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thereafter, they sent her some lewd messages, due to which she blocked their number. On resumption of the classes, the petitioner and the co-accused apologized for their acts and assure to not to do so in future. The prosecutrix forgave them and gradually friendly and cordial relations were developed between them. She alleged that one particular day, while in college, the petitioner and the co-accused took her to college canteen where she was offered some cold drink on consuming which she felt dizziness and lost consciousness. When she regained the consciousness, she found herself lying in the vehicle of the accused Ankit Dahiya. On asking, they showed a video in which they were shown committing rape upon her. By extending threats that they would make her video viral if the incident was disclosed by her to anyone they kept on harassing and blackmailing and due to fear, she did not disclose anything to anybody.

3. Learned counsel for the petitioner *inter alia* contends that there is no evidence available on record to indicate the complicity of the petitioner. Even initially, when the prosecutrix was produced before the jurisdictional Magistrate for recording her statement under Section 164 Cr.P.C. i.e. two days after the registration of the FIR (*supra*), she has categorically stated that the petitioner has never developed any physical relations with her, as such, no offence under Section 376 of IPC is made out against the petitioner. It is further contended that as regards to the second allegation i.e. making the obscene video of the prosecutrix viral, the perusal of the statement of prosecutrix clearly shows that this video was made by co-accused, namely, Ankit Dahiya and the incident is alleged to have taken place in Delhi, whereas, the petitioner was in Mohali on the date of incident and there is no allegation

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that the petitioner has accompanied the co-accused Ankit Dahiya at the time of alleged incident, as such, the petitioner has no role in making the video and further circulating the same. The petitioner was not in contact with the complainant/prosecutrix but it was the co-accused, Ankit Dahiya since long. On 05.08.2023, just few days before the registration of the FIR (*supra*), the complainant/prosecutrix lodged a complaint with Cyber Cell regarding uploading of her video and she has named the co-accused, Ankit Dahiya, for the same, as such, offence under Section 67-A of I.T. Act is also not made out against the petitioner. The petitioner has been falsely implicated in the present case and has no role to play in the alleged incident. The father of the petitioner has made several complaints to the jurisdictional police officers with regard to the father and uncle of the prosecutrix blackmailing him and demanding money. He has even provided the phone recording of the father and uncle of the prosecutrix which proves the factum of their blackmailing the father of the petitioner. Keeping in view the aforesaid totality of the circumstances, it is apparent that there is no truth in the allegation levelled against the petitioner and he has been falsely implicated in the present case. Further, the first incident is alleged to have taken place somewhere in the year 2021. No specific date or time has been mentioned in the FIR (*supra*) and the FIR has been registered after an inordinate delay of more than two years and further, there is no allegation that in July, 2023, when the second incident has taken place, the petitioner was present there or he had any role to play in the same. All the allegations are against the co-accused, Ankit Dahiya and the implication of the petitioner is only to extract money and the allegation that the petitioner owns any channel or ever uploaded any video of the complainant/prosecutrix is



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absolutely incorrect and the Investigating Agency has carried out a biased investigation. Learned counsel for the petitioner further relies upon the judgment of the Hon'ble Supreme Court in 'Kapil Aggarwal and others Vs. Sanjay Sharma and others' (2021) 5 SCC 524 and a two judge bench judgment of the Hon'ble Supreme Court 'State of Haryana Vs. Bhajan Lal' 1992 AIR SC 604.

4. Per contra, the learned State counsel assisted by Mr. Kuldeep Singh Saini, Advocate for the complainant submits that there are specific allegations with regard to rape against the petitioner by taking advantage of her and she has specifically named that the petitioner along with co-accused, Ankit Dahiya, have showed a video in their phone in which both were committing rape upon her when she was lying unconscious in an intoxicant condition and further, in the month of January, 2024, the petitioner has circulated the obscene video of the prosecutrix by changing the name of his channel as AL@ ALYX STAR VIDEO MMS LEAKED and he has posted the same obscene videos of the prosecutrix on his own channel vide post No.433 video No.4. So it is amply clear that the petitioner has not only committed rape upon the prosecutrix and has also made her video viral and further, the disputed question of facts cannot be decided by this Court.

5. Having heard the learned counsel for the parties and after perusing the record with their able assistance, it transpires that there are specific allegations against the petitioner and he has not only committed rape upon the prosecutrix but rather circulated her obscene video and the probable defence, however, convincing it may seem, cannot be looked into by this Court while exercising its power under Section 482 Cr.P.C. The matter requires to be



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adjudicated by the learned trial Court on the basis of the evidence adduced by the parties and the probable defence as set up by the petitioner cannot be gone into at this stage.

6. A two Judge bench of the Hon'ble Supreme Court in ***HMT Watches Limited vs. M.A. Abida (2015) 11 SCC 776*** has held that inherent powers under Section 482 of the Cr.P.C. cannot be extended to determining question of facts. It is only for the trial Court to determine the disputed questions of fact after examining the evidence on record and interference by this Court with regards to factual questions is impermissible in law.

7. A two Judge bench of the Hon'ble Supreme Court in the ***Rathish Babu Unnikrishnan Vs. State (Govt. of NCT) 2022 SCC Online SC 513***, speaking through Justice Hrishikesh Roy, observed as under:

“17. The consequences of scuttling the criminal process at a pre-trial stage can be grave and irreparable. Quashing proceedings at preliminary stages will result in finality without the parties having had an opportunity to adduce evidence and the consequence then is that the proper forum i.e., the trial Court is ousted from weighing the material evidence. If this is allowed, the accused may be given an un-merited advantage in the criminal process. Also because of the legal presumption, when the cheque and the signature are not disputed by the appellant, the balance of convenience at this stage is in favour of the complainant/prosecution, as the accused will have due opportunity to adduce defence evidence during the trial, to rebut the presumption.”

Furthermore, in ***Sampelly Satyanarayana Rao vs. Indian Renewable Energy Development Agency Limited (2016) 10 SCC 458***, a two Judge bench of the Hon'ble Supreme Court, speaking through Justice Adarsh Kumar Goel, made the following observations:

“17. As is clear from the above observations of this Court, it is well settled that while dealing with a quashing petition, the Court has ordinarily to proceed on the basis of averments in the complaint. The defence of the accused cannot be considered at this

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stage. The court considering the prayer for quashing does not adjudicate upon a disputed question of fact.”

8. Accordingly, the present petition is dismissed. Pending miscellaneous application(s), if any, also stand disposed of.

9. However, nothing observed herein shall be construed as expression of an opinion by this Court lest it may prejudice the trial. The learned trial Court is directed to proceed with the trial on its own merits, strictly in accordance with law.

(HARPREET SINGH BRAR)
JUDGE

05.11.2024*Neha*

Whether speaking/reasoned	:	Yes/No
Whether reportable	:	Yes/No