx xxx

21. In the matter of **Narinder Singh v. State of Punjab** [(2014) 6 SCC 466], after considering the decision in **Gian Singh v. State of Punjab**, [(2012) 10 SCC 303], in para 29.1, Their Lordships summed up as under:

“29.1. Power conferred under Section 482 of the Code is to be distinguished from the power which lies in the Court to compound the offences under Section 320 of the Code. No doubt, under Section 482 of the Code, the High Court has inherent power to quash the criminal proceedings even in those cases which are not compoundable, where the parties have settled the matter between themselves. However, this power is to be exercised **sparingly and with caution.**”

22. In the matter of **State of UP v. Golkonda Linga Swamy** [(2004) 6 SCC 522] Hon'ble Supreme Court observed that while exercising the power under Section 482 of Cr.P.C. the court does not function as a court of appeal or revision.....

23. From the aforesaid judicial precedents laid down by the Hon'ble Supreme Court, Hon'ble High Court of HP, Hon'ble Kerala High Court, Hon'ble High Court of Delhi, following legal propositions emerge:-

- i. Inherent powers enumerated in section 482, CrPC can be exercised by the High Court to give effect to an order under Cr.P.C. to prevent abuse of process of Court and to otherwise secure the ends of justice;
- ii. Inherent power under Section 482, Cr.P.C. is to be exercised sparingly and with caution;
- iii. The High Court cannot appreciate the evidence as it can only evaluate material document on record to the extent of its prima facie satisfaction about the existence of sufficient grounds for proceedings against the accused;
- iv. The Court cannot look into material, acceptability of which is essentially a matter for trial;
- v. Power under Section 482 Cr.P.C. does not permit the High Court to go into disputed questions of fact or to appreciate the defence of the accused;
- vi. While exercising the power under Section 482, Cr.P.C. Court does not function as a court of appeal or revision;
- vii. If a consent is given by the prosecutrix under fear of injury, it would be hit by Section 90 of IPC and treated as 'not free consent';
- viii. In a case of rape under clause (a), (b), (c), (d), (e), (f), (g), (h), (l), (j), (k), (l), (m), (n) of sub-section (2) of Section 376 of IPC where sexual intercourse is committed by the accused and prosecutrix states in her evidence before the Court that she did not consent, the Court shall presume that she did not consent;
- ix. If accused had malafide or clandestine motive, he had sole intention to seduce the prosecutrix to indulge in sexual act, gives her promise to marry and commits sexual intercourse with her, but actually from inception his intention was not to marry her, object was to satisfy his lust, in these circumstances, such consent given by the prosecutrix would be deemed to have been given under misconception as provided under Section 90 of IPC. Therefore,

such promise would amount to false promise. Hence the act of the accused would fall in the category of offence of rape punishable under Section 376, IPC;

- x. When the accused having an honest intention promises to prosecutrix to marry her and thereafter physical relationship is developed between them and due to some unavoidable circumstances beyond his control which he could not have foreseen, he was unable to marry her, then it cannot not be said that consent given by her falls in the ambit of misconception and such promise would not be false promise. Hence, It would be a case of breach of promise. Hence, no offence would be made out punishable under Section 376 IPC;
- xi. In the case where accused promises to prosecutrix that he will marry her and she succumbs to his entreaties to have sexual relation with him knowingly that they belong to different castes and on account of it she knew that the marriage is not possible between them, in these circumstances, her consent cannot be said to have been given under misconception. Hence, it cannot be inferred that accused had given false promise to her. Therefore, the case would not be punishable under Section 376, IPC.
- xii. In a case where the prosecutrix agrees to have sexual intercourse on account of her love and passion for the accused and not solely on account of misrepresentation made to her by the accused, in these circumstances, it cannot not be said that consent given by the prosecutrix is the result of misconception. Hence, in such case it would not be deemed that accused had made false promise. Therefore, it would not come in the scope of section 376 of the IPC;
- xiii. Where the marriage of prosecutrix was subsisting, it was not dissolved legally and accused commits sexual intercourse with her on pretext of marriage, then such promise *per se* would not be false promise and Section 376 would not attract;
- xiv. Where the allegations made in the first information report or the complaint, and other materials accompanying the FIR or complaint *prima facie* disclose a cognizable offence or make out a case

against the accused, powers under Section 482 Cr.P.C. should not be exercised;

- xv. Where there is no bar to the institution and continuance of the proceedings, powers under Section 482 Cr.P.C. should not be exercised;
- xvi. Where a criminal proceeding is not manifestly attended with malafide with an ulterior motive for wreaking vengeance on the accused and with a view to spite him due to private and personal grudge, powers under Section 482 Cr.P.C. should not be exercised.

24. Looking to the aforesaid judicial precedent laid down by Hon'ble Supreme Court in the matter of **Tilly Gifford** (supra), this Court finds that aforesaid defence of petitioner cannot not be considered at this stage.

25. In the case in hand as per statement of prosecutrix recorded under Section 164 Cr.P.C. since 2015 to 2017 petitioner had repeatedly committed sexual intercourse with her on account of threatening to kill her husband and children. After year 2017 he repeatedly committed sexual intercourse with her on promise to marry her and saying she would obtain the divorce from her husband, pursuant to it she had filed the divorce petition in the Court of Principal Judge, Janjgir District Janjgir Champa.

26. The consent given by the prosecutrix during 2015 to 2017 prima facie was not free consent because it was given under fear.

27. In the case in hand, the marriage of the petitioner was not dissolved legally. During subsisting it, petitioner after the 2017 onwards prima facie committed sexual intercourse with her saying that he will marry her, asked her to obtain divorce from her husband pursuant to it she filed the said divorce petition. Hence, in these circumstances and aforesaid observation made by Hon'ble Supreme Court in the matter of **Prashant Bharti** (supra), by Hon'ble High Court of HP in the matter of **Dushyant Kumar** (supra), by Hon'ble High Court of Kerala in the matter of **Sideeque** (supra), by Hon'ble High Court of Delhi in the matters of **Mohit Nagr** (supra) and **Mohit Narula** (supra), it cannot not be said that consent given by prosecutrix after year 2017 was on account of

promise to marry made by him. Therefore, it cannot be said that after 2017 he had given false promise to her. Therefore, the intercourse committed by the petitioner after 2017 with her, does not amount to rape punishable under Section 376, IPC.

28. Looking to the above mentioned facts and circumstances prima facie it appears that a case under Section 376 IPC, which is cognizable offence, is made out against the petitioner for the act of sexual intercourse prima facie committed during the period 2015 to 2017 but no prima facie case is made out against him for the act of sexual intercourse committed after 2017 onwards.

29. It does not appear that there is an express legal bar to the institution and continuance of the proceedings against the petitioner for the act of sexual intercourse prima facie committed during the period 2015 to 2017. Prima facie it does not appear that criminal proceeding has been instituted with mala fide intention or ulterior motive for wreaking vengeance on the petitioner and with a view to spite him due to private and personal grudge for the act of sexual intercourse prima facie committed during the period 2015 to 2017.

30. Thus, aforesaid judicial precedents laid down by the Hon'ble Supreme Court in the matter of **Choudhary Bhajan Lal** (Supra) and **R.K. Kapoor** (Supra), are applicable against petitioner for the act of sexual intercourse prima facie committed during the period 2015 to 2017.

31. In the case in hand, it appears that there is no abuse of process of law in the proceedings and no intervention is necessary to secure ends of justice for the act of sexual intercourse prima facie committed during the period 2015 to 2017. Thus, looking to the aforesaid judicial precedent laid down by Hon'ble Supreme Court in the matter of **Parbatbhai Aahir** (supra), this Court finds that on the ground of abuse of process and to secure ends of justice, this Court can not intervene in the proceedings for the act of sexual intercourse prima facie committed during the period 2015 to 2017.

32. Looking to the above mentioned facts and circumstances of the case, looking to the aforesaid judicial precedent laid-down by Hon'ble Supreme Court in the matter of **Narinder Singh** (supra) this Court finds that it is not a fit case where the extra ordinary jurisdiction of Section 482,

Cr.P.C. be invoked which is invoked sparingly with care and circumspection for the act of sexual intercourse prima facie committed during the period 2015 to 2017.

33. Consequently, the instant Cr.M.P. is partly allowed. The FIR, charge sheet and charges framed against the petitioner for the alleged act of sexual intercourse prima facie committed during the period 2015 to 2017 are not quashed. But, the FIR, the charge sheet and charges framed against the petitioner for the alleged act of sexual intercourse prima facie committed during the period 2017 onwards, pending before the Special Judge (Atrocity), Distt. Janjgir Champa, in Special Case No. 02/2019 are quashed.

34. In view of above, I.A. No. 1 and I.A. No. 3 stand disposed of.

Sd/-
(Sharad Kumar Gupta)
Judge