



2024:DHC:9471



IN THE HIGH COURT OF DELHI AT NEW DELHI

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Judgment delivered on:09.12.2024

+ **CRL.REV.P. 238/2023 & CRL.M.A. 6224/2023**

GOVIND SINGH

.....Petitioner

versus

STATE NCT DELHI

.....Respondent

Advocates who appeared in this case:

For the Petitioner : Mr. Azhar Qayam, Mr. Narender Kumar and Mr. Pawan Kumar, Advs.

For the Respondent : Mr. Sunil Kumar Gautam, APP for the State with W/SI Soni Lal, PS Nabi Karim.
Ms. Astha, Adv. for the complainant (through VC)

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HON'BLE MR JUSTICE AMIT MAHAJAN

JUDGMENT

1. The present petition has been filed, *inter alia*, challenging order on charge dated 13.12.2022 (hereafter '**impugned order**'), passed by the learned Additional Sessions Judge ('**ASJ**'), Central District, Tis Hazari Courts, Delhi, in CA No. 535/2022 arising out of FIR No. 52/2021, registered at Police Station Nabi Karim.



2. The learned ASJ held that there was sufficient material on record to frame charges against the petitioner accused for the offences punishable under Sections 376(2)(n)/506 of the Indian Penal Code, 1860 ('**IPC**'). Formal charges were framed against the petitioner for the aforesaid offences on the same day, that is, 13.12.2022.

3. The brief facts of the case are as follows:

3.1 On 03.03.2021, Respondent No.2 made a complaint alleging that the petitioner had established sexual relations with her on the false pretext of marriage and also threatened to circulate her nude photographs on the internet. It is alleged that the petitioner and Respondent No.2 were good friends and used to talk to each other on phone between the years 2010 and 2016. Respondent No.2 met the petitioner for the first time on 13.07.2016 at Vaishali Metro Station when he had come to Delhi from Punjab as he was in need of money. On 02.10.2016, the petitioner called Respondent No.2 to meet him at New Delhi Metro Station and took her to Ramayan Hotel, Nabi Karim on the pretext of meeting his friends–Reet and Lavi. Reet and Lavi were allegedly not present in the Hotel. It is alleged that the petitioner locked the room and forcibly raped Respondent No.2. When Respondent No.2 objected and stated that she will file a police complaint, the petitioner asked her to not tell about the incident to anyone and promised to marry her. Thereafter, the petitioner allegedly called Respondent No.2 to the Hotel multiple times and established physical relations with her on the false pretext of marriage. On



25.04.2017, when Respondent No.2 met the petitioner at the Hotel, he allegedly clicked her photographs without her consent. Respondent No.2 met the petitioner at the Hotel for the last time on 22.01.2020, whereafter they remained in touch through phone. The Roka ceremony of the petitioner and Respondent No.2 was solemnised on 10.01.2021 in the presence of the family members of the petitioner. It is alleged that the ceremony was later broken and the petitioner's family told her that the petitioner will not marry her due to her complexion. When Respondent No.2 insisted to go to Amritsar and talk to the parents of the petitioner, he allegedly threatened to make her nude photos viral. The complaint was thereafter filed which led to the present FIR No. 52/2021 dated 03.03.2021, registered at Police Station Nabi Karim, for offences under Sections 376/506 of the IPC.

3.2 On 04.03.2021, the statement of Respondent No.2 was recorded under Section 164 of the Code of Criminal Procedure, 1973 ('CrPC') where she supported the case of the prosecution. She elaborated upon the allegations as levelled in the FIR and stated that she had helped the petitioner financially between the years 2010 to 2016. She further stated that she had conceived in the year 2017 and the year 2019, however, the petitioner gave her medicines to induce miscarriage. She also stated that she had contacted the petitioner's mother on 10.12.2020 and told her about their relationship whereafter his mother started pressuring Respondent No.2 to prepare for ILETS and settle in Canada with the petitioner. Respondent No.2 told the petitioner that she did not want to get married at that time. Respondent No.2 sought



time for marriage from the petitioner's mother as her parents were against the marriage due to caste differences. After Respondent No.2 convinced her parents, they went to the petitioner's house where the petitioner's family said that they did not care about the complexion of Respondent No.2. She stated that the behaviour of the petitioner's family changed after Roka ceremony and the ceremony was later broken on the pretext of Respondent No.2's complexion and that she is from Delhi. Respondent No.2 found out that the petitioner had gotten engaged on 25.02.2021 pursuant to which she shared their photos and videos with the petitioner's family. She also stated that the petitioner then stated that he had physical relations with many individuals and he would not marry her.

3.3 During course of investigation, notice under Section 91 of the CrPC was served upon the Hotel Manager of Ramayan Hotel who produced photocopy of registers that showed the entry of the petitioner and Respondent No.2 on three dates— 07.04.2017, 10.07.2017 and 22.07.2019.

3.4 During investigation, Respondent No.2 produced two videos. In one of the videos, the petitioner was saying that he will marry her by next month and in the other, the petitioner had a tattoo on his chest of Respondent No.2's name.

3.5 Chargesheet was filed against the petitioner for the offences under Sections 376/506/201 of the IPC. Section 201 of the IPC was added as the petitioner had allegedly destroyed the evidence which contained the photographs and videos of Respondent No.2.



4. The learned ASJ, by the impugned order, directed charges to be framed against the petitioner for the offences under Sections 376/506 of the IPC. The relevant portion of the impugned order is reproduced hereunder:

*“A perusal of police complaint and statement u/s 164 Cr.P.C. show that the prosecutrix had made clear allegation's that the accused, had initially established physical relations with her with use of force and thereafter he gave a false promise to marry the prosecutrix and continued to have sexual relations with her. Later on, he and his family denied for the marriage. At the stage of charge, the Court cannot evaluate the evidence since only a prima facie case is to be seen. **It has been rightly submitted by Ld. Addl. PP for the State that discrepancies and infirmities, if any, in the statement of the prosecutrix can only be considered and appreciated at the stage of final judgment and not at this stage. However, offence u/s 201 IPC is not made out since except the mere oral allegations there is nothing on record that the accused had destroyed any evidence which contained the photographs of the victim.**”*

(emphasis supplied)

5. The learned counsel for the petitioner submitted that the learned ASJ has erroneously framed charges against the petitioner without appreciating that the case of the prosecution does not give rise to any strong suspicion so as to frame charges against the petitioner.

6. He submitted that the learned ASJ has misconstrued the facts and not considered that the investigation showed that the petitioner had not visited Hotel Ramayan on 02.10.2016 which is alleged to be the first instance of physical relation between the parties. He submitted that although Respondent No.2 has alleged that the petitioner forcibly established sexual relations with her at the first instance, however, no complaint was made by her to that effect.



7. He further submitted that it is also alleged that the petitioner established relations with Respondent No.2 on 25.04.2017 and 22.01.2020 at the Ramayan Hotel, but there is no record to corroborate the booking of the Hotel on the said dates.

8. He submitted that the records of Hotel Ramayan and Hotel Paras that were procured during the investigation show that the entry register was signed by both the petitioner and Respondent No.2 which shows that the rooms were booked with consent of Respondent No.2.

9. He submitted that even as per the case of the prosecution, Respondent No.2 and the petitioner established sexual relations for the last time on 22.01.2020 and the FIR was registered way after on 03.03.2021.

10. He submitted that the families of the petitioner and Respondent No.2 met for Roka ceremony of the parties and the marriage was not performed due to circumstances beyond the control of the petitioner.

11. He submitted that the relation between the parties is consensual in nature and the allegations constitute no offence against the petitioner.

12. *Per contra*, the learned Additional Public Prosecutor for the State and the learned counsel for the complainant submitted that the learned ASJ has rightly framed the charges after due application of mind to the facts of the case.

13. They submitted that the learned ASJ has rightly noted that clear allegations have been levelled against the petitioner and any



infirmities or discrepancies in the statement of Respondent No.2 would be seen during the course of trial.

ANALYSIS

14. At the outset, it is relevant to note that the scope of interference by High Courts while exercising revisional jurisdiction in a challenge to order framing charge is well settled. The power ought to be exercised sparingly, in the interest of justice, so as to not impede the trial unnecessarily. It is not open to the Court to misconstrue the revisional proceedings as an appeal and reappreciate the evidence unless any glaring perversity is brought to its notice.

15. Since the petitioner has assailed the impugned order whereby the respondents have been discharged of the offence under Section 308/34 of the IPC, it will be apposite to succinctly discuss the statutory law with respect to framing of charge and discharge as provided under Sections 227 and 228 of the CrPC. The same is set out below:

“227. Discharge

If, upon consideration of the record of the case and the documents submitted therewith, and after hearing the submissions of the accused and the prosecution in this behalf, the Judge considers that there is not sufficient ground for proceeding against the accused, he shall discharge the accused and record his reasons for so doing.

228. Framing of Charge

(1) If, after such consideration and hearing as aforesaid, the Judge is of opinion that there is ground for presuming that the accused has committed an offence which-

(a) is not exclusively triable by the Court of Session, he may, frame a charge against the accused and, by order, transfer the case for



trial to the Chief Judicial Magistrate, or any other Judicial Magistrate of the first class and direct the accused to appear before the Chief Judicial Magistrate, or, as the case may be, the Judicial Magistrate of the first class, on such date as he deems fit, and thereupon such Magistrate shall try the offence in accordance with the procedure for the trial of warrant cases instituted on a police report;

(b) is exclusively triable by the Court, he shall frame in writing a charge against the accused.

(2) Where the Judge frames any charge under clause (b) of subsection (1), the charge shall be read and explained to the accused and the accused shall be asked whether he pleads guilty of the offence charged or claims to be tried."

16. It is trite law that the learned Trial Court while framing charges is not required to conduct a mini-trial and has to merely weigh the material on record to ascertain whether the ingredients constituting the alleged offence are prima facie made out against the accused persons. The Hon'ble Apex Court, in the case of **Sajjan Kumar v. CBI : (2010) 9 SCC 368**, has culled out the following principles in regards to the scope of Sections 227 and 228 of the CrPC:

"21. On consideration of the authorities about the scope of Sections 227 and 228 of the Code, the following principles emerge:

(i) The Judge while considering the question of framing the charges under Section 227 CrPC has the undoubted power to sift and weigh the evidence for the limited purpose of finding out whether or not a prima facie case against the accused has been made out. The test to determine prima facie case would depend upon the facts of each case.

(ii) Where the materials placed before the court disclose grave suspicion against the accused which has not been properly explained, the court will be fully justified in framing a charge and proceeding with the trial.

(iii) The court cannot act merely as a post office or a mouthpiece of the prosecution but has to consider the broad probabilities of the case, the total effect of the evidence and the documents produced before the court, any basic infirmities, etc. However, at



this stage, there cannot be a roving enquiry into the pros and cons of the matter and weigh the evidence as if he was conducting a trial.

(iv) If on the basis of the material on record, the court could form an opinion that the accused might have committed offence, it can frame the charge, though for conviction the conclusion is required to be proved beyond reasonable doubt that the accused has committed the offence.

(v) At the time of framing of the charges, the probative value of the material on record cannot be gone into but before framing a charge the court must apply its judicial mind on the material placed on record and must be satisfied that the commission of offence by the accused was possible.

(vi) At the stage of Sections 227 and 228, the court is required to evaluate the material and documents on record with a view to find out if the facts emerging therefrom taken at their face value disclose the existence of all the ingredients constituting the alleged offence. For this limited purpose, sift the evidence as it cannot be expected even at that initial stage to accept all that the prosecution states as gospel truth even if it is opposed to common sense or the broad probabilities of the case.

(vii) If two views are possible and one of them gives rise to suspicion only, as distinguished from grave suspicion, the trial Judge will be empowered to discharge the accused and at this stage, he is not to see whether the trial will end in conviction or acquittal.”

(emphasis supplied)

17. In a recent decision in ***State of Gujarat v. Dilipsinh Kishorsinh Rao*** : 2023 SCC OnLine SC 1294, the Hon’ble Apex Court has discussed the parameters that would be appropriate to keep in mind at the stage of framing of charge/discharge, as under:

*“7. It is trite law that application of judicial mind being necessary to determine whether a case has been made out by the prosecution for proceeding with trial and it would not be necessary to dwell into the pros and cons of the matter by examining the defence of the accused when an application for discharge is filed. At that stage, the trial judge has to merely examine the evidence placed by the prosecution in order to determine whether or not the grounds are sufficient to proceed against the accused on basis of charge sheet material. **The nature of the evidence recorded or collected***



by the investigating agency or the documents produced in which prima facie it reveals that there are suspicious circumstances against the accused, so as to frame a charge would suffice and such material would be taken into account for the purposes of framing the charge. If there is no sufficient ground for proceeding against the accused necessarily, the accused would be discharged, but if the court is of the opinion, after such consideration of the material there are grounds for presuming that accused has committed the offence which is triable, then necessarily charge has to be framed.

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12. The primary consideration at the stage of framing of charge is the test of existence of a prima-facie case, and at this stage, the probative value of materials on record need not be gone into. This Court by referring to its earlier decisions in the State of Maharashtra v. Som Nath Thapa, (1996) 4 SCC 659 and the State of MP v. Mohan Lal Soni, (2000) 6 SCC 338 has held the nature of evaluation to be made by the court at the stage of framing of the charge is to test the existence of prima-facie case. It is also held at the stage of framing of charge, the court has to form a presumptive opinion to the existence of factual ingredients constituting the offence alleged and it is not expected to go deep into probative value of the material on record and to check whether the material on record would certainly lead to conviction at the conclusion of trial."

(emphasis supplied)

18. In view of the above, it is clear that this Court, at this stage, is not required to reevaluate the evidence or hold a mini trial as the same would tantamount to this Court assuming appellate jurisdiction. Thus, all that has to be seen is whether the learned Trial Court has adequately appreciated the material on record and whether, given the material placed before it, there is grave suspicion against the accused which is not properly explained.

19. It is the case of the prosecution that the petitioner had established sexual relations with Respondent No.2 on the false pretext of marriage. It is also alleged that at the first instance, the petitioner



had forcibly raped Respondent No.2 without her consent on 02.10.2016. It is alleged that the petitioner has also threatened to make viral the nude photographs of Respondent No.2.

20. The case of the prosecution in the present case is essentially based on the statement of Respondent No.2. It is trite law that mere testimony of the prosecutrix can be sufficient for the purpose of conviction for the offence under Section 376 of the IPC and the same requires no corroboration, however, to frame charge under Section 376 of the IPC on allegations of false promise to marry, it is to be seen whether a *prima facie* case is made out that the person who has made the promise to marry was dishonest from the beginning and had no intention of upholding his word even at the time of making such a promise. Mere breach of a promise to marry at a belated stage after significant time has elapsed cannot be termed as a false promise.

21. The Hon'ble Apex Court in ***Pramod Suryabhan Pawar v. State of Maharashtra : (2019) 9 SCC 608***, held that:

*“12. This Court has repeatedly held that consent with respect to Section 375 IPC involves an active understanding of the circumstances, actions and consequences of the proposed act. An individual who makes a reasoned choice to act after evaluating various alternative actions (or inaction) as well as the various possible consequences flowing from such action or inaction, consents to such action. In **Dhruvaram Sonar [Dhruvaram Murlidhar Sonar v. State of Maharashtra, (2019) 18 SCC 191 : 2018 SCC OnLine SC 3100]** which was a case involving the invoking of the jurisdiction under Section 482, this Court observed : (SCC para 15)*

“15. ... An inference as to consent can be drawn if only based on evidence or probabilities of the case. “Consent” is also stated to be an act of reason coupled with deliberation. It denotes an active will in mind of a person to permit the doing of the act complained of.”



This understanding was also emphasised in the decision of this Court in Kaini Rajan v. State of Kerala [Kaini Rajan v. State of Kerala, (2013) 9 SCC 113 : (2013) 3 SCC (Cri) 858] : (SCC p. 118, para 12)

“12. ... “Consent”, for the purpose of Section 375, requires voluntary participation not only after the exercise of intelligence based on the knowledge of the significance of the moral quality of the act but after having fully exercised the choice between resistance and assent. Whether there was consent or not, is to be ascertained only on a careful study of all relevant circumstances.”

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14. In the present case, the “misconception of fact” alleged by the complainant is the appellant's promise to marry her. Specifically in the context of a promise to marry, this Court has observed that there is a distinction between a false promise given on the understanding by the maker that it will be broken, and the breach of a promise which is made in good faith but subsequently not fulfilled. In Anurag Soni v. State of Chhattisgarh [Anurag Soni v. State of Chhattisgarh, (2019) 13 SCC 1 : 2019 SCC OnLine SC 509] , this Court held : (SCC para 12)

“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 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 Sections 375 IPC and can be convicted for the offence under Section 376 IPC.”

Similar observations were made by this Court in Deepak Gulati v. State of Haryana [Deepak Gulati v. State of Haryana, (2013) 7 SCC 675 : (2013) 3 SCC (Cri) 660] (Deepak Gulati) : (SCC p. 682, para 21)

*“21. ... **There is a distinction between the mere breach of a promise, and not fulfilling a false promise. Thus, the court must examine whether there was made, at an early stage a false promise of marriage by the accused;**”*



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16. Where the promise to marry is false and the intention of the maker at the time of making the promise itself was not to abide by it but to deceive the woman to convince her to engage in sexual relations, there is a “misconception of fact” that vitiates the woman's “consent”. On the other hand, a breach of a promise cannot be said to be a false promise. To establish a false promise, the maker of the promise should have had no intention of upholding his word at the time of giving it. The “consent” of a woman under Section 375 is vitiated on the ground of a “misconception of fact” where such misconception was the basis for her choosing to engage in the said act. In *Deepak Gulati [Deepak Gulati v. State of Haryana, (2013) 7 SCC 675 : (2013) 3 SCC (Cri) 660]* this Court observed : (SCC pp. 682-84, paras 21 & 24)

“21. ... There is a distinction between the mere breach of a promise, and not fulfilling a false promise. Thus, the court must examine whether there was made, at an early stage a false promise of marriage by the accused; and whether the consent involved was given after wholly understanding the nature and consequences of sexual indulgence. There may be a case where the prosecutrix agrees to have sexual intercourse on account of her love and passion for the accused, and not solely on account of misrepresentation made to her by the accused, or where an accused on account of circumstances which he could not have foreseen, or which were beyond his control, was unable to marry her, despite having every intention to do so. Such cases must be treated differently.

24. Hence, it is evident that there must be adequate evidence to show that at the relevant time i.e. at the initial stage itself, the accused had no intention whatsoever, of keeping his promise to marry the victim. There may, of course, be circumstances, when a person having the best of intentions is unable to marry the victim owing to various unavoidable circumstances. The “failure to keep a promise made with respect to a future uncertain date, due to reasons that are not very clear from the evidence available, does not always amount to misconception of fact. In order to come within the meaning of the term “misconception of fact”, the fact must have an immediate relevance”. Section 90 IPC cannot be



called into aid in such a situation, to pardon the act of a girl in entirety, and fasten criminal liability on the other, [Ed. : The matter between two asterisks has been emphasised in original.] unless the court is assured of the fact that from the very beginning, the accused had never really intended to marry her [Ed. : The matter between two asterisks has been emphasised in original.] .”

(emphasis supplied)

*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.***

(emphasis supplied)

22. In *Dhruvaram Murlidhar Sonar v. State of Maharashtra : (2019) 18 SCC 191*, the Hon’ble Apex Court has pointed out the distinction between the offence of rape and consensual sex between two adults. It was held as under:

“23. Thus, there is a clear distinction between rape and consensual sex. The court, in such cases, must very carefully examine whether the complainant had actually wanted to marry the victim or had mala fide motives and had made a false promise to this effect only to satisfy his lust, as the latter falls within the ambit of cheating or deception. There is also a distinction between mere breach of a promise and not fulfilling a false promise. If the accused has not made the promise with the sole intention to seduce the prosecutrix to indulge in sexual acts, such an act would not amount to rape. There may be a case where the prosecutrix agrees to have sexual intercourse on account of her love and passion for the accused and not solely on account of the misconception created by accused, or where an accused, on account of circumstances which he could not have foreseen or which were beyond his control, was unable to marry her despite



having every intention to do. Such cases must be treated differently. If the complainant had any mala fide intention and if he had clandestine motives, it is a clear case of rape. The acknowledged consensual physical relationship between the parties would not constitute an offence under Section 376 IPC.”

(emphasis supplied)

23. In the recent case of ***Mahesh Damu Khare v. State of Maharashtra*** : 2024 SCC OnLine SC 3471, the Hon’ble Apex Court reiterated the legal principles concerning consensual relationships and the initiation of criminal proceedings on allegations of sexual relationship on the false promise of marriage. The Hon’ble Apex Court quashed the FIR against the appellant therein and held as under :

“22..... Thus, in a situation where physical relationship is maintained for a prolonged period knowingly by the woman, it cannot be said with certainty that the said physical relationship was purely because of the alleged promise made by the appellant to marry her. Thus, unless it can be shown that the physical relationship was purely because of the promise of marriage, thereby having a direct nexus with the physical relationship without being influenced by any other consideration, it cannot be said that there was vitiation of consent under misconception of fact.

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27..... In our opinion, the longer the duration of the physical relationship between the partners without protest and insistence by the female partner for marriage would be indicative of a consensual relationship rather than a relationship based on false promise of marriage by the male partner and thus, based on misconception of fact.

28. Moreover, even if it is assumed that a false promise of marriage was made to the complainant initially by the appellant, even though no such cogent evidence has been brought on record before us to that effect, the fact that the relationship continued for nine long years, would render the plea of the complainant that her consent for all these years was under misconception of fact that the Appellant would marry her implausible. Consequently, the criminal liability



attached to such false promise would be diluted after such a long passage of time and in light of the fact that no protest was registered by the complainant during all those years. Such a prolonged continuation of physical relationship without demurral or remonstrance by the female partner, in effect takes out the sting of criminal culpability and neutralises it.

29. *It will be very difficult to assume that the complainant who is otherwise a mature person with two grown up children, was unable to discover the deceitful behaviour of the appellant who continued to have sexual relationship with her for such a long period on the promise of marriage. Any such mendacious act of the appellant would have been exposed sooner without having to wait for nine years. The inference one can draw under the circumstances is that there was no such false promise made to the complainant by the appellant of marriage by continuing to have physical relationship so as to bring this act within the province of Section 376 IPC and therefore, there was no vitiation of consent under misconception of fact.*

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31. *In our view if criminality is to be attached to such prolonged physical relationship at a very belated stage, it can lead to serious consequences. It will open the scope for imputing criminality to such long term relationships after turning sour, as such an allegation can be made even at a belated stage to drag a person in the juggernaut of stringent criminal process. There is always a danger of attributing criminal intent to an otherwise disturbed civil relationship of which the Court must also be mindful."*

(emphasis supplied)

24. This Court is of the view that in cases where a consensual physical relationship continues over an extended period, it cannot be said that the consent was purely based on the alleged promise to marry.

25. The Hon'ble Apex Court, in the case of ***Tameezuddin v. State (NCT of Delhi) : (2009) 15 SCC 566***, had observed as under:



“9. It is true that in a case of rape the evidence of the prosecutrix must be given predominant consideration, but to hold that this evidence has to be accepted even if the story is improbable and belies logic, would be doing violence to the very principles which govern the appreciation of evidence in a criminal matter.”

26. At the stage of framing charges as well, when the primary material on record is only the statement of the prosecutrix, the Court has to consider whether the same inspires such confidence so as to give rise to grave suspicion against the accused person of having committed the crime.

27. From a bare perusal of the FIR and the statement of Respondent No.2 under Section 164 of the CrPC, it is evident that the parties continued to have an amorous relationship for around four years. Admittedly, the promise to marry was allegedly made at the very outset of the relationship, that is, more than four years before the registration of the FIR. As per the chargesheet, Respondent No.2 had adduced a video during investigation that showed her name tattooed across the chest of the petitioner. Furthermore, it cannot be ignored that the parties had undergone a Roka ceremony with the agreement of their families whereafter the same was broken allegedly due to the complexion of Respondent No.2. While the same may be morally deplorable, however, from the said circumstances, it cannot be said that the petitioner had induced the consent of Respondent No.2 with no intention to marry her. Mere non-fulfilment of a promise at a future date is insufficient to conclude that the promise was false at the very start.



28. It is also not the case of the prosecution that Respondent No.2 was continuously insisting the petitioner for marriage. Instead, it is stated by Respondent No.2 in her statement under Section 164 of the CrPC that the petitioner's mother pressurised her to settle down with the petitioner in Canada and that she told the petitioner that she did not want to get married at that time. The petitioner's failure to keep his promise after almost four years cannot be construed to mean that his promise was false from the very start.

29. Insofar as the allegations of the petitioner raping her without her consent on 02.10.2016 is concerned, it is relevant to note that at the time of framing of charges, the learned Trial Court is required to sift through the entire material on record and take the same into consideration. Doubt is cast on the veracity of the prosecution as the Hotel records show that the parties did not go to the named Hotel on the concerned day. It is also relevant to note that the said incident took place way back in the year 2016 whereafter the parties commenced an amorous relationship. The present FIR was however only registered way after in the year 2021 after the Roka ceremony between the parties was broken.

30. Thus, in the opinion of this Court, a *prima facie* case for the offence under Section 376 of the IPC is not made out against the petitioner.

31. It is relevant to note that while the learned Trial Court did not frame charge against the petitioner for the offence under Section 201 of the IPC as the allegation was based on a mere bald averment, the



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petitioner was charged under Section 506 of the IPC in the absence of any material on record to show such threats. Although the statement of Respondent No.2 in this regard creates suspicion, however, the same alone does not give rise to grave suspicion against the petitioner so as to warrant framing of charge against him. It is trite law that if two views are possible and one of them gives rise to only suspicion instead of grave suspicion, it is open to the Court to discharge the accused.

32. Considering the totality of circumstances, in the opinion of this Court, grave suspicion is not raised against the petitioner. This Court is of the opinion that the statement of the petitioner does not inspire confidence and the material on record does not establish a *prima facie* case against the petitioner so as to warrant subjecting the petitioner to a trial.

33. In view of the aforesaid discussion, the impugned order is set aside and the petitioner is discharged of the charges framed against him in the case arising out of FIR No. 52/2021, registered at Police Station Nabi Karim.

34. The present petition is allowed in the aforesaid terms.

AMIT MAHAJAN, J

NOVEMBER 9, 2024