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IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

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Date of decision: 27.08.2024

Deepak Joshi

...Petitioner

V/s

State of Haryana and another

...Respondents

CORAM: HON'BLE MR. JUSTICE SUMEET GOEL

Present: Mr. Lokesh Kumar, Advocate with
Mr. Harish Nigam, Advocate for the petitioner.
Ms. Mahima Yashpal, DAG Haryana.
Mr. Mohan Singh Rana, Advocate for respondent No.2.

SUMEET GOEL, J. (Oral)

1. The present petition has been filed by the accused challenging the order dated 22.09.2023 (Annexure P-1) passed by the Additional Sessions Judge, Faridabad, Haryana whereby the application filed by the petitioner (herein) under Section 227 of the Code of Criminal Procedure, 1973 (hereinafter to be referred as 'Cr.P.C.'), for his discharge has been dismissed.
2. The relevant part of the report filed by the Police under Section 173 of Cr.P.C., as spelt out in the petition reads as under:

*"To the SHO, Women Police Station, Sector 16 A, Faridabad, Sir,
It is stated that I, Puja @ Savita D/o Sh. Hari Sharan, cast Thakur (Chauhan) is resident of H. No. A/133, Gali No. 2, Karnal Vihar, Bharat Colony, Police Station, Khandipul, Faridabad. On 1 July, 2017, I met Deepak Joshi S/o Roshan Lal Joshi, at Court premises of Sector 12, Faridabad. Thereafter, we used to talk on phone. On 06/07/2017, he took me to Vrindaban on the pretext of solemnizing marriage with me. Thereafter on the same day i.e. 06/07/2017, we came back to Faridabad. Deepak Joshi seduced me and took me to his flat No. BPTP-ET-15-202, Old Faridabad and did sexual intercourse with me without my consent. On the pretext of marrying me, he continued to rape me. In between he left me and went to his house at Fathepur Biloch. On 16.03.2018, he came back and told me that he had committed mistake and he will reside with me and will marry me.*



Thereafter, he lived with me for a month. On 8 April, 2018, at 9.00 pm, he raped me and beat me and told me that he will kill me and will not marry me. Legal action may be taken against Deepak Joshi. Sd/- Savita Puja Savita @ Puja D/o Haricharan R/o Bharat Colony Old Faridabad. Mobile 8750010059 Date 20/09/18, Deepak Joshi, S/o Sh. Roshan Lal S/o Sh. Roshan Lal R/o Fatahpur Baloch Police station Sadar Tehsil Balabh Garh, Faridabad, House No. 173, Block No. 5, Mobile No. 8800629341, 9718745838. On the basis of the above complaint, a case u/s 376/506, is made out and FIR No.89 dated 21.09.2018, u/s.376/506, is registered at P.S. Women Police Station, Sector 16A, Faridabad. After registering of the above case, investigation of this case was firstly conducted by SI Raj Rani. During investigation, statements of witnesses were recorded after conducting inspection of the place of incident, statements of witnesses were recorded and sexual Medical MLR No. 1069/BW/CH/2018 dated 21-09-18 of the Victim Pooja @ Savita was conducted in B.K. Hospital, Faridabad in which it is stated by Dr. Sahab in his opinion- Advise UPT & USG lower & abdomen and regarding which the victim Savita @ Pooja has refused to conduct of any of her test on 15.11.2018. The statement under Section 164 Cr.P.C. was recorded in the Hon'ble Court of Ms. Shakshi Saini, JMIC, Faridabad. The investigation of the case was conducted by ACP/CAW Smt. Pooja Dabla and statement of the victim was recorded before Legal Advisor Ms. Poonam Saini. As per order of Hon'ble Punjab & Haryana High Court in CRM No. 49853/18, on grant of Interim Bail to the accused Deepak Joshi, the accused Deepak Joshi, S/o Roshan Lal Joshi, Resident of Fatehpur Billoch, Ballabhgarh, Faridabad, has joined the investigation of the case and recorded his Fard Inksaf after arrest on 10-1-2019. According to Fard Inkshaf, Nisandehi of the spot was carried out by the accused and his Sexual Medical MLR No. 03/VS/CH/2018 dated 10.01.19 was conducted from B.K. Hospital, Faridabad and Bail Bond Muchalka was filled up. Complete and confirmed Bail has been granted to the accused accused Deepak Joshi on 14.02.19 by the Hon'ble Punjab and Haryana High Court in CRM No. 49853/18 and now no investigation is left in the case, The challan of the case with proof against the above accused Deepak Joshi is given to the Court for trial after preparing it under Section 173 Cr.P.C. During Trial, trial is to be conducted after summoning the witnesses of Khana No. 13 through summons. ”

3. Learned counsel for the petitioner has argued that the petitioner as also the victim/complainant were married with their respective spouses and also had children from their respective marriages; the marital status of the parties was well known to each other; the petitioner as also the victim were in consensual relationship; the said consensual relationship turned sour on account of dispute(s) arising between them and, in this factual backdrop, from the report filed by police under Section 173 of Cr.P.C. (as also material

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rape upon the victim/complainant. Learned counsel for the petitioner has further argued that the petitioner as also the victim are educated persons. Petitioner is aged about 23 years whereas respondent No.2-complainant is aged about 32 years and both were well aware of the entirety of situation when entering into such consensual relationship. Therefore, setting aside of the impugned order is prayed for.

3.1 Learned State counsel has argued that, the report filed by the Police under Section 173 of Cr.P.C., 1973 as also material appended therewith, clearly shows that the petitioner-accused had caused the complainant/victim to enter into physical relation(s) by extending false promise of marriage and hence the impugned order does not deserve to be interfered with. Accordingly, she has prayed for dismissal of the instant revision petition.

3.2 Learned counsel appearing for the complainant-respondent No.2 has argued that the complaint made by the complainant as also the statement recorded by the complainant under Section 164 of Cr.P.C. before the concerned Magistrate clearly shows that the petitioner-accused is guilty of committing rape upon the victim/complainant by *inter alia* extending false promise of marriage. Learned counsel for the complainant has further argued that the petitioner-accused had promised to divorce his wife in order to marry the complainant/victim which was never ever the intention of the petitioner-accused from the very beginning. Learned counsel for the complainant has further argued that the plea(s) raised on behalf of the petitioner-accused involve adjudication upon disputed questions of fact which shall be essentially gone into during the course of trial after entire



evidence has been led and these cannot be looked into at the present stage. Accordingly, learned counsel has sought for dismissal of the instant revision petition.

4. I have heard the learned counsel for the parties and have perused the paper-book. Vide order dated 23.07.2024, the lower Court record (in original) was summoned which has been since received and has also been perused by this Court.

5. The prime issue for consideration in the present revision petition is as to whether the discharge application preferred by the petitioner/accused has been rightly rejected by the learned trial Court.

6. It would be apposite to refer herein to a judgment passed by this Court titled as *Sanjay Kumar Sharma vs. State of Haryana and another: Neutral Citation No.2024:PHHC:080609*, relevant whereof reads as under:

“9.4 As a result of above discussion, the following postulates emerge:

I. The power as also the duty cast upon the Court, while considering the aspect of framing of charges, is a significant facet of criminal proceedings & hence the same ought to be undertaken in an assiduous manner and not in a ritualistic or lackadaisical manner.

II. The Court, while considering the aspect of framing of charges, ought not to act merely as a post office or a mouth piece of the prosecution but ought to consider this pivotal aspect keeping in view the interest of all concerned namely the prosecution (society at large), victim/complainant as also the accused, the interest of justice and fair trial being above all.

III. A Court while considering the question of framing of charges, undoubtedly, has power to sift and weigh the material produced before it for the limited purpose of finding out whether or not a prima facie case is made out against the accused. It must be cautioned, at this stage, that the Court ought not to make a roving enquiry into the truthfulness, reliability, relevance or sufficiency etc. of such material brought before it since these aspects are required to be accounted for at the time of holding the accused guilty or not.

”



IV. While sifting through the material placed before it the Court ought to consider the broad probabilities of the case, total affect of evidence/document produced before it, basic infirmities in the case, there being legal bar to the prosecution, whether such material is opposed to common sense, whether the allegations and material brought in support thereof are patently absurd or inherently improbable to meet the test of a prudent person, the continuation of the trial is abuse of the process of Court/law leading to injustice and such factors of akin nature.

V. Where the material produced before the Court discloses grave/strong suspicion, the Court will be justified in framing charge(s) and proceed further. However, where such material shows that two views are equally possible and the material gives rise to some suspicion but not grave/strong suspicion, then the Court ought not to frame charges against the accused.

VI. There is no gainsaying that the factors/principles enumerated hereinabove are illustrative in nature for no inexorable formula can be laid down in this regard. In other words, it is not only difficult but is inherently impossible to state with exhaustive precision such factors/principles since every case has its own unique factual conspectus.

xxx	xxx	xxx	xxx
xxx	xxx	xxx	xxx

14 As a sequel to the above said discussion, the following postulates emerge:

I. The Consent of a woman; in context of Section 375 of IPC, 1860, must involve an active and reasoned deliberation towards the proposed act.

II. For a court to hold that the "Consent" of a woman was marred by 'misconception of fact' on account of a promise to marry; it must emerge from the factual conception of a given case that, firstly such promise was false from inception itself with no intention to upkeep it and secondly, such false promise must be of immediate relevance in terms of time or bear a direct nexus to the woman's decision to engage in physical relation(s).

III. In a case pertaining to rape, based upon promise to marry and/or involving extra marital relationship (wherein the man or woman or both are married to other persons), the Court ought to take into account the entirety of facts/circumstances of such case, including but not limited to, comparative age of accused and victim, educational, social and economic background of the accused and the victim, the nature of professional work/avocation being undertaken by accused and victim in their respective lives etc. It is neither axiomatic nor fathomable to lay any exhaustive set of guidelines in this regard as every case has its own peculiar factual matrix."

7. The prime case set by the complainant/victim is that she had met the petitioner (accused) on 07.07.2017 at Sector -12 Court premises,

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phone; the petitioner-accused took the victim to Vrindavan on 06.07.2017 on the pretext of marrying her and returned to Faridabad on the same day whereafter the petitioner (accused) took the victim to a flat and committed rape upon her; the petitioner (accused) continued to commit rape upon the victim on the promise of marrying her; petitioner-accused, thereafter, lived at the house of the victim-complainant for about a month and continued to commit rape; the petitioner (accused) on 08.04.2018 physically assaulted the victim-complainant and again raped her and threatened her of dire consequences whereupon a complaint was given to the Police and later on the instant FIR was got lodged. The petitioner (accused) is aged more than 23 years of age at the time of the alleged incident whereas the complainant (victim) was alleged to be of 32 years of age; the petitioner is married and blessed with two children whereas the complainant/victim is also blessed with three children. The allegations of rape, on multiple occasions, pertain to the period since the year 2017/2018 and the FIR was registered by the complainant/victim in the year 2018 itself.

8. Perusal of the version of the complainant in her statement recorded under Section 164 of the Code of Criminal Procedure Code makes it manifestly clear that the relationship between the complainant and the petitioner started on a consensual note. Both of them despite being of mature age, being married to their respective spouse, having children, decided to be in a relationship on their own quixotic notions. The complainant for the first time came in contact with the petitioner through Facebook in 2017 and thereon they became friends. She stated that the petitioner took her to a Hotel in Vrindavan on 06.07.2017 where she stayed with the petitioner-

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accused for 3/4 days. She stated that despite her refusal, the petitioner committed rape upon her and also gave assurance of marrying her. Thereafter, she was taken to Gurgaon wherein she was again raped. Subsequently, the complainant (victim) was taken to BPTP Flat where she remained for 2-3 months and the petitioner (accused) used to make physical relations with her (victim). Afterward, the complainant (victim) was again taken to Vrindavan on 16.03.2018 where the petitioner again made physical relations with the complainant (victim) and thereafter, the complainant was left at her house with the promise by the petitioner (accused) that he would perform marriage with her (victim). The conduct of the complainant in this entire episode narrated by her in her statement under Section 164 of Cr.P.C. makes it clear as a crystal that the engagement by both the parties in physical relationship was mutual and willful exercise of choice by both of them without their being any element of force involved in the incident.

8.1 From the above stated prosecution story and the version of the complainant there is nothing on record of the case to even remotely suggest, from the perspective of a common prudent man, that the complainant in real sense communicated any serious unwillingness to the petitioner, when they both entered physical relationship for the first time. Rather, the conduct of the complainant and the attending circumstances of the incident, speak volumes about the fact that the complainant had willingly, after being in the full knowledge of the repercussions of her act, entered into physical relationship with the petitioner.

8.2 Cases involving extramarital relationships particularly when both the parties are aware of each other's marital status, fall in a different

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realm. The man may not be completely innocent in such circumstances but his act(s) may not be sufficient to attract culpability. When mature, educated man and woman; while being married to different people and also parents to children with wedded partners decide to enter into an extramarital relationship, it cannot be treated as a contingent happenstance. Even if such a relationship is based on some romantic ideals or irrational assumptions of a fairy tale script or, especially, for companionship, mutuality and reciprocity, such relations between consenting adults cannot but be formed with such awareness of the consequences and reverberating effects. Regardless, any disillusionment or disappointment in expectations which may follow are not antonymous to the very nature of such a complex entanglement. Even if the consenting adults, at some point in their relationship, thought about parting with their wedded partners to proceed towards legalizing their extramarital relationship, while one of them decides to not proceed with the idea, it may very well lead to utter disappointment for the other person in the extramarital affair but it would be sheer far fetchedness to term the consensual extramarital relation as anything but that. For a married woman, who has willingly formed consensual extramarital relationship with a man, wherein the said man is married to another woman with children born out of the wedlock, it is seemingly preposterous to expect that the said man would divorce his wife to marry her, while she continues in her marital relationship and family life with children. The convoluted expectations placed upon the man and the accusation of having sexual relationship on pretext of marriage are seemingly duplicitous as well as disparaging much less culpable to invite criminal prosecution. In such like cases, the presumption stipulated under

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Section 114-A of Indian Evidence Act, 1872 cannot come to the aid of the prosecution/complainant.

8.3 The parties were in a relationship for around 01½ years. They both were married separately, having their own children from their respective legal marital relationships. Complainant herself is a lady of advanced age of 32 years at the time of lodging of the present FIR. In these circumstances, it cannot be legally and validly construed that there was any alleged promise to marry on part of the petitioner, which made the complainant vary her stand and communicate her consent to make physical relations with the petitioner. The complainant has tried to plead that she had obtained divorce from her husband but no material has been brought forward by her to substantiate the same. Orders dated 16.03.2023 and 31.03.2023 passed by the learned trial Court clearly show that repeated opportunities were given but she failed to bring out any such material. So far as the allegations regarding other offences are concerned, the same are generic in nature. It is a matter of common knowledge, judicial notice whereof can be taken, that the parties in the course of taking criminal action(s) against each other, in order to vent their ire, often tend to exaggerate the allegations so as to add severity thereto. As such, the charges were framed against the petitioner-accused under Sections 376/506 of IPC.

8.4. The complainant (victim) was major during her relationship with the petitioner (accused) and could very well understand the consequences of her act. Moreover, the promise to marry was not the only reason of the complainant (victim) permitting the petitioner for the sexual indulgence since she accepted her love affair with the petitioner. Repeated



sexual indulgence was out of the love affair, and it was not necessarily preceded by the promise of marriage on every occasion. The relationship between the victim and the petitioner continued for around 1½ years, which cannot be said that she consented because she was under misconception of promise of marriage. However, when the said relationship turned sour, it cannot be inferred that the physical relationship established on every occasion was against her will or without consent. Thus, this Court is of the considered opinion that there does not exist any sufficient ground to proceed against the petitioner for charges under Sections 376 and 506 of IPC.

8.7 Keeping in view the entirety of facts and circumstances of the case, the petitioner ought not to be arraigned as an accused for offence under Sections 376/506 of IPC. Therefore, the impugned order passed by the trial Court is, thus, liable to be set-aside.

Decision

9. The present revision petition is accepted, the impugned order dated 22.09.2023 passed by learned Additional Sessions Judge, Faridabad, Haryana is set aside and the accused is discharged from FIR No.089/2018 dated 21.09.2018 under Sections 376/506 of IPC registered at Police Station Women Police Station, Sector 16-A, Faridabad.

10. Pending application(s), if any, shall also stand disposed off.

(SUMEET GOEL)
JUDGE

August 27, 2024
Ajay

Whether speaking/reasoned: Yes/No

Whether reportable: Yes/No