

AFRHIGH COURT OF CHHATTISGARH, BILASPURReserved on 28.06.2021Pronounced on 26.07.2021CRMP No. 1220 of 2020

- Rajiv Kumar Sahu S/o A.R. Sahu Aged About 50 Years R/o D-3 Triveni Vihar, Behind Ramkrishna Hospital, Lalpur Raipur Chhattisgarh.

---- Applicant

Versus

1. The State Of Chhattisgarh Through Station House Officer Of Police Station Chakardhar Nagar Raigarh Chhattisgarh.
2. X (Identity Of Prosecutrix Is Filed Separately In Sealed. As Per Order Dated 05-03-2021.)

---- Non-applicants

For Applicant	: Shri Shivang Dubey, Advocate
For State	: Shri Gurudev I. Sharan, Government Advocate
For Non-applicant No.2	: Shri Prabhat Saxena, Advocate

Hon'ble Shri Justice Narendra Kumar VyasC.A.V. ORDER

1. The applicant has filed the present Cr.M.P. under Section 482 Cr.P.C. for quashing of FIR No. 0068/2020 registered at police station Chakradhar Nagar, Raigarh and subsequent filing of the final report by the State for committing offence under Section 376 IPC.
2. The brief facts, as projected by the applicant in the petition, are that Prosecutrix- Non-applicant No.2 has filed a complaint on 12.1.2020 before the police station Chakradhar Nagar, Raigarh alleging that applicant committed sexual intercourse with her from year 2008 to 2019 on the pretext of marriage. According to prosecutrix, she is legally wedded wife of Shanbhoo Sarkar, resident of Nehru Nagar, Bilaspur. She met with the present applicant while working with an NGO in the month of June, 2008 at Bilaspur. Prosecutrix and present applicant developed cordial relationship and started living together. It has been alleged that the applicant has convinced Prosecutrix on the

count that her husband is an alcoholic person and does not love her, therefore, he promised to marry her. The applicant feared prosecutrix that her husband would know about their illegitimate relationship and he took prosecutrix to a rented house at Raigarh. Prosecutrix started living with her and they were regularly committing sexual intercourse. Last time, applicant committed sexual intercourse with prosecutrix on 10.11.2019, thereafter, he left Raigarh. The prosecutrix tried to contact applicant but the applicant has put her mobile number in block list. Thereafter, prosecutrix came to know that applicant was already married and was living with his wife at Triveni Vihar, H.No.-598/6 near Krishna Hospital, Raipur. Thereafter, she filed a complaint on 12.1.2020 and on the basis of complaint, FIR has been registered at the police station Chakradhar Nagar, Raigarh on 3.3.2020 for committing offence under section 376 IPC.

3. The further contention of the applicant is that he has filed a complaint against prosecutrix on 24.2.2020 and 25.2.2020 before Inspector General of Police, Bilaspur contending that prosecutrix and her husband have threatened him that they will implicate him for committing offence with intention to extort money from him, therefore, he has requested for registration of offence against them. It is further contended that he was living with the prosecutrix in live-in-relationship. She has also extorted huge amount of money from him. She is wife of Shambhoo Sarkar and no divorce has been taken place between them. With an intention to grab illegal monetary consideration, she has fabricated her voter I.D. as wife of applicant thereby she has withdrawn money from his bank account. In the month of December, 2019 she demanded Rs. 5 lakh which he was unable to pay therefore she has threatened him that she will file false complaint of physical molestation against him, as such, requested authorities to register criminal case against her.
4. Applicant has also filed a complaint before the Chief Election Officer, Raipur on 27.2.2020 alleging act of fabrication in the voter I.D. card done by the prosecutrix along with her husband, but no action has been taken on his application, It is further contended by the learned Counsel of the Applicant that FIR bearing No.0068/2020 has been registered before police station Chakardhar Nagar, Raigarh on the

behest of the prosecutrix for committing offence under section 376 IPC against him . During pendency of present Cr.M.P. police has completed his investigation in the matter and submitted final report before the learned Sessions Judge, Raigarh which has been registered as criminal case No. 185/2021.

5. On the above factual foundation, applicant prayed for quashing of the FIR and subsequent charge-sheet filed before the learned Sessions Judge, Raigarh .
6. The state has not filed their return.
7. Prosecutrix has filed her return contending that prima-facie ingredients of offence under section 376 of the IPC are present, FIR has rightly been registered against the applicant. The applicant has promised her to marry therefore, she shifted to a rented house at Raigarh along with him. Applicant has committed sexual intercourse with her lastly on 10.11.2019, thereafter, he left Raigarh. When she came to know that applicant is already married and is living with his wife at H.No.-598/6 near Krishna Hospital, Raipur, she made a complaint before the police. The applicant has cheated her by giving false assurance to marry on the count that his wife has already expired. The allegation made in the petition with regard to various documents like voter I.D. card, Adhaar card, Electric bill and other relevant documents have been denied by her. The said documents have been created by applicant himself to change the identity of prosecutrix. It is emphatically denied that she has demanded any money from the applicant. The applicant was residing with the prosecutrix as married couple. To substantiate her submission, she has annexed photographs with her return. The police recorded her statement under Section 161 Cr.P.C. The non-applicant No.2 recorded her statement under Section 164 Cr.P.C. before learned Judicial Magistrate, First Class, Raigarh and after investigation submitted final report, therefore, prim-facie offence under section 376 IPC is made out.
8. Learned counsel for non-applicant No. 2 filed some documents on 21.06.2021 which are alleged to be the mutual divorce document dated 20.04.2007 and would submit that recital of the said mutual divorce document would reveal that non-applicant No. 2 and her

husband have already taken mutual divorce and there is no relationship between them. They are not living as husband and wife since year 2006. On the basis of this document it has been submitted that applicant has committed fraud and committed rape on her on the pretext of marriage, he made sexual intercourse with her from year 2008 to 10.11.2019, thus committed offence under Section 376 IPC, and prayed that petition of applicant be dismissed with cost.

9. Learned counsel for the applicant also submitted written synopsis on 5.7.2021 reiterating his stand taken in the petition and would further submit that as per Section 13 of the Hindu Marriage Act since non-applicant No. 2 and her husband had not obtained decree of divorce therefore it cannot be said that marriage has been dissolved, their marriage is valid and subsisting. He would further submit that Section 17 of the Hindu Marriage Act, 1955, provides punishment for bigamy. Since, non-applicant No. 2 has not dissolved her marriage by competent decree of divorce under Section 13 of Hindu Marriage Act, the allegation by non-applicant No. 2 that applicant has committed sexual intercourse on the pretext of marriage is far away from truth. Non-applicant No. 2 was well aware of the fact that her marriage with her husband was still in existence, therefore, false promise to marry her cannot be made by him. She is 38 year old woman having two children from her wedlock. Sexual intercourse with her has been done with her consent for a period of 12 years. Non-applicant No. 2 has herself stated in her statement recorded under Section 164 Cr.P.C. before the Judicial Magistrate First Class on 05.03.2020 that applicant has asked her to obtain decree of divorce and after divorce from competent forum applicant will marry her, this fortifies his contention that he has never intention of false promise of marriage. Therefore, it cannot be held that rape has been committed with her, as such, registration of FIR for the offence under Section 376 IPC prima facie is illegal and liable to be quashed by this Court exercising inherent power under 482 Cr.P.C.

10. Learned counsel for the applicant relied upon the paragraph 18 of the judgment of Hon'ble Supreme Court in case of ***Pramod Suryabhan Pawar Vs. The State of Maharashtra And Anr.***¹, and the same is

¹ (2019) 9 SCC 608

reproduced below:-

“18 To summarise the legal position that emerges from the above cases, the “consent” of a woman with respect to Section 375 must involve an active and reasoned deliberation towards the proposed act. To establish whether the “consent” was vitiated by a “misconception of fact” arising out of a promise to marry, two propositions must be established. The promise of marriage must have been a false promise, given in bad faith and with no intention of being adhered to at the time it was given. The false promise itself must be of immediate relevance, or bear a direct nexus to the woman’s decision to engage in the sexual act.

11.Learned counsel for the applicant relied upon paragraphs No. 17, 23.7, 23.8 and 24 of the judgment of Hon'ble Supreme Court in case of *Prashant Bharti vs State (NCT of Delhi)*² , the same are reproduced below:-

“17. In such a fact situation, the assertion made by the complainant/prosecuterix, 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.

23.7 *Seventhly*, as per the judgment and decree of the Civil Judge (Senior Division), Kanpur (Rural) dated 23.9.2008, the complainant was married to Lalji Porva on 14.6.2003. The aforesaid marriage subsisted till 23.9.2008. The allegations made by the complainant dated 16.2.2007 and 21.2.2007 pertain to occurrences of 23.12.2006, 25.12.2006, 1.1.2007 and 15.2.2007 i.e. positively during the subsistence of her marriage with Lalji Porwal. Thereafter, the complainant Priya married another man Manoj on 30.9.2008. This is evidenced by a “certificate of marriage” dated 30.9.2008. In view of the aforesaid, it is apparent that the complainant could not have been induced into a physical relationship, based on an assurance of marriage.

23.8 *Eighthly*, the physical relationship between the complainant and the accused was admittedly consensual. In her complaints Priya had however asserted, that her consent was based on a false assurance of marriage by the accused. Since the aspect of assurance stands falsified, the acknowledged consensual physical relationship between the parties would not constitute an offence under Section 376 IPC. Especially because the complainant was a major on the date of

² (2013) 9 SCC 293

occurrences, which fact emerges from the “certificate of marriage” dated 30.9.2008, indicating her date of birth as 17.7.1986.

24. Most importantly, as against the aforesaid 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. As a matter of fact, the complainant/prosecutrix had herself approached the High Court, with the prayer that the first information lodged by her, be quashed. It would therefore be legitimate to conclude, in the facts and circumstances of this case, that the material relied upon by the accused has not been refuted by the complainant/prosecutrix. Even in the charge sheet dated 28.6.2007, (extracted above) the investigating officer has acknowledged, that he could not find any proof to substantiate the charges. The charge-sheet had been filed only on the basis of the statement of the complainant/prosecutrix under Section 164 of the Cr.P.C.

12. Learned counsel for the applicant further relied upon the judgments of Hon'ble Supreme Court in cases of *Deepak Gulati vs. State of Haryana*³, *Maheshwar Tigga vs. State of Jharkhand*⁴, *Dr. Dhruvram Murlidhar Sonar vs. State of MH and another*⁵ *State of Haryana and others vs. Choudhary Bhajan Lal and others*⁶. Learned counsel for the applicant also relied upon the judgment of Hon'ble High Court of Kerala in the case of *Sideeque vs. State of Kerala*⁷, the judgment of Hon'ble High Court of Himachal Pradesh in the case *Dushyant Kumar vs. State of Himachal Pradesh and Anr.*⁸, the judgment of Hon'ble High Court of Delhi in the case of *Mohit Nagar vs. State and Another*⁹, *Mohit Narula vs. State of NCT of Delhi and another*¹⁰ and judgment of this Court passed in the case of *Komal Soni vs. State of C.G. and Anr.* order dated **29.08.2019** and would submit that no case is made out under Section

³ (2013) 7 SCC 675

⁴ (2020) 10 SCC 108

⁵ 2018 SCC Online 3100

⁶ AIR 1992 SCC 604

⁷ 2016 SCC Online ker 27100

⁸ 2016 SCC Online HP 4166

⁹ 2017 SCC Online DEL 7616

¹⁰ 2018 SCC Online DEL 8764

376 IPC and initiation of process against the applicant is nothing but abuse of process of law, therefore, this Court exercising power under Section 482 Cr.P.C. very well can quash the criminal proceedings against the applicant, and would pray that petition be allowed and FIR and subsequent charge-sheet filed against applicant be quashed.

13. Learned counsel for non-applicant No. 2 would submit that applicant has made false promise to marry her and on this pretext has committed act of sexual intercourse with her. The consent given by her was not free consent, therefore, it cannot be said that prima facie offence under Section 376 is not made out and the petition filed under Section 482 Cr.P.C. is liable to be dismissed by this Court.

14. I have learned counsel for the parties and perused the record.

15. It is necessary to examine the FIR, statement recorded under Section 161 and 164 of the Cr.P.C. before Judicial Magistrate First Class to find out the correct factual matrix of the issue. The prosecutrix in the FIR has clearly stated that the prosecutrix has made a complaint before Police Station- Chakradhar Nagar, District- Raigarh, wherein she has stated that the applicant has always told her that **his wife has already expired**, therefore, he will marry with her and on the pretext of marriage, he has made sexual intercourse with her since 2008 to 2019. Similarly in her statement recorded under Section 161 Cr.P.C., she has stated that the applicant was telling her that his wife is no more, therefore, he will perform second marriage with the prosecutrix and on the basis of pretext of marriage, he committed sexual intercourse with her from 2008 to 2019. In the statement recorded under Section 164 of the Cr.P.C. before Judicial Magistrate First Class that the applicant has told her that his wife has expired and also that

you give divorce to your husband, then he will perform marriage with the prosecutrix, in fact, wife of the applicant is still surviving and he is living with his wife and children. The factum of survival of wife of the applicant is within knowledge of the applicant. He made wrong statement before non-applicant No. 2. non-applicant No. 2 on his misconception of fact, he has done sexual intercourse with non-applicant No. 2, therefore, this cannot be said that non-applicant No. 2 has given consent for sexual intercourse with the applicant. As such, it is misconception of fact, therefore, it can be safely presumed that prima facie, the offence under Section 376 of I.P.C. is made out.

16. Learned counsel for the applicant vehemently argued that since non-applicant No. 2 has not given divorce to her husband and he annexed document R/2, it cannot be termed as divorce as it has not been done as per provisions of Hindu Marriage Act and no judicial forum has granted any decree of divorce. So far as the legal submission is concerned, it seems to be correct but prima facie foundation led by the applicant himself is on wrong factual matrix and it, prima facie, appears to be for fulfilling his lust. Therefore, the judgment cited by learned counsel for the applicant in case of *Prashant Bharti (Supra)*, is distinguishable from the facts of the present case.

17. Hon'ble the Supreme Court in case of **Anurag Soni Vs. State of Chhattisgarh**, reported in (2019) 13 SCC 1, has examined Sections 375 and 90 of I.P.C. and held that from very inception, promise given by appellant accused to marry the prosecutrix was a false promise and from the very beginning there was no intention of accused to marry prosecutrix, thus, her consent can be said to be a consent on misconception of act as per Section 90 of I.P.C. The Court held in para

12, which reads as under:-

“12. 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. The contention of learned counsel for the applicant with regard to allegation that he told that he will marry with non-applicant No. 2/ prosecutrix and the statement of the prosecutrix under Sections 161 & 164 of the Cr.P.C. are subjected to cross-examination and unless and until the allegation put forward by the applicant or by non-applicant No. 2 is not established in course of evidence. It cannot be accepted by this Court while exercising the power under Section 482 of the Cr.P.C. From the applicant's contention it is apparent that non-applicant No. 2 has not taken divorce from her husband, therefore, he could not perform marriage with non-applicant No. 2 and sexual intercourse was done with the consent of her are the defence raised by him. Simultaneously, the correctness of the statements of the prosecutrix recorded under Sections 161, 164 Cr.P.C. and the documents which have been produced by the applicant, their genuineness and correctness can be examined by the trial Court while recording of the evidence. This Court while hearing the petition under Section 482 Cr.P.C. cannot examine the reliability or genuineness of the statements or allegations made in the FIR.

19. Hon'ble the Supreme Court in **State of A.P. Vs. Golconda Linga**

Swamy & another¹¹, held as under:-

“10. In all these cases there was either statements of witnesses or seizure of illicit distilled liquor which factors cannot be said to be without relevance. Whether the material already in existence or to be collected during investigation would be sufficient for holding the concerned accused persons guilty has to be considered at the time of trial. At the time of framing the charge it can be decided whether prima facie case has been made out showing commission of an offence and involvement of the charged persons. At that stage also evidence cannot be gone into meticulously. It is immaterial whether the case is based on direct or circumstantial evidence. Charge can be framed, if there are materials showing possibility about the commission of the crime as against certainty. That being so, the interference at the threshold with the F.I.R. is to be in very exceptional circumstances as held in *R.P. Kapoor and Bhajan Lal cases* (supra).

11. Ultimately, the acceptability of the materials to fasten culpability on the accused persons is a matter of trial. These are not the cases where it can be said that the FIR did not disclose commission of an offence. Therefore, the High Court was not justified in quashing the FIR in the concerned cases.

12. So far as Criminal Appeal Nos. 1183/2003, 1193-1196/2003 and Criminal Appeals arising out of SLPs(Crl.) Nos. 2191/2003, 2632/2003, 2633/2003, and 3463/2003 are concerned, we find that the FIR did not disclose commission of an offence without anything being added or subtracted from the recitals therein. Though the FIR is not intended to be an encyclopedia of the background scenario, yet even skeletal features must disclose the commission of an offence. The position is not so in these cases. Therefore, the High Court's interference does not suffer from any legal infirmity, though the reasonings indicated by the High Court do not have our approval.”

20. Hon'ble the Supreme Court in *Rajiv Thapar & others Vs. Madan Lal Kapoor*¹², held as under:-

“28. The High Court, in exercise of its jurisdiction under Section 482 of the Cr.P.C., must make a just and rightful choice. This is not a stage of evaluating the truthfulness or otherwise of allegations levelled by the prosecution/ complainant against the accused. Likewise, it is not a stage for determining how weighty the defences raised on behalf of the accused is. Even if the accused is successful in showing some suspicion or doubt, in the allegations levelled by the prosecution/ complainant, it would be impermissible to discharge the accused before trial. This is so, because it would

¹¹ (2004) 6 SCC 522

¹² (2013) 3 SCC 330

result in giving finality to the accusations levelled by the prosecution/ complainant, without allowing the prosecution or the complainant to adduce evidence to substantiate the same. The converse is, however, not true, because even if trial is proceeded with, the accused is not subjected to any irreparable consequences. The accused would still be in a position to succeed, by establishing his defences by producing evidence in accordance with law. There is an endless list of judgments rendered by this Court declaring the legal position, that in a case where the prosecution/complainant has levelled allegations bringing out all ingredients of the charge(s) levelled, and have placed material before the Court, *prima facie* evidencing the truthfulness of the allegations levelled, trial must be held.

21. Hon'ble the Supreme Court in *State of Telangana Vs. Habib Abdullah Jeelani & others*¹³, held as under:-

15. We have referred to the said decisions only to stress upon the issue, how the exercise of jurisdiction by the High Court in a proceeding relating to quashment of FIR can be justified. We repeat even at the cost of repetition that the said power has to be exercised in a very sparing manner and is not to be used to choke or smother the prosecution that is legitimate. The surprise that was expressed almost four decades ago in *Kurukshetra University* case compels us to observe that we are also surprised by the impugned order.”

22. Hon'ble the Supreme Court in *Neeharika Infrastructure Pvt. Ltd. Vs. State of Maharashtra & others*¹⁴, held as under, relevant paragraphs are reproduced below:-

“iv) The power of quashing should be exercised sparingly with circumspection, as it has been observed, in the ‘rarest of rare cases (not to be confused with the formation in the context of death penalty).

v) While examining an FIR/complaint, quashing of which is sought, the court cannot embark upon an enquiry as to the reliability or genuineness or otherwise of the allegations made in the FIR/complaint;

vi) Criminal proceedings ought not to be scuttled at the initial stage;

vii) Quashing of a complaint/FIR should be an exception rather than an ordinary rule;

x) Save in exceptional cases where non-interference would result in miscarriage of justice, the Court and the judicial process should not interfere at the stage of investigation of offences;

¹³ (2017) 2 SCC 779

¹⁴ AIR 2021 SC 1918

xi) Extraordinary and inherent powers of the Court do not confer an arbitrary jurisdiction on the Court to act according to its whims or caprice;

xii) The first information report is not an encyclopaedia which must disclose all facts and details relating to the offence reported. Therefore, when the investigation by the police is in progress, the court should not go into the merits of the allegations in the FIR. Police must be permitted to complete the investigation. It would be premature to pronounce the conclusion based on hazy facts that the complaint/FIR does not deserve to be investigated or that it amounts to abuse of process of law. After investigation, if the investigating officer finds that there is no substance in the application made by the complainant, the investigating officer may file an appropriate report/summary before the learned Magistrate which may be considered by the learned Magistrate in accordance with the known procedure;

xiii) The power under Section 482 Cr.P.C. is very wide, but conferment of wide power requires the court to be more cautious. It casts an onerous and more diligent duty on the court;"

23. From the perusal of the above discussions and considering the materials placed on record, I am of the view that no case is made out for interference by this Court.

24. As an upshot, the petition fails and is hereby dismissed. However, it is made clear that this Court has not expressed anything on the merits of the case. The facts have been considered for adjudication of the present Criminal Miscellaneous Petition. The trial Court is directed to proceed further, in accordance with law, without being influenced by any of the observations made by this Court while deciding this Criminal Miscellaneous Petition.

Sd/-

(Narendra Kumar Vyas)
Judge