HC-KAR

NC: 2026:KHC:61346
CRL.P No. 1964 of 2024

CNR: KAHC010119332024

IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 4TH DAY OF NOVEMBER, 2026

BEFORE

THE HON'BLE MR. JUSTICE RAJESH RAI K

CRIMINAL PETITION NO. 1964 OF 2024

BETWEEN:

SRI DARSHAN H.L
S/O LOKESHMATHA H.M.
AGEDA BOUT 33 YEARS,
BUSINESSMEN
R/AT ARALIMARA BUS STOP,
HASSAN ROAD
ARASIKERE TOWN
HASSAN - 573 122.

...PETITIONER

(BY SRI. T PRAKASH, ADVOCATE)

AND:

Digitally signed by PANKAJA S
Location: HIGH COURT OF KARNATAKA

1. STATE OF KARNATAKA BY
ARASIKERE TOWN PS.
REPRESENTED BY PUBLIC PROSECUTOR
HIGH COURT BUILDING,
BENGALURU - 560 001.

2. KAVANA B.,
D/O BALAKRISHNA
AGED ABOUT 29 YEARS,
R/AT NO. VIJAYA NAGAR,
4TH STAGE, 2ND PHASE,
MYSORE CITY, KARNATAKA-570 017

...RESPONDENTS

(BY SRI. MAHESHA P, HCGP FOR R1,
R2 - SERVED)

THIS CRL.P IS FILED U/S 482 OF CR.PC PRAYING TO QUASH THE FIR IN CR.NO.15/2024 OF ARASIKERE TOWN P.S FOR THE ALLEGED OFFENCE P/U/S 376,420 OF IPC VIDE ANNEXURE-A PENDING ON THE FILE OF THE CIVIL JUDGE (SR.DN) AND J.M.F.C COURT ARASIKERE SO FAR AS THE PETITIONER IS CONCERNED.

THIS PETITION, COMING ON FOR ORDERS, THIS DAY, ORDER WAS MADE THEREIN AS UNDER:

CORAM: HON'BLE MR. JUSTICE RAJESH RAI K

ORAL ORDER

1. This petition is filed under Section 482 of Cr.P.C. to quash the FIR against the petitioner/accused in Crime No.15/2024, registered by Arasikere Town Police, for the offences punishable under Sections 376 and 420 of IPC, pending on the file of Civil Judge (Sr.Dn.) JMFC Court, Arasikere.

2. Brief facts of the case are, respondent No.2 lodged a complaint before respondent No.1-Police on 21.05.2024 alleging that though she was married, due to some matrimonial dispute, she was residing separately. In the meanwhile, she came in contact with the petitioner and both of them fell in love and thereafter, on the promise of marrying her, the petitioner

and respondent No.2 were sexually active. It is further stated that the petitioner insisted her to get divorce from her husband and thereafter he will marry her and take care of her. Upon such promise, respondent No.2 gave divorce to her husband. Thereafter, the petitioner once again assured that he would marry respondent No.2 in the year 2024. In the meantime, she came to know that the petitioner performed his engagement with another girl. When she requested him not to marry her, the petitioner turn a deaf ear. As such, she lodged a complaint. On the strength of the said complaint, FIR came to registered against the petitioner for the aforementioned offences. Aggrieved by the same, the petitioner is before this Court.

3. Heard the learned counsel for the respective parties.

4. The primary contention of the learned counsel for the petitioner is that, on a perusal of the averments made in the complaint, respondent No.2 is a major and married woman, who, during the subsistence of her first marriage, fell in love with the petitioner and, with her consent, both of them were

sexually involved. It is, however, alleged in the complaint that the petitioner had made a promise to marry respondent No.2 and, on the basis of such promise, had sexual intercourse with her. Learned counsel would contend that, when the marriage of respondent No.2 was subsisting, such a promise cannot constitute an offence under Section 417 of IPC. It is further contended that, admittedly, the sexual relationship between the petitioner and respondent No.2 was consensual and, therefore, the ingredients of Section 376 of IPC are also not attracted. Accordingly, he seeks to allow the petition.

5. *Per contra*, the learned HCGP opposed the prayer of the petitioner contending that the investigation is still at a nascent stage and the police are yet to collect the necessary material. It is contended that, despite having knowledge that he could not marry respondent No.2, the petitioner made a promise to marry her, pursuant to which she obtained divorce from her first husband. In such circumstances, the learned HCGP submits that the allegations prima facie attract the offences punishable under Sections 417 and 376 of IPC. Accordingly, he seeks dismissal of the petition.

6. I have given my anxious consideration to the aforesaid submissions and perused the documents made available before this Court.

7. As could be gathered from the averments of the FIR and complaint, admittedly, respondent No.2 is a major and married woman. The allegation is that, during the subsistence of her first marriage, she fell in love with the petitioner and, thereafter, both of them were sexually involved for a period of six years. In such circumstances, the sexual relationship between the petitioner and respondent No.2 can be prima facie considered to be consensual. Further, as rightly contended by the learned counsel for the petitioner, the alleged promise made by the petitioner cannot be construed as an inducement so as to attract the ingredients of Section 417 of IPC. This is for the reason that, according to respondent No.2 herself, the petitioner had assured her that he would marry her after she obtained a decree of divorce from her husband. The complaint itself discloses that respondent No.2 was residing separately from her husband. The Hon'ble Apex Court in the case of ***Shiva***

Prathap Singh Rana V/s State of Madhya Pradesh and Another - ***(2024) 8 SCC 313*** held in paragraphs No.26 to 33 as under:

> "**26**. We have carefully gone through the definition of "rape" provided under Section 375IPC. We have also gone through the provisions of Section 376(2)(n)IPC, which deals with the offence of rape committed repeatedly on the same woman. Section 375 IPC defines "rape" by a man if he does any of the acts in terms of clauses (a) to (d) under the seven descriptions mentioned therein. As per the second description, a man commits rape if he does any of the acts as mentioned in clauses (a) to (d) without the consent of the woman. Consent has been defined in Explanation 2 to mean an unequivocal voluntary agreement when the woman by words, gestures or any form of verbal or nonverbal communication, communicates willingness to participate in the specific sexual act. However, the proviso thereto clarifies 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.
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> **27**. Having regard to the above and in the overall conspectus of the case, we are of the view that the physical relationship between the prosecutrix and the appellant cannot be said to be against her will and without her consent. On the basis of the available materials, no case of rape or of criminal intimidation is made out.
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> **28**. The learned counsel for the respondents had placed considerable reliance on the provisions of Section 90IPC, particularly on the expression "under a misconception of fact". Section 90IPC reads thus:

> "90. Consent known to be given under fear or misconception.—A consent is not such a consent as it 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 Consent of insane person.—if the consent is given by a person who, from unsoundness of mind, or intoxication, is unable to understand the nature and consequence of that to which he gives his consent; or Consent of child.—unless the contrary appears from the context, if the consent is given by a person who is under twelve years of age."

29. Section 90 IPC says that a consent is not such a consent as it is intended by any section of IPC, if the consent is given by a person under the fear of injury or under a misconception of fact.

30. In Dhruvaram Murlidhar Sonar v. State of Maharashtra [Dhruvaram Murlidhar Sonar v. State of Maharashtra, (2019) 18 SCC 191 : (2020) 3 SCC (Cri) 672] , this Court after examining Section 90IPC held as follows : (SCC p. 198, para 17) "17. Thus, Section 90 though does not define "consent", but describes what is not "consent". Consent may be express or implied, coerced or misguided, obtained willingly or through deceit. If the consent is given by the complainant under misconception of fact, it is vitiated. Consent for the purpose of Section 375 requires voluntary participation not only after the exercise of intelligence based on the knowledge of the significance and moral quality of the act, but also

after having fully exercised the choice between resistance and assent. Whether there was any consent or not is to be ascertained only on a careful study of all relevant circumstances."

31. This Court also examined the interplay between Section 375IPC and Section 90IPC in the context of consent in Pramod Suryabhan Pawar v. State of Maharashtra [Pramod Suryabhan Pawar v. State of Maharashtra, (2019) 9 SCC 608 : (2019) 3 SCC (Cri) 903] , and held that consent with respect to Section 375IPC 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. After deliberating upon the various case laws, this Court summed up the legal position as under : (SCC p. 620, para 18)

> "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."

32. The learned counsel for the respondents had relied heavily on the expression "misconception of fact". However, according to us, there is no misconception of fact here. Right from the inception, it is the case of the prosecution that while the appellant was insisting on having a relationship with the prosecutrix, the later had turned down the same on the ground that the appellant was the friend of her younger brother and a distant relative of her jijaji. That apart, according to the prosecutrix, the appellant was younger to her. Nonetheless, the prosecutrix had accompanied the appellant to a temple, where she had voluntarily taken bath under a waterfall. Her allegation that the appellant had surreptitiously taken photographs of her while she was bathing and later on changing clothes and was blackmailing her with such photographs remain unfounded in the absence of seizure of such photographs or the mobile phone on which such photographs were taken by the appellant. If, indeed, she was under some kind of threat from the appellant, it defies any logic, when the prosecutrix accompanied the appellant to Gwalior from Dabra, a journey which they had made together by train. On reaching Gwalior, she accompanied the appellant on a scooter to a rented premises at Anupam Nagar, where she alleged that the appellant had forced himself upon her. But she did not raise any alarm or hue and cry at any point of time. Rather, she returned back to Dabra along with the appellant. The relationship did not terminate there. It continued even thereafter. It is the case of the prosecutrix herself that at one point of time the family members of the two had met to discuss about their marriage but nothing final could be reached regarding their marriage. It was only thereafter that the FIR was lodged.

33. As already pointed out above, neither the affidavit nor stamp papers have been recovered or seized by the police; so also the jewellery. The

> alleged cheque of the prosecutrix's mother given to the appellant or the bank statement to indicate transfer of such money have not been gathered by the police. In the absence of such materials, the entire substratum of the prosecutrix's case collapses. Thus, there is hardly any possibility of conviction of the appellant. As a matter of fact, it is not even a case which can stand trial. It appears to be a case of a consensual relationship which had gone sour leading to lodging of FIR. In the circumstances, the Court is of the view that compelling the appellant to face the criminal trial on these materials would be nothing but an abuse of the process of the court, result of the trial being a foregone conclusion."

8. Further, the said position of law is reiterated by the Hon'ble Apex Court in the case of ***JASPAL SINGH KAURAL Vs. STATE OF NCT OF DELHI AND OATHERS*** - ***MANU/SC/0463/2025*** and held in paragraph No.15 as under:

> *"**15**. Upon a bare perusal of the FIR and the charge-sheet, the following facts are clearly established:*
>
> *(i). xxx*
>
> *(ii). xxx*
>
> *(iii). There is also no element of criminality that can be accrued to the Appellant, insofar as it is the own case of the prosecutrix, that she was in a relationship with the Appellant, while being in a subsisting marriage. It is also hard to believe that the prosecutrix could have sustained a physical*

relationship for a prolonged period of five years3, while being in a subsisting marriage, and even subsequently obtaining divorce to sustain the relationship. The prolonged period of the relationship, during which the sexual relations continued between the parties, is sufficient to conclude that there was never an element of force or deceit in the relationship.4 The prosecutrix was thus, conscious and cognizant of the consequences of her Prashant Vs State of NCT Delhi 2024 SCC Online SC 3375 Mahesh Damu Khare Vs State of Maharashtra and Anr. (2024) SCC Online SC actions, and had given her consent after an active and reasoned deliberation."

9. Collocating the above findings of the Hon'ble Apex Court in the above judgments to the facts and circumstances of the case, in my considered view, even if the entire allegations in the FIR are taken on its face value, no offences have been made out against the petitioner/accused. As such, continuation of proceedings against him is nothing but abuse of process of Court. Accordingly, I proceed to pass the following:

ORDER

i. The petition is ***allowed***.

ii. The proceedings against the petitioner/accused in Crime No.15/2024, registered by Arasikere Town Police, for the

offences punishable under Sections 376 and 420 of IPC, pending on the file of Civil Judge (Sr.Dn.) JMFC Court, Arasikere, are hereby quashed.

SD/-
(RAJESH RAI K)
JUDGE

HKV/List No.: 1 Sl No.: 12