

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.5695 of 2024

Arising Out of PS. Case No.-774 Year-2023 Thana- AHIYAPUR District- Muzaffarpur

Dr. Atul Shekhar, Son of Prakash Sahu, R/O Lohiya Nagar, P.S.- Lohia Nagar,
Ward No. 28, Dist.- Begusarai, Bihar.

... .. Petitioner/S

Versus

1. The State of Bihar.
2. Dr. Priya Kumari, D/O Baiju Choudhary, R/O Mohalla- Sheikhpur, P.S.-
Ahiyarpur, Dist.- Muzaffarpur.

... .. Opposite Party/s

Appearance :

For the Petitioner/s	:	Mr. N.K. Agrawal, Sr. Advocate Mr. Kumar Rajdeep, Advocate Mr. Arvind Kumar, Advocate Mrs. Diksha Kumari, Advocate
For the Opposite Party/s	:	Mr. Navin Kumar Pandey, APP

CORAM: HONOURABLE MR. JUSTICE CHANDRA SHEKHAR JHA
ORAL JUDGMENT
Date : 27-02-2025

1. Heard learned counsel appearing on behalf of the parties.

2. The present application has been filed for quashing the order dated 09.10.2023 passed by learned Chief Judicial Magistrate, Muzaffarpur in connection with Ahiyarpur P.S. Case No. 774/2023, for the offences punishable under Sections 376, 504, 506 of the Indian Penal Code.



3. Prosecution case in brief, as it appears from written statement of the Opposite Party no. 2, namely, Dr. Priya Kumari dated 21.06.2023, stating inter-alia, that she did her MBBS from P.M.C.H, Patna from 2014 to 2020 and during her stay in Patna, she came in contact with the petitioner (Dr. Atul Shekhar) and became friends and visited each other houses. Petitioner was also pursuing MBBS from S.K.M.C.H, Muzaffarpur and she being friend used to visit the petitioner off and on. On 06.09.2020, petitioner during his visit to his friend at Muzaffarpur visited her house also at 6:00 PM, and seeing nobody at her home petitioner forcefully established physical relation with her and on protest he threatened to kill if she disclosed it to anybody outside as he had contact with the criminals. Thereafter, petitioner made physical relation with her on different occasions and took video from the hidden camera without her knowledge at PMCH, Patna and promised her to marry. Presently the petitioner is posted in ANMCH, Gaya. Opposite party no. 2 went to meet the petitioner at Gaya and stayed in hotel and on the assurance of marriage the petitioner again established



physical relation with her. On 23.05.2023 petitioner on phone refused to marry her and threatened to make all the videos and photos viral and spoil her carrier, if she again press for her marriage with the petitioner. On 29.05.2023 she narrated the entire story of their relation/occurrence to her parents.

4. Police after investigation submitted charge sheet, upon perusal of which and on the basis of material available and collected during the course of investigation, the learned jurisdictional magistrate took cognizance for the offences under Sections 376, 504 and 506 of the Indian Penal Code against petitioner.

5. It is submitted by Mr. N.K. Agrawal, learned senior counsel appearing for the petitioner that as per FIR, the affairs between the parties started somewhere in year 2014, while both of them were pursuing their medical course. It is submitted that this case was filed on 21.06.2023 i.e. in the background of seven years of acquaintance. It is submitted by Mr. Agrawal that informant of the present case wanted to marry with petitioner which was not acceptable to the petitioner and his family members and, therefore, the



present case was lodged. It is submitted that as per the narration of FIR, on the first occasion petitioner visited the house of opposite party no. 2 at Muzaffarpur on 06.09.2020, while she was alone in her house and established physical relation with her. Thereafter, on several occasions, physical relations was established between them and for that video clips were also captured by the petitioner, on the basis of which opposite party no. 2 was threatened to keep silent, failing which she would loose her social reputation as the petitioner threatened to make it viral, but no such video clips was gathered by police during investigation. It is submitted that the opposite party is a full grown lady of about 30 years and she is well educated being a MBBS doctor from a reputed institution.

6. Mr. Agrawal in support of false allegation submitted further that opposite party no. 2 failed to provide any video clip during the course of investigation or photographs in support of her allegation and it was also not collected by investigating agency. It is pointed out that petitioner never called informant at Bodhgaya rather she



herself went to Gaya to pressurize the petitioner to marry her otherwise to face the dire consequences.

7. It is submitted that interestingly, opposite party no. 2 also filed a complaint case before the Chief Judicial Magistrate, Muzaffarpur bearing complaint case no. 1786 of 2023 on 27.05.2023 for the offences punishable under Section 498A of the Indian Penal Code, stating inter alia that on 13.10.2021 she solemnized marriage with petitioner at Patandevi Mandir, Patna but his family members not accepting her as their daughter-in-law as she could not fulfill their dowry demand.

8. While concluding the argument, it is submitted that the physical relations between the parties was consensual and same cannot be categorized as **rape**. It is submitted that the present FIR was lodged on 21.06.2023, prior to lodging the aforesaid complaint case with ulterior and oblique motive to settle the private and personal grudge and also to harass the petitioner and his family members. In support of his submission, learned senior counsel submitted that Hon'ble Supreme Court categorically held that any corporeal



relationship under the garb of false promise of marriage cannot be categorized as rape. In support of his submission, Mr. Agrawal relied upon the legal report of Hon'ble Supreme Court as available through ***Ansaar Mohammed. Vs State of Rajasthan*** reported through ***2022 SCC OnLine SC 886*** and also upon ***Pramod Suryabhan Pawar Vs State of Maharashtra and Another*** reported through ***(2019) 9 SCC 608.***

9. Learned counsel appearing for opposite party no. 2 filed counter affidavit on 08.01.2025, where it appears that marriage of opposite party no. 2 was never solemnized with petitioner as the parents of petitioner demanded Rs. 50 lacs from the parents of opposite party no. 2 as dowry. It is submitted that on first occasion physical relation with opposite party no. 2 was established forcibly at Muzaffarpur by petitioner with a threat to kill her which forced opposite party no. 2 to maintain her silence. It is conceded that on false assurance of marriage on several occasions, the petitioner established physical relationship with opposite party no. 2.

10. It would be apposite at this stage to reproduce



the paragraph nos. 8, 9 and 10 of the **Pramod Suryabhan Pawar Case (supra)**, which reads as under:-

"8. In deciding whether to exercise its jurisdiction under Section 482, the Court does not adjudicate upon the veracity of the facts alleged or enter into an appreciation of competing evidence presented. The limited question is whether on the face of the FIR, the allegations constitute a cognizable offence. As this Court noted in Dhruvaram Murlidhar Sonar v. State of Maharashtra, (Dhruvaram Sonar) : (SCC para 13)

"13. It is clear that for quashing the proceedings, meticulous analysis of factum of taking cognizance of an offence by the Magistrate is not called for. Appreciation of evidence is also not permissible in exercise of inherent powers. If the allegations set out in the complaint do not constitute the offence of which cognizance has been taken, it is open to the High Court to quash the same in exercise of its inherent powers."

9. The present proceedings concern an FIR registered against the appellant under Sections 376, 417, 504 and 506(2) IPC and Sections 3 (1) (u), (w) and 3(2)(vii) of the SC/ST Act. Section 376 IPC prescribes the punishment for the offence of rape which is set out in Section 375. Section 375 prescribes seven descriptions of how the offence of rape may be committed. For the present purposes only the second such description, along with Section 90 IPC is relevant and is set out below:

"375. Rape.-A man is said to commit "rape" if he-

under the circumstances falling under any of the following seven descriptions-

communication, communicates willingness to participate in the specific sexual act:

Provided that a woman who does not



physically resist to the act of penetration shall not by the reason only of that fact, be regarded as consenting to the sexual activity."

"90. Consent known to be given under fear or misconception. A consent is not such a consent as is intended by any section of this Code, if the consent is 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; or"

10. Where a woman does not "consent" to the sexual acts described in the main body of Section 375, the offence of rape has occurred. While Section 90 does not define the term "consent", a "consent" based on a "misconception of fact" is not consent in the eye of the law."

11. The primary contention advanced by the learned counsel appearing for opposite party no. 2 that the petitioner engaged in sexual relation with opposite party no. 2 on the false promise of marrying her and, therefore, her consent being premised on "misconception of fact" (the promise to marry), stands vitiated.

12. At this juncture, it would be apposite to reproduce para nos. 12 and 18 of the **Pramod Suryabhan Pawar Case (supra)**, which reads as under:-

"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.”

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.

13. In background of aforesaid legal proposition, now coming to the fact of the present case, it appears that the petitioner was acquainted with opposite party no. 2 since 2014. It appears that on first occasion this petitioner established forcible relation with opposite party no. 2 on 06.09.2020, whereafter opposite party no. 2 was threatened by him that if she would disclose the incidence to her parents, they would be killed. She also supplied reason to maintain her silence was false promise of marriage. It appears highly contrasting to co-exist both “threat to kill parents” and the “false promise” of marriage. It appears that the opposite party no. 2 continued in relation with petitioner since long three years thereafter it was finally refused to marry by petitioner on 23.05.2023 and after so she lodged the present FIR on 21.06.2023. It also appears from the FIR that the



petitioner was posted in Gaya, where out of her own opposite party no. 2 visited and resided together in a hotel of Bodhgaya, where she also claimed to establish physical relation with petitioner.

14. Interestingly, it appears from complaint case no. 1786 of 2023, which was filed on 13.10.2021 before the learned C.J.M., Muzaffarpur that opposite party no. 2 married with petitioner on 13.10.2021, in Patandevi Temple, Patna, making *prima facie* all allegation of rape false subsequently.

15. In view of aforesaid factual and legal discussions and by taking note of fact as opposite party no. 2 claimed herself to marry petitioner long back in year 2021 before lodging this FIR in year 2023, where in FIR she narrated a completely different story that petitioner refused to marry her due to non-fulfillment of demand of dowry as raised by his parents, the narration of FIR not appears convincing as to disclosing the offence of **rape** as discussed above.

16. Accordingly, impugned order of cognizance dated 09.10.2023 passed by learned Chief Judicial Magistrate, Muzaffarpur in connection with Ahiyarpur P.S.



Case No. 774/2023 is hereby set aside and quashed *qua*
petitioner with all its consequential proceedings.

17. Let copy of this order be sent to the trial court,
without delay.

(Chandra Shekhar Jha, J)

veena/-

AFR/NAFR	AFR
CAV DATE	NA
Uploading Date	28.02.2025
Transmission Date	28.02.2025

