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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ **CRL.M.C. 630/2025 & CRL.M.A. 2998/2025**

PRATEEK AGGARWAL

.....Petitioner

Through: Mr. C.M. Sangwan and Mr. Saksham Aggarwal, Advocates.

versus

THE STATE (NCT OF DELHI) & ANR.

.....Respondent

Through: Mr. Raj Kumar, APP with SI Surabhi Upadhyay, PS-Sarita Vihar.
Mr. C.M. Sharma, Advocate for R-2.

CORAM:

HON'BLE MR. JUSTICE CHANDRA DHARI SINGH

ORDER

10.02.2025

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1. The instant petition under Section 528 of the Bharatiya Nagarik Suraksha Sanhita, 2023 (hereinafter “BNSS”) [earlier under Section 482 of the Code of Criminal Procedure, 1973 (hereinafter “Cr.P.C.”)] has been filed on behalf of the petitioner praying for quashing of FIR bearing No. 264/2022 registered at Police Station - Sarita Vihar, Delhi for offences punishable under Sections 376 and 506 of the Indian Penal Code, 1860 (hereinafter “IPC”).

2. The brief facts of the case are that the respondent no.2/prosecutrix and petitioner/accused became acquainted with each other at New Sky Medicos, Tughlakabad, Delhi where the petitioner obtained the prosecutrix’s contact details under the pretext of offering home delivery of



medicines. Over time, they developed a friendship and the petitioner accompanied the prosecutrix on multiple morning walks near Deshbandhu College, Delhi.

3. On 4th July 2021, the accused invited the prosecutrix to Hotel Heera Palace, Sarita Vihar, Delhi purportedly to celebrate his birthday. However, no other guests were present and the petitioner allegedly established physical relations with the prosecutrix on the false pretext of marriage. Thereafter, the petitioner repeatedly called the prosecutrix to hotels namely, Hotel Heera Palace and Jai Singh Palace located in Delhi, continuing physical relations with her while assuring her of marriage.

4. In October 2021, the prosecutrix and petitioner visited Arya Samaj Mandir, East of Kailash, Delhi, where they submitted photographs, Aadhar cards and Rs.2100/- for marriage registration. However, when the date of marriage was fixed, the petitioner postponed it, claiming he had not yet informed his parents.

5. However, on 26th February 2022, the petitioner invited the prosecutrix to Jai Singh Place, Sarita Vihar, Delhi allegedly assuring her that they would marry the next day. However, on 27th February 2022, the petitioner refused to proceed for marriage to Arya Samaj Mandir, citing his father's ill health. Instead, he allegedly performed a symbolic wedding ritual by applying sindoor and tying a mangalsutra at the aforesaid hotel.

6. Thereafter, on 8th March 2022, the petitioner unequivocally refused to marry the prosecutrix. Later, he allegedly invited her again to Hotel Heera Place, Sarita Vihar, Delhi, wherein he again established physical relations with her on 30th March 2022, and told her that he had installed cameras in the room and threatened to leak her illicit videos if she reported the matter.



7. Subsequently, the prosecutrix filed a complaint, leading to the registration of FIR No. 264/2022 at Police Station – Sarita Vihar, Delhi under Sections 376 and 506 of the IPC on 26th April, 2022.

8. Learned counsel appearing on behalf of the petitioner submitted that the parties have amicably settled the matter and are now living peacefully and the respondent no.2 has settled the matter without any fear, force or coercion. It is also submitted that the prosecutrix/respondent no.2 was present before the Registrar and has given a statement that she does not wish to pursue the matter any further against the petitioner.

9. Therefore, it is prayed that the instant FIR may be quashed on the basis of the settlement. The terms and conditions of the said settlement are recorded in the Memorandum of Understanding (MoU), which is appended as Annexure P-3 to the instant petition dated 27th January, 2025.

10. *Per Contra*, learned APP appearing for the State vehemently opposed the instant petition and submitted that serious allegations of rape and criminal intimidation for threatening to create illicit videos are levelled against him.

11. Learned APP appearing for the state submitted that upon perusal of the contents made in the instant FIR, it reveals that the petitioner allegedly established physical relations with the prosecutrix under false promise of marriage which vitiates her consent. It is further submitted that the petitioner not only threatened to leak explicit videos of the prosecutrix but also claimed that the law enforcement would be unable to take action against him as he had provided fake identity proofs.

12. It is submitted that taking into consideration the entire facts of the case and the gravity of the allegations, this is not a fit case for quashing the



FIR merely on the grounds of settlement between the parties. The offenses alleged, including rape and criminal intimidation, are of a serious nature and have wider implications on public interest.

13. It is further submitted that the inherent powers under Section 528 of the BNSS should not be exercised in cases involving such grave offenses, and entertaining the present petition would amount to gross misuse of the process of law.

14. In light of the foregoing submissions, it is prayed that the instant petition, being devoid of any merit, may be dismissed.

15. Heard learned counsel for the parties and perused the material placed on the record.

16. Before adverting to the merits of this case, it is important at this stage to discuss the settled law on the issue of quashing of FIR and subsequent proceedings emanating therefrom. In the case of ***State of Haryana v. Bhajan Lal***, (1992 Supp (1) SCC 335) the Hon'ble Supreme Court had set out the broad categories of cases in which the inherent powers of the Court could be exercised for quashing criminal proceedings. The relevant portion of the judgment is reproduced as under:

“102. In the backdrop of the interpretation of the various relevant provisions of the Code under Chapter XIV and of the principles of law enunciated by this Court in a series of decisions relating to the exercise of the extraordinary power under Article 226 or the inherent powers under Section 482 of the Code which we have extracted and reproduced above, we give the following categories of cases by way of illustration wherein such power could be exercised either to prevent abuse of the process of any court or otherwise to secure the ends of justice, though it may not be possible to lay down any precise, clearly defined and sufficiently channelised and inflexible



guidelines or rigid formulae and to give an exhaustive list of myriad kinds of cases wherein such power should be exercised.

(1) Where the allegations made in the first information report or the complaint, even if they are taken at their face value and accepted in their entirety do not prima facie constitute any offence or make out a case against the accused.

(2) Where the allegations in the first information report and other materials, if any, accompanying the FIR do not disclose a cognizable offence, justifying an investigation by police officers under Section 156(1) of the Code except under an order of a Magistrate within the purview of Section 155(2) of the Code.

(3) Where the uncontroverted allegations made in the FIR or complaint and the evidence collected in support of the same do not disclose the commission of any offence and make out a case against the accused.

(4) Where, the allegations in the FIR do not constitute a cognizable offence but constitute only a noncognizable offence, no investigation is permitted by a police officer without an order of a Magistrate as contemplated under Section 155(2) of the Code.

(5) Where the allegations made in the FIR or complaint are so absurd and inherently improbable on the basis of which no prudent person can ever reach a just conclusion that there is sufficient ground for proceeding against the accused.

(6) Where there is an express legal bar engrafted in any of the provisions of the Code or the Act concerned (under which a criminal proceeding is instituted) to the institution and continuance of the proceedings and/or where there is a specific provision in the Code or the Act concerned, providing efficacious redress for the grievance of the aggrieved party.



(7) Where a criminal proceeding is manifestly attended with mala fide and/or where the proceeding is maliciously instituted with an ulterior motive for wreaking vengeance on the accused and with a view to spite him due to private and personal grudge.”

17. Upon careful consideration, it is evident that the inherent powers of the court must be exercised sparingly and with great caution. As held by the Hon’ble Supreme Court, an FIR may be quashed under Section 482 Cr.P.C. only if the allegations, even when taken at face value in their entirety, do not *prima facie* disclose any offense. Further, the Court may also invoke its extraordinary powers to quash a complaint if the allegations made in the FIR are so absurd and improbable that no prudent person may reach a conclusion that there are sufficient grounds for proceeding against the accused.

18. Therefore, it is clear that the question of exercise of the Court’s inherent powers under Section 482 of the Cr.P.C to quash criminal proceedings or FIR would depend on the facts and circumstances of each case. However, while deciding this question, the Court does not need to determine the genuineness of the evidence placed before it. The Court’s exercise is merely limited to a determination as to whether the allegations when taken at their face value, disclose the commission of the offence in question by the accused.

19. Having underscored the inherent powers of the High Court under Section 482 of the Cr.P.C for quashing of FIR, we need to understand the scope of the offence under Section 375 of the IPC which deals with rape, punishable under Section of the 376 of the IPC. While the said Section 375



of the IPC deals with various aspects of rape, in the present case, the allegations made against the petitioner in the FIR stand are threefolds – *firstly*, it is alleged that the petitioner obtained the consent of the prosecutrix to engage in a sexual relationship with her on the pretext of marriage; *secondly*, it is alleged that the accused threatened the prosecutrix to not report the said issue to anyone otherwise he would leak her illicit videos; *thirdly*, the alleged misuse of identity proof.

20. Section 375 of the IPC clearly provides that a person is said to have committed rape if he conducts any of the sexual acts as mentioned under clauses (a), (b), (c) and (d) without the consent of the woman. In terms of Section 90 of the IPC, if the consent is given under a misconception of fact, such consent is no consent in the eyes of law and cannot be considered to be a willful and voluntary consent on the part of the woman. Section 90 of the IPC reads as under:

“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...”

21. In the case of ***Pramod Suryabhan Pawar v. State of Maharashtra, (2019) 9 SCC 608***, the Hon’ble Supreme Court clarified the position of law on consent under “misconception of fact” in case of an offence committed under Section 375 of the IPC which involves a false promise to marry the victim, and the relevant portion of the same is produced as under:



“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.”

22. It is clear from a perusal of the above judgment that if the consent of a woman for engaging in sexual acts with her is obtained by promising to marry her without having the intention to do the same, the said consent is said to be vitiated as it is obtained by deceiving the said woman and would amount to consent under misconception of fact.

23. The consent of a woman under Section 375 of the IPC would stand vitiated in case of a misconception of fact which emerges from a promise made to marry her. In this regard, it is well-settled in law that there must be a two-pronged inquiry that the Court must conduct – *firstly*, if the promise



to marry as alleged to be a false promise was made in bad faith without any intention of keeping it when the said promise was made; and *secondly*, the promise so made must bear immediate relevance and have a direct nexus to the woman's decision to engage in sexual acts with the accused.

24. After a thorough consideration of the entire facts and circumstances of the case, the allegations made against the petitioner when taken at their face value and accepted in their entirety, *prima facie* disclose the commission of the offence under Section 375 of the IPC as the consent given by the prosecutrix was vitiated on account of it being given under a misconception of fact.

25. In the present case, the allegations against the petitioner pertain to serious offences, including rape, criminal intimidation and the submission of false identity proofs. Permitting quashing on the basis of a private settlement in such circumstances would set a dangerous precedent and undermine the deterrence of criminal law. Therefore, considering the gravity of the offense and the nature of the allegations, the instant petition does not warrant the invocation of the inherent powers under Section 528 of the BNSS.

26. Taking into consideration the contents made in the FIR, it is evident that the allegations are serious in nature and cannot be nullified merely on the grounds of settlement. The inherent powers under Section 528 of the BNSS (earlier Section 482 of the Cr.P.C) are meant to prevent abuse of process but should not be exercised where serious offences affecting public interest are involved.

27. In view of the aforesaid discussions on facts and the law laid down by the Hon'ble Supreme Court, this Court is of the considered view that the



present matter is not a fit case for the exercise of the Court's inherent powers under Section 528 of the BNSS to quash the FIR bearing No. 264/2022 dated 26th April, 2022, registered against the petitioner under Sections 376 and 506 of the IPC at Police Station – Sarita Vihar, Delhi and the consequential proceedings emanating therefrom.

28. Accordingly, the instant petition along with pending applications, if any, stands dismissed.

CHANDRA DHARI SINGH, J

FEBRUARY 10, 2025
NA/anr/mk