

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL APPEAL (SJ) No.3303 of 2024

Arising Out of PS. Case No.-118 Year-2021 Thana- SAMASTIPUR COMPLAINT CASE
District- Samastipur

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Rituraj Kumar Verma @ Ritu Raj S/o Late Vijay Sharma @ Vijay Kumar
Himanshu R/o Village Narghoghi Ward No.5 PS Sarairanjan Dist Samastipur

... .. Appellant/s

Versus

1. The State of Bihar
2. Ambika Kumari D/o Aashish Das R/o vill - Dalsingsarai, P.s. -
Dalshingsarai, Distt. - Samastipur

... .. Respondent/s

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Appearance :

For the Appellant/s : Mr. Vikas Mohan, Adv.

For the Respondent/s : Mr. Usha Kumari 1, APP

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CORAM: HONOURABLE MR. JUSTICE RAJIV ROY

ORAL ORDER

6 12-02-2025 Heard the parties.

2. The present appeal has been preferred:

*for quashing the order taking
cognizance dated 26.04.2022 by which the
Special Judge SC/ST (POA) Act Samastipur
has been taken cognizance against the
appellant u/s 376 I.P.C. and u/s 3(2)(V) of
SC/St Act in C.R. No. 118/2021 and entire
proceeding of complaint case No. 118/2021.*

3. With the consent of the parties, the appeal has been
taken up on merit.

4. As per the prosecution story, the complainant alleged
that she was working as an ANM at the Health Center, Udyapur,



Sarairanjan in the district of Samastipur when she met the appellant who claimed to be running a Child Care Nursing Home and wanted her to devote some time there. She agreed to it, the appellant demanded and was provided Rs. 3,00,000/- for purchasing articles for the Nursing Home. In between, he established physical relationship, the same was videographed and on that pretext and assuring of marriage, the repeated physical relationship was made.

5. Later, abusing her of being belonging to SC category (*Tatma caste*), she was threatened of dire consequences if she makes any demand/allegation. This led to the complaint.

6. The concerned Court after going through the complaint and the deposition vide an order dated 26.04.2022 took cognizance in the matter under Section 376 of the IPC and Section 3(2)(v) of SC/ST Act.

7. Aggrieved, the present appeal.

8. It is the case of the appellant that the lady is married, it was a consented relationship, no such video was prepared, she is a characterless woman and her complaint is fit to be ignored.

9. Further, in view of the fact that in the year 2024, the Supreme Court struck off *Tatma* Caste from the Bihar list of SC category, it cannot be tried by a Special SC/ST Court.

10. By way of supplementary affidavit, he has brought



on record the Gazette notification of the Bihar Government dated 12.08.2024 to show that pursuant to the order passed by the Hon'ble Supreme Court on 15.07.2024, *Tatma* Caste has been brought back to the most backward class category.

11. He has further taken this Court to a case of **Naim Ahamed Vs. State (NCT of Delhi) reported in 2023 LiveLaw (SC) 66** with specific reference to **paragraph 20** which read as follows:

20. The bone of contention raised on behalf of the respondents is that the prosecutrix had given her consent for sexual relationship under the misconception of fact, as the accused had given a false promise to marry her and subsequently he did not marry, and therefore such consent was no consent in the eye of law and the case fell under the Clause - Secondly of Section 375 IPC. In this regard, it is pertinent to note that there is a difference between giving a false promise and committing breach of promise by the accused. In case of false promise, the accused right from the beginning would not have any intention to marry the prosecutrix and would



have cheated or deceived the prosecutrix by giving a false promise to marry her only with a view to satisfy his lust, whereas in case of breach of promise, one cannot deny a possibility that the accused might have given a promise with all seriousness to marry her, and subsequently might have encountered certain circumstances unforeseen by him or the circumstances beyond his control, which prevented him to fulfill his promise. So, it would be a folly to treat each breach of promise to marry as a false promise and to prosecute a person for the offence under Section 376. As stated earlier, each case would depend upon its proved facts before the court.

12. Learned counsel, as such, submits that the order taking cognizance is an abuse of the process of law.

13. Mrs. Usha Kumari 1 represent the State and according to her, multiple ingredients are there which satisfied the Court to take cognizance in the matter. The appellant deceived the lady by taking Rs. 3,00,000/- for the purchase of articles for his Nursing Home, luring her to work as a part time in her Nursing



Home, he established physical relationship, videographed it and later threw her out by abusing that she belongs to *Tatma* caste.

14. It is her submission that the occurrence is between the year 2020 and 2021 when *Tatma* was very much in the list of SC category in the State of Bihar. The subsequent development by which pursuant to the order passed by the Hon'ble Supreme Court on 15.07.2024 followed by the Gazette notification of the State Government dated 12.08.2024, though *Tatma* caste is now in MBC list, will not affect the present case as it will always be prospective in nature.

15. It is her further submission that so far as the case of **Naim Ahamed (supra)** is concerned, in that case, the Hon'ble Apex Court recorded that in case of false promise, the accused must have the intent of cheating from the beginning itself and only wanted to satisfy his lust and later he encountered certain circumstance unforeseen, beyond his control which prevented him to fulfill his promise, in that case, it cannot be clubbed in the category of false promise.

16. She submits that contrary to the said observation of the Hon'ble Apex Court, in this case, there is no such unforeseen circumstance, it is clear that only because she belongs to the *Tatma* caste, was thrown out, abused, the amount taken was not returned and allegation of videography is also there. She submits



that picking up one point here or there and/or her status being a married woman cannot take out the prosecution story in its entirety. In that background, the Court rightly took the cognizance in the matter.

17. This Court has gone through the facts of the case, the submissions of the parties as also the Gazette notification of the State Government dated 12.08.2024 and the Hon'ble Apex Court's order in the case of **Naim Ahamed (supra)**. The question before this Court is whether prima facie, the contents of the complaint constitute a case for taking cognizance or not. The lady has alleged that while serving as ANM in Government Hospital, the appellant who was running a Nursing Home lured her, wanted her to work part time, took money for establishing it, under false narrative, established physical relationship despite being a married person as informed by learned State Counsel and not refuted by learned counsel for the appellant and after one year, abusing her as belonging to *Tatma* caste, she was thrown out. In that background, the Court concerned was fully justified in taking cognizance in the matter.

18. So far as the Gazette notification is concerned, it was rightly pointed out by learned State Counsel that the occurrence is of the year 2020-21 when *Tatma* caste was in the SC category. The Gazette notification dated 12.08.2024 of the State



government will not change the situation as it has come on a later date.

19. So far as the order of the Hon'ble Apex Court in **Naim Ahamed (supra)** is concerned, again each case has different facts and circumstance. The present case is/was completely different from case cited by the learned counsel for the appellant. Here, the intent to cheat was right from the beginning which shows that firstly he lured her to work part time in his Nursing Home, took her in confidence, allowed her to pay him Rs. 3,00,000/-, established physical relationship despite not only he being married, knowingly that the lady is also married, gave a false promise and later abusing her as belonging to Scheduled Caste category, threw her out.

20. In that background, the Court is not interested in interfering with the cognizance order dated 26.04.2022 passed in C.R. No. 118 of 2021.

21. The appeal fails and is accordingly, dismissed.

(Rajiv Roy, J)

Vijay Singh/-

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