

AFR**HIGH COURT OF CHHATTISGARH, BILASPUR****Reserved on 2-7-2019****Delivered on 3-7-2019****CRMP No. 1544 of 2018**

Omprakash Chandra S/o Shri Ayodhya Prasad Chandra Aged
About 28 Years R/o- Village Jaijaipur, District- Janjgir-Champa,
CG

---- Petitioner**Versus**

1. State of Chhattisgarh Through- The Superintendent of Police,
District- Korba, Chhattisgarh
2. The Station House Officer Police Station Balco, District- Korba,
Chhattisgarh
3. Kavita Chandra W/o Shri Omprakash Chandra Aged About 22
Years R/o- Jaijaipur, District- Janjgir-Champa, Chhattisgarh

---- Respondents

For petitioner	:	Ms. Shivali Dubey, Adv.
For State/ R 1 & 2	:	Mr. Vikram Dixit, Govt. Adv.
For R-3	:	Mr. Prateek Kumar Singh, Adv.

Hon'ble Shri Sharad Kumar Gupta, Judge**CAV ORDER**

1. Petitioner has preferred this CRMP under Section 482 of the Code of Criminal Procedure (in brevity Cr.P.C.) for quashing the FIR No. 0113 dated 15.03.2018 registered at PS Balco against him for the offences punishable under Sections 376 and 417 of the IPC.

2. In brief petitioner's case is that respondent No. 2 had lodged aforesaid FIR alleging that he had committed repeatedly sexual intercourse with her on pretext of marriage during 01-02-2016 to 30-11-2017. Now the dispute has been amicably settled between them. He has performed marriage with her on 6-7-2018 in Arya Samaj, ITI,

Rampur, Korba (C.G.). Now, they are living as husband and wife. At the time of lodging FIR she was 20 years old. He should not be compelled to undergo the rigormole investigation conducted by police. She was consenting party in the intercourses. Chances of ultimate conviction are bleak and weak.

3. Counsel for the petitioner submitted that the matter has been materialised. All the grievances have been met out. No useful purpose would be sub-served if criminal prosecution is permitted to continue. Thus, in the interest of justice the impugned FIR may be quashed.

4. The Government Advocate submitted that prosecution would be futile exercise.

5. Counsel for respondent No. 3 supported the version of petitioner.

6. 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.

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

“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.”

8. The counsel for the petitioner placed reliance in the matter of

Uday -v- State of Karnataka [(2003) 4 SCC 46)] wherein prosecutrix was deeply in love with petitioner. He committed sexual intercourse with her on a promise that he would marry her on a later date. Para 21 and 23 of the judgment are reproduced below :-

“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 straitjacket 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.

23. Keeping in view the approach that the court must adopt in such cases, we shall now proceed to consider the evidence on record. In the instant case, the prosecutrix was a grown-up girl studying in a college. She was deeply in love with the appellant. She was, however, aware of the fact that since they belonged to different castes, marriage was not possible. In any event the proposal for their marriage was bound to be seriously opposed by their family members. She admits having told so to the appellant when he proposed to her the first time. She had sufficient intelligence to understand the significance and moral quality of the act she was consenting to. That is why she kept it a secret as long as she could. Despite this, she did not resist the overtures of the appellant, and in fact succumbed to them. She thus freely exercised a choice between resistance and assent. She must have known the consequences of the act, particularly when she was conscious of the fact that their marriage may not take place at all on account of caste considerations. All these circumstances lead us to the conclusion that she freely, voluntarily and consciously consented to having sexual intercourse with the appellant, and her consent was not in consequence of any misconception of fact.”

9. The counsel for the petitioner placed reliance in the matter of

Deelip Singh alias Dilip Kumar -v- State of Bihar [2005(1) SCC 88].

In this case the prosecutrix had lodged a complaint in the police station

alleging that she and petitioner fell in love with each other. He forcibly raped her and later on consoled her by saying that he would marry her. She succumbed to the entreaties of him to have sexual relation with him on account of the promise made by him to marry her. In the case it was held thus :-

“The remaining question is whether on the basis of the evidence on record, it is reasonably possible to hold that the accused with the fraudulent intention of inducing her to sexual intercourse, made a false promise to marry. We have no doubt that the accused did hold out the promise to marry her and that was the predominant reason for the victim girl to agree to the sexual intimacy with him. PW 12 was also too keen to marry him as she said so specifically. But we find no evidence which gives rise to an inference beyond reasonable doubt that the accused had no intention to marry her at all from the inception and that the promise he made was false to his knowledge. No circumstances emerging from the prosecution evidence establish this fact. On the other hand, the statement of PW 12 that “later on”, the accused became ready to marry her but his father and others took him away from the village would indicate that the accused might have been prompted by a genuine intention to marry which did not materialise on account of the pressure exerted by his family elders. It seems to be a case of breach of promise to marry rather than a case of false promise to marry. On this aspect also, the observations of this Court in Uday case at para 24 come to the aid of the appellant”.

10. Counsel for the petitioner placed reliance in **Deepak Gulati v- State of Haryana** [(2013) 7 SCC 675]. In this case the petitioner had given the assurance to the prosecutrix that he would get married to her. Prosecutrix therefore left her home voluntarily and of her own free will went with the petitioner to get married with him. Thereafter they indulged in sexual intercourse. Hon'ble Supreme Court held that “ the physical relationship between the parties had clearly developed with the consent of the prosecutrix as there was neither a case of any resistance nor had she raised any complaint anywhere at any time, despite the fact that she had been living with the accused for several days and had travelled with him from one place to another. The Court further held that it is not possible to apprehend the circumstances in which a charge of

deceit/ rape can be leveled against the accused.”

11. Counsel for the petitioner placed reliance in **Dr. Dhruvaram Muralidhar Sonar -v- State of Maharashtra and others (2018 SCC Online 3100)**. In this case the petitioner was serving as Medical officer in the PHC and prosecutrix was working as an Assistant Nurse in the same PHC. He told her that he has differences with his wife. He and she belonged to different communities. She had fallen in love with him and she needed a companion as she was widow. They started residing together. Their Lordships of Hon'ble Supreme Court held that “We are of the view that, even if the allegations made in the complaint are taken at their face value and accepted in their entirety, they do not make out a case against the appellant. We are also of the view that since complainant has failed to prima facie show the commission of rape, the complaint registered under Section 376(2)(b) cannot be sustained”.

12. In **Gian Singh v. State of Punjab**, [(2012) 10 SCC 303] in para 61, Hon'ble Supreme Court has observed and held as under:

“61. The position that emerges from the above discussion can be summarised thus: the power of the High Court in quashing a criminal proceeding or FIR or complaint in exercise of its inherent jurisdiction is distinct and different from the power given to a criminal court for compounding the offences under Section 320 of the Code. Inherent power is of wide plenitude with no statutory limitation but it has to be exercised in accord with the guideline engrafted in such power viz.: (i) to secure the ends of justice, or (ii) to prevent abuse of the process of any court. In what cases power to quash the criminal proceeding or complaint or FIR may be exercised where the offender and the victim have settled their dispute would depend on the facts and circumstances of each case and no category can be prescribed. However, before exercise of such power, the High Court must have due regard to the nature and gravity of the crime. Heinous and serious offences of mental depravity or offences like murder, rape, dacoity, etc. cannot be fittingly quashed even though the victim or victim's family and the offender have settled the dispute. Such offences are not private in nature and have a serious impact on society. Similarly, any compromise between the victim and the offender in relation to the offences under special statutes like the Prevention of Corruption Act or the offences committed by public servants

while working in that capacity, etc. cannot provide for any basis for quashing criminal proceedings involving such offences. But the criminal cases having overwhelmingly and predominatingly civil flavour stand on a different footing for the purposes of quashing, particularly the offences arising from commercial, financial, mercantile, civil, partnership or such like transactions or the offences arising out of matrimony relating to dowry, etc. or the family disputes where the wrong is basically private or personal in nature and the parties have resolved their entire dispute. In this category of cases, the High Court may quash the criminal proceedings if in its view, because of the compromise between the offender and the victim, the possibility of conviction is remote and bleak and continuation of the criminal case would put the accused to great oppression and prejudice and extreme injustice would be caused to him by not quashing the criminal case despite full and complete settlement and compromise with the victim. In other words, the High Court must consider whether it would be unfair or contrary to the interest of justice to continue with the criminal proceeding or continuation of the criminal proceeding would tantamount to abuse of process of law despite settlement and compromise between the victim and the wrongdoer and whether to secure the ends of justice, it is appropriate that the criminal case is put to an end and if the answer to the above question(s) is in the affirmative, the High Court shall be well within its jurisdiction to quash the criminal proceeding.”

13. In **Narinder Singh v. State of Punjab** [(2014) 6 SCC 466], after considering the decision in **Gian Singh v. State of Punjab**, (supra), in para 29, Their Lordships summed up as under:

“29. In view of the aforesaid discussion, we sum up and lay down the following principles by which the High Court would be guided in giving adequate treatment to the settlement between the parties and exercising its power under Section 482 of the Code while accepting the settlement and quashing the proceedings or refusing to accept the settlement with direction to continue with the criminal proceedings:

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.

29.2. When the parties have reached the settlement and on that basis petition for quashing the criminal proceedings is filed, the guiding factor in such cases would be to secure:

(i) ends of justice, or

(ii) to prevent abuse of the process of any court.

While exercising the power the High Court is to form an opinion on either of the aforesaid two objectives.

29.3. Such a power is not to be exercised in those prosecutions which involve heinous and serious offences of mental depravity or offences like murder, rape, dacoity, etc. Such offences are not private in nature and have a serious impact on society. Similarly, for the offences alleged to have been committed under special statute like the Prevention of Corruption Act or the offences committed by public servants while working in that capacity are not to be quashed merely on the basis of compromise between the victim and the offender.

29.4. On the other hand, those criminal cases having overwhelmingly and predominantly civil character, particularly those arising out of commercial transactions or arising out of matrimonial relationship or family disputes should be quashed when the parties have resolved their entire disputes among themselves.

29.5. While exercising its powers, the High Court is to examine as to whether the possibility of conviction is remote and bleak and continuation of criminal cases would put the accused to great oppression and prejudice and extreme injustice would be caused to him by not quashing the criminal cases.

29.6. Offences under Section 307 IPC would fall in the category of heinous and serious offences and therefore are to be generally treated as crime against the society and not against the individual alone. However, the High Court would not rest its decision merely because there is a mention of Section 307 IPC in the FIR or the charge is framed under this provision. It would be open to the High Court to examine as to whether incorporation of Section 307 IPC is there for the sake of it or the prosecution has collected sufficient evidence, which if proved, would lead to proving the charge under Section 307 IPC. For this purpose, it would be open to the High Court to go by the nature of injury sustained, whether such injury is inflicted on the vital/delicate parts of the body, nature of weapons used, etc. Medical report in respect of injuries suffered by the victim can generally be the guiding factor. On the basis of this prima facie analysis, the High Court can examine as to whether there is a strong possibility of conviction or the chances of conviction are remote and bleak. In the former case it can refuse to accept the settlement and quash the criminal proceedings whereas in the latter case it would be permissible for the High Court to accept the plea compounding the offence based on complete settlement between the parties. At this stage, the Court can also be swayed by the fact that the settlement between the parties is going to result in harmony between them which may improve their future relationship.

29.7. While deciding whether to exercise its power under Section 482 of the Code or not, timings of settlement play a crucial role. Those cases where the settlement is arrived at immediately after the alleged commission of offence and the matter is still under investigation, the High Court may be liberal in accepting the settlement to quash the criminal proceedings/investigation. It is

because of the reason that at this stage the investigation is still on and even the charge-sheet has not been filed. Likewise, those cases where the charge is framed but the evidence is yet to start or the evidence is still at infancy stage, the High Court can show benevolence in exercising its powers favourably, but after prima facie assessment of the circumstances/material mentioned above. On the other hand, where the prosecution evidence is almost complete or after the conclusion of the evidence the matter is at the stage of argument, normally the High Court should refrain from exercising its power under Section 482 of the Code, as in such cases the trial court would be in a position to decide the case finally on merits and to come to a conclusion as to whether the offence under Section 307 IPC is committed or not. Similarly, in those cases where the conviction is already recorded by the trial court and the matter is at the appellate stage before the High Court, mere compromise between the parties would not be a ground to accept the same resulting in acquittal of the offender who has already been convicted by the trial court. Here charge is proved under Section 307 IPC and conviction is already recorded of a heinous crime and, therefore, there is no question of sparing a convict found guilty of such a crime.”

14. In **Parbatbhai Aahir v. State of Gujarat**, [(2017) 9 SCC 641], again Their Lordships have 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 of this Court on the point, this 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) The invocation of the jurisdiction of the High Court to quash a first information report or a criminal proceeding on the ground that a settlement has been arrived at between the offender and the victim is not the same as the invocation of jurisdiction for the purpose of compounding an offence. While compounding an offence, the power of the court is governed by the provisions of Section 320 CrPC. The power to quash under Section 482 is attracted even if the offence is non-compoundable.

(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.

(5) The decision as to whether a complaint or first information report should be quashed on the ground that the offender and victim have settled the dispute, revolves ultimately on the facts and circumstances of each case and no exhaustive elaboration of principles can be formulated.

(6) In the exercise of the power under Section 482 and while dealing with a plea that the dispute has been settled, the High Court must have due regard to the nature and gravity of the offence. Heinous and serious offences involving mental depravity or offences such as murder, rape and dacoity cannot appropriately be quashed though the victim or the family of the victim have settled the dispute. Such offences are, truly speaking, not private in nature but have a serious impact upon society. The decision to continue with the trial in such cases is founded on the overriding element of public interest in punishing persons for serious offences.

(7) As distinguished from serious offences, there may be criminal cases which have an overwhelming or predominant element of a civil dispute. They stand on a distinct footing insofar as the exercise of the inherent power to quash is concerned.

(8) Criminal cases involving offences which arise from commercial, financial, mercantile, partnership or similar transactions with an essentially civil flavour may in appropriate situations fall for quashing where parties have settled the dispute.

(9) In such a case, the High Court may quash the criminal proceeding if in view of the compromise between the disputants, the possibility of a conviction is remote and the continuation of a criminal proceeding would cause oppression and prejudice; and

(10) There is yet an exception to the principle set out in Propositions (8) and (9) above. Economic offences involving the financial and economic well-being of the State have implications which lie beyond the domain of a mere dispute between private disputants. The High Court would be justified in declining to quash where the offender is involved in an activity akin to a financial or economic fraud or misdemeanour. The consequences of the act complained of upon the financial or economic system will weigh in the balance.”

15. In the matter of **State of Madhya Pradesh vs. Dhruv Gurjar and Another** [AIR 2019 SC 1106] Hon'ble Supreme Court held in para 16.1, which reads as under:-

“**16.1** However, the High Court has not at all considered the fact that the offences alleged were non-compoundable offences as per Section 320 CrPC. From the impugned judgments and orders, it appears that the High Court has not at all considered the relevant facts and circumstances of the case, more

particularly the seriousness of the offences and its social impact. From the impugned judgments and orders passed by the High Court, it appears that the High Court has mechanically quashed the respective FIRs, in exercise of its powers under Section 482 CrPC. The High Court has not at all considered the distinction between a personal or private wrong and a social wrong and the social impact. As observed by this Court in *State of Maharashtra v. Vikram Anantrao Doshi* [*State of Maharashtra v. Vikram Anantrao Doshi*, [(2014) 15 SCC 29] , the Court's principal duty, while exercising the powers under Section 482 CrPC to quash the criminal proceedings, should be to scan the entire facts to find out the thrust of the allegations and the crux of the settlement. As observed, it is the experience of the Judge that comes to his aid and the said experience should be used with care, caution, circumspection and courageous prudence. In the case at hand, the High Court has not at all taken pains to scrutinise the entire conspectus of facts in proper perspective and has quashed the criminal proceedings mechanically. Even, the quashing of the respective FIRs by the High Court in the present cases for the offences under Sections 307, 294 and 34 IPC and Section 394 IPC, Sections 11/13 of the M.P.D.V.P.K. Act and Sections 25/27 of the Arms Act respectively, and that too in exercise of powers under Section 482 CrPC is just contrary to the law laid down by this Court in a catena of decisions.”

16. In the case in hand, FIR transpires that petitioner had come in her house to see her for marriage. Thereafter they became facebook friend. He had committed repeatedly sexual intercourse on pretext of marriage thereafter he refused to marry her.

17. In the case in hand, respondent No 3 was not in a deep love with petitioner. There is no such situation that petitioner and respondent No. 3 were belonging to different castes and marriage was not possible. She had not left her matrimonial home voluntarily and of her own free will to go with the accused to get married to him. She had not lived with him for several days.

18. In the case in hand prima facie it appears that petitioner had made false promise with her with the sole intention to seduce her to indulge in sexual acts. Prima facie it does not appear that she was agreed for sexual intercourse on account of her love and passion for him. Prima facie it appears that from the initial stage the intention of the

petitioner was not to marry her. Prima facie it appears that sexual relationship was on account of the misconception created by him.

19. Looking to the above mentioned facts and circumstances this Court finds that prima facie an offence under Section 376 of the IPC is constituted. Thus, petitioner does not get any help from the aforesaid judicial precedents laid down by Hon'ble Supreme Court in the matter of **Uday (supra), Deelip Singh alias Deelip Kumar (supra), Deepak Gulati (supra), and Dr. Dhruvaram Muralidhar Sonar (supra)**.

20. Looking to the aforesaid judicial precedents laid down by Hon'ble Supreme Court in the matters of **Gian Singh (supra), Narendra Singh (supra), Parbatbhai Aahir (supra)** and **Dhruv Gurjar (supra)**, this Court finds that the offence punishable under Section 376, IPC is a serious and heinous offence involving mental depravity, is not private in nature but have a serious impact on society. Mere this fact that after lodging the FIR petitioner and respondent No.3 performed the marriage and living as husband and wife, does not dilute this settled legal position. Thus, this Court cannot quash the impugned FIR exercising the power vested in this court under Section 482, Cr.P.C. Impugned FIR clearly discloses cognizable offences thus, looking to the aforesaid judicial precedent laid down by Hon'ble Supreme Court in the matter of **Choudhari Bhajan Lal (supra)** and **R.P. Kapoor (Supra)**, impugned FIR cannot be thrown down.

21. In the matter **B.S. Joshi v. State of Haryana** [2003 (4) SCC 675] Hon'ble Supreme Court has laid down following judicial precedent:-

“Inherent power must be utilised with sole purpose of preventing abuse of process of Court or to otherwise serve end of justice.”

22. Prima facie it does not appear that there is a abuse of process or intervention is necessary to secure end of justice. Thus, aforesaid

judicial precedent laid down by Hon'ble Supreme Court in the matter **B.S. Joshi** (Supra) is applicable against the petitioner.

23. Looking to the above mentioned facts and circumstances of the case, this Court finds that it is not the fit case where the extra ordinary jurisdiction of Section 482, Cr.P.C. be invoked which is invoked sparingly with care and circumspection. Consequently, the instant CRMP is dismissed at motion stage without entertaining it for final hearing.

Sd/-
(Sharad Kumar Gupta)
Judge