

**IN THE HIGH COURT OF PUNJAB AND HARYANA  
AT CHANDIGARH**

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**CRM-M-43334-2023(O&M)**  
**Date of Decision: 15.11.2023**

GURPREET SINGH

...Petitioner

Versus

STATE OF HARYANA and ANR.

...Respondents

**CORAM: HON'BLE MRS. JUSTICE MANISHA BATRA**

Present:- Mr. Harvinder Singh Mann, Advocate  
for the petitioner.

Mr. Arjun Lakhanpal, Addl., A.G., Haryana.

Ms. Kirandeep Kaur, Advocate  
for the respondent.

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**MANISHA BATRA, J. (Oral)**

1. The instant petition has been filed under Section 482 of Code of Criminal Procedure for quashing of FIR No.67, dated 02.03.2023, registered under Sections 376(2)(n), 313, 109 and 506 of IPC at Police Station Kalka.

2. The relevant facts in brief are that the respondent No.2-“M” (name withheld) got registered the aforementioned FIR by filing a complaint alleging that she was married with Mukesh Sharma, on 09.07.2018. In the year 2018, the accused i.e. the present petitioner started making calls and sending messages to her on her mobile phone. She told him not to do so and also apprised about this fact to her husband. The husband of the complainant also told the petitioner, to stop calling her but the petitioner did not listen. Due to this fact, disputes started taking place between the complainant and her husband and taking advantage of the situation, the petitioner took the complainant in his influence by making conversations with her. The husband of the complainant came to know about this fact and left her. The petitioner

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while trapping the complainant induced her to obtain divorce from her husband, by promising to perform marriage with her. On the same pretext, he developed physical intimacy with her. The complainant even became pregnant. On coming to know about this fact, the petitioner however, pressurized her to terminate her pregnancy and she did so by taking medicines. While alleging that the petitioner had then left her thereby ruining her life, she prayed for taking penal action against him. After registration of FIR, investigation proceedings were initiated. The petitioner was arrested on 12.04.2023.

3. The present petition has been filed by the petitioner making prayer for quashing of the FIR on the ground that a compromise has been arrived at between the respondent No.2-complainant and himself. Both of them are major and had a consensual physical relationship. He could not perform marriage with the respondent No.2 as earlier as she was married and her divorce decree was passed only on 17.05.2023. He will solemnize marriage with the respondent No.2 on being released on bail. Prayer has, therefore, been made for allowing the petition.

4. The respondent No.1-State has filed status report submitting therein that after conducting thorough investigation, the petitioner was arrested in this case and had suffered disclosure statement admitting his guilt. The allegation against the petitioner were serious in nature. Investigation had since been completed and charges had been framed. While apprehending that the petitioner might indulge into commission of similar offences, dismissal of the petition has been prayed for.

5. Learned counsel for the respondent No.2-complainant admitted the factum of compromise being arrived at between the petitioner and

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respondent No.2 and has stated that the respondent No.2 has no objection, if the FIR was quashed.

6. Learned counsel for the petitioner submitted that both the parties were major and had physical relations with each other with their consent. The respondent No.2 was already married. Her marriage as such with the petitioner was not possible during subsistence of her marriage which was dissolved only on 17.05.2023 after lodging of FIR of this case. They had arrived at a compromise now and wanted to marry. No useful purpose would be served by keeping the criminal proceedings pending against the petitioner as chances of his conviction were remote and bleak. Accordingly, it is urged that the petition be allowed.

7. Per contra, learned Deputy Advocate General, for respondent No.1 state has vehemently opposed the prayer of the petitioner by arguing that charge sheet had been submitted against the petitioner for commission of offences punishable under Sections 376(2)(n) , 313, 109 and 506 of IPC which were serious in nature and fell within the category of heinous crime. Compromise between the parties was not permissible in law. While stressing that the petition was misconceived, he urged that the same was liable to be dismissed.

8. There are catena of judgments of Hon'ble Supreme Court whereby, parameters governing the exercise of jurisdiction of Section 482 of the Code of Criminal Procedure are well settled. In a celebrated judgment cited as **State of Haryana Vs. Bhajan Lal 1992 SUPP (1) SCC**, the Hon'ble Supreme Court has discussed different categories of cases wherein, the power under Section 482 Cr.P.C. could be exercised either to prevent abuse of process of law or otherwise to secure the ends of justice, while observing

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that it might not be possible to lay down any precise, clearly defined, sufficiently channelized, inflexible guidelines or rigid formulae and to give an exhaustive list or myriad kind of cases where such powers should be exercised. The paras relevant to this case may be set out as follows:-

“102 (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)

(3) to (6) \_\_\_\_\_

(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,

9. In ***Dhruvaram Murlidhar Sonar Vs. State of Maharashtra 2019 (18) SCC 191*** the Hon’ble Supreme Court while reiterating the parameters as laid down in Bhajan Lal’s case (supra) had observed that for quashing of the proceedings, meticulous analysis of factum of taking cognizance of an offence by the Magistrate was not called for. Appreciation of evidence was also not permissible in exercise of inherent powers. If the allegations set out in the complaint did not constitute the offence of which

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cognizance has been taken, it is open to the High Court to quash the same in exercise of its inherent powers.

10. In *Neeharika Infrastructure Vs. State of Maharashtra 2021 SCC OnLine SC 315*, the Apex Court observed that while the Courts ought to be cautious in exercising powers under Section 482 of Cr.P.C., they do have power to quash. The test is whether or not the allegations in the FIR disclose the commission of a cognizable offence? The merits of the allegations are not to be entered into nor the power of the investigating agency to investigate into allegations involving the commission of a cognizable offence is to be trenched upon.

11. In view of the above discussed position of law qua exercise of inherent powers of the High Court for quashing criminal proceedings, this Court has to consider the question as to whether the quashing of FIR in this case can be allowed. The petitioner has been charge sheeted in this case for commission of offence punishable under Section 376(2)(n) of IPC besides some other offences, on the allegations that he committed rape with the respondent No.2 on the pretext of and by making promise to marry her. The offence of 'rape' is defined under Section 375 of IPC setting out certain circumstances. The relevant for the purpose of this case is the second circumstance that a male subjecting a female to sexual inter course without her consent, commits offence of rape.

As per Explanation-2 of Section 375, 'consent' means an unequivocal voluntary agreement when the women by words, gestures or any form of verbal or non verbal communication, communicates willingness to participate in the specific sexual act. It will also be relevant to refer to

Section 90 of IPC, as per which a 'consent' 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, is not consent.

12. It is well settled proposition of law that the ‘consent’ with respect to Section 375 of IPC, involves an active understanding of the circumstances, actions and consequences of the proposed act. The consent of a women with respect to Section 375 must involve an active and reasoned deliberation towards the proposed act. The Hon’ble Supreme Court had observed in *Pramod Suryabhan Pawar Vs. State of Maharashtra 2019 (9) SCC 608* that in the context of a promise to marry, there was a distinction between a false promise given on the understanding by the maker that it will be broken, and the breach of promise which is made in good faith but subsequently not fulfilled. It was held that where the promise to marry was false and the intention of maker at the time of making the promise itself was to deceive the women to convince her to engage in sexual relations and not to abide by the promise, there was “misconception of fact” that vitiated the woman’s “consent”.

13. It was also observed in the above cited case that breach of promise, could not be held to be a false promise. On the other hand, to hold a promise of marriage to be false promise, it must be proved to be given in bad faith with no intention of being adhered to at the time, it was given and further that the false promise itself must be of immediate relevance, or bear a direct nexus to the women’s decision to engage in the sexual act.

On applying the above discussed position of law to the present case, it is to be seen that whether an offence punishable under Section 376 of

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FIR/charge sheet to be correct. Admittedly, the petitioner and respondent No.2 were in consensual relationship from the year 2018 till the registration of FIR. The respondent No.2 was married elsewhere at that time and a petition seeking divorce with her husband by way of mutual consent was pending at the time of lodging of FIR. Admittedly, the marriage of the respondent No.2 with her husband has been dissolved on 17.05.2023. These peculiar circumstances, do not indicate that the petitioner had given promise to marry which at the very inception of relationship of the parties was false and on the basis of the same, the respondent No.2 was induced into sexual relationship. The copy of statement recorded by the petitioner under Section 164 of Cr.P.C. is part of the record which shows that even no allegation whatsoever had been made by the respondent No.2 at that time that the petitioner had made any promise to marry. The relationship between the parties as such can be considered to be purely of consensual nature. This relationship was in existence during the subsistence of marriage of the respondent No.2 with Mukesh. The facts as they stand and are not in dispute clearly indicate that the ingredients of offence under Section 376 are not prima facie established and the allegations on the face of the record cannot be taken as true.

14. In *Ananda D.V. Vs. State and Anr. 2021 ALL SCR (criminal) 1175*, the gravamen of the allegations in the FIR filed by the private respondent was that the appellant-accused had promised that he would marry her, which promise was not kept by him. The parties resolved their dispute after registration of FIR and had got married. The Apex Court took overall view of the matter and allowed quashing of FIR and all the steps taken on the basis of impugned FIR were ordered to be treated as effaced from the

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15. In *Shambhu Kharwar Vs. State of Uttar Pradesh and Anr. 2022 (4) RCR (criminal) 493*, the Hon'ble Supreme Court while dealing with a similar case relating to quashing of FIR/Charge sheet filed under Section 376 of IPC, wherein the appellant had allegedly given a promise to the respondent to marry, had observed that even as per the allegations in the FIR and the charge sheet, ingredients of offence under Section 375 of IPC were absent and relationship of parties was purely of consensual nature and had allowed quashing of charge sheet and cognizance order. Similar observations were made by Co-ordinate Benches of this Court in *Vaibhav Bhalotia Vs. State of Uttar Pradesh and Anr. CRM-M-45795-2018, decided on 01.06.2022, Baljeet Kaur Rao Vs. State of Haryana 2018 (2) LAW Herald Page 114, and Rizwab Saifi Vs. State of Punjab and ANR. CRM-M-13716-2016, decided on 07.02.2017.*

16. Reference can also be made to a recent pronouncement dated 20.02.2023 made by High court of Jammu & Kashmir *in CRM-M-783-2021 titled as Vinod Kumar Saini Vs. U.T. of Jammu & Kashmir and Anr.*, and dated 02.08.2022 passed by High Court of Delhi passed in *CRI.M.C.3561-2022 titled as Sunny Kumar @ Mukesh and Ors. Vs. The State and Anr.* and passed by *High Court of Kerala in Emmanuel Peter Vs. State of Kerala and Ors 2023(1) BOM.C.R (Cri) 25* wherein similar observations were made.

17. Reference can be made to *Narinder Singh and Ors. Vs. State of Punjab (2014) 6 SCC 466* wherein the Hon'ble Supreme Court had observed that while exercising power under Section 482 of Cr.P.C., the High Court has to examine as to whether the possibility of conviction is remote and bleak and continuation of criminal case would put him into great

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oppression and prejudice and injustice would be caused to him by not quashing criminal case

18. On considering the peculiar facts and circumstances of the case, as noted above, while keeping in view the well established position of law coupled with the reasons aforementioned to the effect that the ingredients of offence punishable under Section 376 are not prima facie established as per the allegations on the face of the record, that the parties have recorded statements before learned trial Court on 31.08.2023 affirming the factum of amicable settlement by stating that they have voluntarily arrived at a compromise and keeping in view the fact that the possibility of conviction is remote and bleak even if the proceedings are ordered to be continued, in my considered opinion, the continuation of prosecution would result in sheer abuse of process of law. It is a fit case for exercising inherent jurisdiction of this Court under Section 482 of the Code, so as to secure the ends of justice and the quashing of FIR would be for the welfare of the parties. As such, FIR No.67, dated 02.03.2023, registered under Sections 376(2)(n), 313, 109 and 506 of IPC at Police Station Kalka and the consequential proceedings arising therefrom, are ordered to be quashed and the petition stands allowed.

November 15, 2023  
himanshu

(MANISHA BATRA)  
JUDGE

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|---------------------------|--------|
| Whether speaking/reasoned | Yes/No |
| Whether reportable        | Yes/No |